ORAP COMMITTEE 2026

April 16 Agenda -- Combined Agenda and Materials

PENDING PROPOSALS:

- ***For discussion:***

  3. ORAP 1.40, 13.25, COA Verification and Sanctions -- Use of Fabricated Authorities from Artificial Intelligence

  6. ORAP 1.35(2)(b)(ii), ORAP 16.45(2)(a) -- eService Mandated for eFiled Documents (previous summary: "ORAP 3.30(6), 3.40(1)(b), 5.85(3)(a), etc. -- Response or Reply Times Run from Service Instead of Filing")

  23. ORAP 11.10, new 11.12, 11.15, SCT Mandamus -- Consolidate and Clean Rules

- ***Technical amendments:***

  15. ORAP 5.50, Excerpts of Record -- Streamline Requirements

FOR INFORMATIONAL PURPOSES ONLY: PROPOSALS RESOLVED AT PRIOR MEETING:

- ***Proposals approved:***

  1. ORAP 1.32 etc, Temporary Rules -- Terminology -- Change OSB Member to Licensee

  2. ORAP 1.35, Filing and Service -- Clarifications re Duplicative Filings and Service Requirements

  4. ORAP 1.45, Filings -- Cannot Use Color Text or Highlighting

  5. ORAP 2.35, SCT Summary Determination of Appealability -- Caption Requirement

  7. ORAP 3.30, Transcript Preparation -- Service Requirements

  8. ORAP 3.43, New Rule -- Process to Transfer Transcript Between Appeals

  9. ORAP 3.50, 4.20, Electronic Records Retention

10. ORAP 5.05, 7.10, Briefs and Motions -- Captions Must Note Impending Oral Argument Date

11. ORAP 5.15, Brief References -- Party Designation in Domestic Relations Cases

13. ORAP 5.45, Plain Error Rule -- Revisions and Explanations

16. ORAP 6.05, COA Oral Argument Requests -- Time Runs from Reply Brief

and

14. ORAP 5.50, 6.05, 6.10, 6.15, 6.20, and 6.30, Temporary Rules -- COA Argument

18. ORAP 6.25, COA Reconsideration of Orders -- 14 Days for Motion to Reconsider (approved with edit)

19. ORAP 8.45, Notice of Mootness -- Probable Mootness, Does Not Require Party to Argue for Dismissal

24. ORAP 12.25, SCT Bar Proceedings -- Correct Terminology and Cross References

25. ORAP 12.27, SCT Judicial Disability Proceedings -- Correct Limiting Term in Rule Subcaption

26. ORAP 13.05, Costs -- Address SCT Remand to COA

- ***Proposals rejected or resolved without adoption:***

12. ORAP 5.35 etc, Terminology -- Use "Table" of Contents etc. Instead of "Index"

17. ORAP 6.25, COA Reconsideration -- Permit Requests to Reconsider En Banc ***(withdrawn)***

20. ORAP 9.05 or 9.17, SCT Petitions or Briefs -- Use Same Sequence for Questions on Review and Facts

21. ORAP 10.15, COA Juvenile Dependency and Adoption -- Also Expedite Juvenile Delinquency Appeals

22. ORAP 10.30, COA Nonprecedential Opinions -- Expand When Opinions are Precedential ***(withdrawn)***

27. ORAP 13.10, Attorney Fees -- Amount is Discretionary Even Absent Objection ***(withdrawn)***

ORAP COMMITTEE 2026
April 16 Materials

AMENDING RULE(S): Version 3.2 - Proposal # 3 -- ORAP 1.40, 13.25 -- Address Fabricated Facts and Law from Artificial Intelligence in Court of Appeals

PROPOSER: Hon. Erin C. Lagesen, Chief Judge, Court of Appeals

EXPLANATION:

4-3-26 Update:

The proposed revisions reflect the workgroup's attempt to lessen concerns that the new rules will invite petty (as opposed to substantive) motions practice. Another key goal was to provide notice to litigants, especially self-represented litigants, that there can be severe sanctions for submitting filings with "fabricated authorities," which is defined to encompass false statements of fact and law. We hope the revisions accomplished our goals. Some highlights of the most recent revisions:

- The workgroup rewrote ORAP 1.40(6) to include a definition of "fabricated authority." Defining the term here made this rule easier to follow; it also allowed the workgroup to simplify ORAP 13.25.
- We added a footnote to ORAP 1.40 that includes citations to cases in which parties have been sanctioned for filings that included fabricated authorities.
- "Appellate court" is defined in ORAP 1.15(1)(f) to be both the Supreme Court and the Court of Appeals, so the workgroup simplified references to the courts throughout the rule.
- The workgroup decided to simplify ORAP 13.25(3)(a). Under the rule, an appellate court can impose sanctions anytime it determines there has been a false certification under ORAP 1.40(5).
- The workgroup also decided to soften the mandatory components of ORAP 13.25. The rule as proposed provides the courts with the flexibility they need to handle the wide variety of circumstances in which this situation can come up, while still ensuring that litigants are aware that a false certification is taken seriously by the courts, and alerts litigants of the types of sanctions that can be expected.
- The workgroup proposes deleting ORAP 13.25(6), which included several *requirements* for what must be included in an order imposing sanctions. The workgroup agrees that it is important for a court to explain itself when it imposes sanctions but concluded that an express provision requiring them to do so was not needed for that to happen.

- We've included both a track changes version of the rules and a clean version.
- To reach the recommendations listed below, the workgroup worked from the "clean" version of the rules that were submitted to the March 11 ORAP meeting. (ORAP 1.40; ORAP 13.25) To see how the proposal submitted here differs from the currently published rules, please compare them to the March 11 ORAP materials.

2-27-26 Update: The original proposal has been extensively amended and still requires some additional work. As a result, this version is submitted to the committee for discussion and feedback only.

This revision is intended to address concerns that the certification section and sanction sections seemed to set out different tests, to add the Supreme Court, to allow more discretion for types of sanctions, to line up the standards with ORCP 17 or other statutes that use sanctions, to address supplemental pro se briefs, and to match ORAP structure and wording.

Three notes for specific consideration: (1) In ORAP 13.25(3)(a), the use of "objectively unreasonable" was retained, but it could be reworded to "one for which there is no objectively reasonable basis" or similar.
(2) Should the show cause process be mandatory in all cases? ORAP 13.25(3)(b) ("Upon striking the document, the court *will* direct the person or party that filed the document to show cause within 14 days * * *.") In particular, where a respondent has not appeared on appeal and the court determines striking the document is a sufficient remedy, should the rule allow discretion to not initiate a show cause process?(3) The workgroup will be clarifying references to the "person" and to the "party," possibly to use "attorney or pro se party" in lieu of "person" to indicate a reference to the signer of the document. And use of "party" more generally to mean a party to the litigation. Also, should the show cause section explicitly allow for a party represented by an attorney who made a false certification the opportunity to respond separately from the attorney?

Original proposal:

The proposed amendments are intended to address the uptick in fabricated law that the Court of Appeals is seeing as the use of generative artificial intelligence increases. Rather than propose direct regulation of the use of AI, the proposed amendments center on the consequences of submitting fabricated law and facts to the court, rather than on the likely mechanism by which that is occurring.

RULES AS AMENDED:

Tracked Changes:

Rule 1.40
VERIFICATION; DECLARATIONS; ADOPTING ORCP 17

(1) Except if specifically required by statute, no thing filed with the appellate court need be verified.

(2) When a statute requires a paper filed with the appellate court to be verified, a verification shall consist of a statement:

(a) that the person has read the paper and that the facts stated in the paper are true, to the best of the person's knowledge, information and belief formed after reasonable inquiry;

(b) signed and dated by the person; and

(c) sworn to or affirmed before a person authorized by law to administer oaths or affirmations, including, but not necessarily limited to, a notary public.

(3) A declaration under penalty of perjury may be used in lieu of any affidavit required or allowed by these rules. A declaration under penalty of perjury may be made without notice to adverse parties, must be signed by the declarant, and must include the substance of the following sentence in prominent letters immediately above the signature of the declarant: "I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury." As used in these rules, "declaration" means a declaration under penalty of perjury.

(4) Oregon Rule of Civil Procedure (ORCP) 17 is hereby adopted as a rule of appellate procedure applicable to the appellate courts~~Supreme Court and Court of Appeals~~.[1]

(5) In addition to the general certifications in ORCP 17 C, a person signing a document as required by ORCP 17 that is filed in an appellate court ~~the Supreme Court or the Court of Appeals~~ is ~~specifically~~ certifying that ~~a human being~~ the document does not contain any fabricated authority.

(a) As used in the Oregon Rules of Appellate Procedure, "fabricated authority" means legal or factual content that is fake, whether created by artificial intelligence or otherwise, and includes but is not limited to a citation of law that does not exist, a quotation that does not appear in the citation attributed to it, a proposition of law that is not reasonably related to the citation attributed to it, or factual support that is fictitious and does not have a basis in the record.[2] ~~has read all citations to cases, statutes,~~

~~constitutions, or other sources of law appearing in the document and has confirmed that each citation is to a source of law that, in fact, exists, contains the text of any quotation attributed to it, and supports the principles of law attributed to it; and~~

~~(b) has read all statements of fact appearing in the document and confirmed that those facts are supported by the portion of the record cited in the manner required by ORAP 5.20(1) - (3).~~

~~(6~~(b) This subsection ~~This rule~~ does not apply to ~~impose any certification obligations on the~~ an attorney filing ~~with regard to~~ a supplemental *pro se* brief prepared by the attorney's client under ORAP 5.92.

[1] *See* ORAP 13.25 regarding the procedure for requesting sanctions under this subsection.

[2] *See Ringo v. Colquhoun Design Studio, LLC*, 345 Or App 301, 582 P3d 695 (2025) (imposing sanctions on an attorney for citation of fabricated authority and describing the negative impact AI is having on the court system and the rule of law); *see also Powell v. Employment Department*, 347 Or App 55, ___ P3d ___ (2026) (imposing sanctions on a self-represented party for citation to fabricated authority that resulted from the party's reliance on online search engines and AI and describing the resulting prejudice to the opposing party and waste of judicial resources).

See generally ORS 138.090 regarding the signing of notices of appeal in criminal cases, ORS 19.250(1)(g) regarding the signing of notices of appeal in civil cases, and ORAP 5.05(3)(e) regarding the signing of briefs.

Rule 13.25
PETITIONS AND MOTIONS FOR DAMAGES AND SANCTIONS

(1) Damages under ORS 19.445, attorney fees under ORS 20.105, and reasonable expenses (including attorney fees) under ORAP 1.40(4) and ORCP 17 D are recoverable only by petition filed within 21 days after the decision deciding the appeal or review in the manner provided in ORAP 13.10. A request for damages, attorney fees, and reasonable expenses should not be included in the party's brief.

(2) A motion for reasonable expenses (including attorney fees) under ORAP 1.40(4) and ORCP 17 D based on the filing of a motion or thing shall be included in the answer or objection to the motion, statement of costs and disbursements, or petition for attorney fees to which the motion for sanctions relates.

(3) An appellate court may impose sanctions against a person or party who has made

a false certification under ORAP 1.40(5).

~~(a) Circumstances in which the court will find a person has made a false certification under ORAP 1.40(5) in a document filed by the person include, but are not limited to:~~

~~(i) a citation or citations to nonexistent case law or any other nonexistent source of law;~~

~~(ii) a quotation attributed to an existing source of law that does not contain the quoted text;~~

~~(iii) a statement of a principle of law attributed to an existing case or other source of law where the attribution is one that is objectively unreasonable; or~~

~~(iv) an assertion of fact that is objectively unreasonable to attribute to the portion of the record cited in the manner required by ORAP 5.20 (1) - (3).~~

~~(b~~(a) The court on its own motion, or the motion of any party, ~~will~~may order a person to show cause within 14 days if the court has a basis to find that the ~~strike any document that the court finds a~~ person has filed a document with a false certification under ORAP 1.40(5). As part of the order, the court may ~~Upon~~ strik~~e~~ing the document. T~~, t~~he order ~~court will~~may direct the person ~~or party that~~who filed the document to show cause within 14 days why the proceeding should not proceed without the ~~stricken~~ document, why sanctions under paragraph (3)(b~~e~~) of this rule should not be imposed on the person who signed the document, and, in circumstances when the ~~stricken~~ document is an opening brief or a case initiating document, why the appeal should not be dismissed. Within 14 days after the response to the show cause order is filed, any other party to the appeal may file a supplemental response and may include a request for reasonable attorney fees incurred in responding to the circumstances of the false certification under ORAP 1.40(5).

(b) Absent ~~extraordinary circumstances~~good cause, the court will impose sanctions on a person for filing a document with a false certification under ORAP 1.40(5)~~, which will include monetary sanctions, but, in the court's discretion, may include other or additional appropriate sanctions~~. A court may impose one or more of the following sanctions:

(i) Monetary sanctions. When the court imposes monetary sanctions, absent ~~extraordinary circumstances~~good cause, it will impose a minimum of $500 ~~for~~ each ~~citation to nonexistent~~time a fabricated authority is referenced in the stricken document. ~~, and $1000 for each nonexistent quotation or objectively unreasonable factual or legal attribution. The sanction imposed under this paragraph may be imposed as a fine or to compensate a party for the effects of the~~

~~false certification.~~

(ii) Attorney fees. Sanctions ~~will~~may include an award of ~~-~~reasonable attorney fees ~~to any other party~~ incurred by any other party ~~-~~as a result of the circumstances of the false certification under ORAP 1.40(5).

(iii) ~~A sanction~~Other sanctions. Sanctions other than the sanctions specified in subparagraphs (i) and (ii) of this subsection may be imposed if the court determines that the ~~sanction would be~~sanctions are an effective remedy for the false certification under ORAP 1.40(5).

(c ~~(iv~~) In determining whether to sanction a person in excess of the amounts under ~~subparagraph (~~paragraph (3)(b)(i) of this rule, award attorney fees under paragraph (3)(b)(ii), or to include other sanctions under ~~subparagraph (~~paragraph (3)(b)(iii), and whether to permit the filing of a new document in the place of a stricken one, the court will consider:

(i ~~A~~) The number of times in the stricken document ~~any of the circumstances under paragraph (3)(a) of this rule appear~~a reference to a fabricated authority appears;

(ii ~~B~~) The number of occasions on which the person filing the document has been found by the appellate court~~Supreme Court, Court of Appeals~~, or any other court or agency to have filed documents containing ~~the circumstances under paragraph (3)(a) of this rule~~a fabricated authority;

(iii ~~C~~) Any prejudice to the other parties to the case resulting from the false certification under ORAP 1.40(5);

(iv ~~D~~) The degree to which the party on whose behalf the document was filed played a role in including or encouraging the appearance of any ~~of the circumstances under paragraph (3)(a) of this rule in the stricken document~~fabricated authority; and

(v ~~E~~) Any such other factor the court deems relevant under the circumstances.

~~(d) The court order imposing sanctions under subsection (3) of this rule must specifically describe the false certification and the grounds for determining that the certification was false. The order must explain the grounds for the imposition of the specific sanction that is ordered.~~

Clean version of proposed rules:

Rule 1.40
VERIFICATION; DECLARATIONS; ADOPTING ORCP 17

(1) Except if specifically required by statute, no thing filed with the appellate court need be verified.

(2) When a statute requires a paper filed with the appellate court to be verified, a verification shall consist of a statement:

(a) that the person has read the paper and that the facts stated in the paper are true, to the best of the person's knowledge, information and belief formed after reasonable inquiry;

(b) signed and dated by the person; and

(c) sworn to or affirmed before a person authorized by law to administer oaths or affirmations, including, but not necessarily limited to, a notary public.

(3) A declaration under penalty of perjury may be used in lieu of any affidavit required or allowed by these rules. A declaration under penalty of perjury may be made without notice to adverse parties, must be signed by the declarant, and must include the substance of the following sentence in prominent letters immediately above the signature of the declarant: "I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury." As used in these rules, "declaration" means a declaration under penalty of perjury.

(4) Oregon Rule of Civil Procedure (ORCP) 17 is hereby adopted as a rule of appellate procedure applicable to the appellate courts.[1]

(5) In addition to the general certifications in ORCP 17 C, a person signing a document as required by ORCP 17 that is filed in an appellate court is certifying that the document does not contain any fabricated authority.

(a) As used in the Oregon Rules of Appellate Procedure, “fabricated authority” means legal or factual content that is fake, whether created by artificial intelligence or otherwise, and includes but is not limited to a citation of law that does not exist, a quotation that does not appear in the citation attributed to it, a proposition of law that is not reasonably related to the citation attributed to it, or factual support that is fictitious and does not have a basis in the record.[2]

(b) This subsection does not apply to an attorney filing a supplemental *pro se*

brief prepared by the attorney's client under ORAP 5.92.

[1] *See* ORAP 13.25 regarding the procedure for requesting sanctions under this subsection.

[2] *See Ringo v. Colquhoun Design Studio, LLC*, 345 Or App 301, 582 P3d 695 (2025) (imposing sanctions on an attorney for citation of fabricated authority and describing the negative impact AI is having on the court system and the rule of law); *see also Powell v. Employment Department*, 347 Or App 55, ___ P3d ___ (2026) (imposing sanctions on a self-represented party for citation to fabricated authority that resulted from the party's reliance on online search engines and AI and describing the resulting prejudice to the opposing party and waste of judicial resources).

See generally ORS 138.090 regarding the signing of notices of appeal in criminal cases, ORS 19.250(1)(g) regarding the signing of notices of appeal in civil cases, and ORAP 5.05(3)(e) regarding the signing of briefs.

Rule 13.25
PETITIONS AND MOTIONS FOR DAMAGES AND SANCTIONS

(1) Damages under ORS 19.445, attorney fees under ORS 20.105, and reasonable expenses (including attorney fees) under ORAP 1.40(4) and ORCP 17 D are recoverable only by petition filed within 21 days after the decision deciding the appeal or review in the manner provided in ORAP 13.10. A request for damages, attorney fees, and reasonable expenses should not be included in the party's brief.

(2) A motion for reasonable expenses (including attorney fees) under ORAP 1.40(4) and ORCP 17 D based on the filing of a motion or thing shall be included in the answer or objection to the motion, statement of costs and disbursements, or petition for attorney fees to which the motion for sanctions relates.

(3) An appellate court may impose sanctions against a person or party who has made a false certification under ORAP 1.40(5).

(a) The court on its own motion, or the motion of any party, may order a person to show cause within 14 days if the court has a basis to find that the person has filed a document with a false certification under ORAP 1.40(5). As part of the order, the court may strike the document. The order may direct the person who filed the document to show cause within 14 days why the proceeding should not proceed without the document, why sanctions under paragraph (3)(b) of this rule should not be imposed on the person who signed the document, and, in circumstances when the document is an opening brief or a case initiating document, why the appeal should not be dismissed.

Within 14 days after the response to the show cause order is filed, any other party to the appeal may file a supplemental response and may include a request for reasonable attorney fees incurred in responding to the circumstances of the false certification under ORAP 1.40(5).

(b) Absent good cause, the court will impose sanctions on a person for filing a document with a false certification under ORAP 1.40(5). A court may impose one or more of the following sanctions:

(i) Monetary sanctions. When the court imposes monetary sanctions, absent good cause, it will impose a minimum of $500 each time a fabricated authority is referenced in the stricken document.

(ii) Attorney fees. Sanctions may include an award of reasonable attorney fees incurred by any other party as a result of the circumstances of the false certification under ORAP 1.40(5).

(iii) Other sanctions. Sanctions other than the sanctions specified in subparagraphs (i) and (ii) of this subsection may be imposed if the court determines that the sanctions are an effective remedy for the false certification under ORAP 1.40(5).

(c) In determining whether to sanction a person in excess of the amounts under paragraph (3)(b)(i) of this rule, award attorney fees under paragraph (3)(b)(ii), or to include other sanctions under paragraph (3)(b)(iii), and whether to permit the filing of a new document in the place of a stricken one, the court will consider:

(i) The number of times in the stricken document a reference to a fabricated authority appears;

(ii) The number of occasions on which the person filing the document has been found by the appellate court, or any other court or agency to have filed documents containing a fabricated authority;

(iii) Any prejudice to the other parties to the case resulting from the false certification under ORAP 1.40(5);

(iv) The degree to which the party on whose behalf the document was filed played a role in including or encouraging the appearance of any fabricated authority; and

(v) Any such other factor the court deems relevant under the circumstances.

ORAP COMMITTEE 2026
April 16 Materials

AMENDING RULE(S): Proposal # 6 -- ORAP 1.35(2)(b)(ii), ORAP 16.45(2)(a) -- eService Mandated for eFiled Documents (previous summary: "ORAP 3.30(6), 3.40(1)(b), 5.85(3)(a), etc. -- Response or Reply Times Run from Service Instead of Filing")

PROPOSER: Tom Christ

WORKGROUP: Daniel Parr, Theresa Kidd

EXPLANATION:

Summary for April 16 (by SP Armitage, based on email from Daniel Parr): The committee's interest at the March 11 meeting was in mandating eService when eFiling was used. Daniel and Theresa have suggested changes to ORAP 1.35(2)(b)(ii) and ORAP 16.45(2)(a). They have concluded that no other rule changes would be required.

Workgroup notes for March 11: The workgroup offers the following options (not in any specific order other than #1):

1) Do nothing.

2) Adopt ORCP 10B.

3) Make changes to the response time for certain filings. For example, when a rule requires 14 days or less to respond, add 3 days to the time (in the rule) with a comment that the historical time has been 14 days and we are making this change instead of adopting ORCP 10B. In other words, if a rule provides 7 days to respond it should be changed to 10, if 14 it should be changed to 17.

4) Mandate eService when eFiling is used.

If the committee prefers options 2, 3, or 4, then the workgroup will work on specific language or identify specific rules that will need to be modified

Original explanation: "Change the time for responding or replying to another party's document to begin when the document is served rather than when it was filed, as in the following rules, which are just a few of many:

- 3.30(6)

- 3.40(1)(b)
- 5.85(3)(a)
- 5.90(3)
- 6.25(4)
- 6.30(3)(a)(ii)
- 6.35(3)
- 7.05(3) and (4)
- 9.10(2)
- etc.

"You can't respond or reply to a document you haven't yet received. So the time for doing so should not begin to run until you've received it or are likely to have received it in the ordinary course, which can happen after filing, sometimes long after. To be sure, the rules say that a party that files a document must also serve it, but doesn't say when that has to happen. See ORAP 1.35(2) (a)(i). If the document is served electronically, via the eFiling system, the service and filing will coincide. But it doesn't have to be served that way; it can be served by email or mail instead, and at some later date, see ORAP 1.35(b), and, of course, if it's mailed, the delivery could take several days. That's why the ORCP adds three days to the time to respond or reply to a document served that way in a trial court proceeding. See ORCP 10 B.

"Lawyers are accustomed to response- and reply-times that start with service, not filing. E.g., ORCP 21 D and E (motions to make more definite and certain), ORCP 23 A (response to motion to amend), ORCP 43 B(2) (response to RFP); ORCP 45 B (response to request for admissions); ORCP 47 C ('served and filed') (response to MSJ and reply to response).

"I recently received a document that my client's opponent filed electronically on a Saturday evening and served on me by mail when the Post Office opened on Monday. When I got it on, I think, Wednesday, five days of my time to respond had already lapsed."

RULE AS AMENDED:

Rule 1.35
FILING AND SERVICE

(1) Filing

* * * * *

(2) Service

* * * * *

(b) Except as otherwise provided by law,[5] a party may serve a document on another person as provided in ORCP 9 or by commercial delivery service.

(i) If a party serves a copy of a document by the U.S. Postal Service or commercial delivery service, the class of service must be calculated to result in the person receiving the document within three calendar days.

(ii) A party eFiling a document must utilize ~~E~~electronic service via the eFiling system ~~is permitted only~~ on authorized users of the eFiling system ~~and only~~ as provided in ORAP 16.45.

(iii) Service by email or facsimile communication is permitted only as provided in ORCP 9 F or G.

* * * * *

Rule 16.45
ELECTRONIC SERVICE

* * * * *

(2) (a) Except as provided in subsection (3), a party eFiling a document must ~~may~~ use the eFiling system's eService function to accomplish service of that document on any other party's attorney or on a self-represented party, if that party's attorney or the self-represented party is a registered eFiler.[1] The eFiling system will generate an email to the attorney or self-represented party being eServed that includes a link to the document that was eFiled. To access the eFiled document, the attorney or self-represented party who has been eServed must log in to the eFiling system.

(b) eService is effective under this rule when the eFiler has received a confirmation email stating that the eFiled document has been received by the eFiling system.

* * * * *

ORAP COMMITTEE 2026
April 16 Materials

AMENDING RULE(S): Proposal # 23 -- ORAP 11.10, new 11.12, 11.15 -- Reorganize Mandamus Rules and Remove Obsolete Requirements

PROPOSER: Lisa Norris-Lampe (Kendra Matthews submitted)

EXPLANATION:

***Workgroup notes for April 16*:**

To reach our final recommendations, the workgroup worked from the "clean" version of the rules that were submitted to the March 11 ORAP meeting. (ORAP 11.10; *new* ORAP 11.12; ORAP 11.15; ORAP 11.17) To see how those rules differ from the currently published rules, please see the March 11 ORAP materials.

- In this revision, the workgroup changed repeated references to "the action of a judge in a particular case in the circuit court, the Tax Court, or the Court of Appeals" to "the action of a judge or lower court in a particular case." This change increases readability (the list doesn't seem necessary) and is more accurate (in addition to the courts listed, mandamus could also be filed challenging an order entered in a municipal or justice court). Because this list was also in ORAP 11.05, the workgroup added ORAP 11.05 to the list of rules being revised.
- The workgroup also tried to make ORAP 11.12(2), which relates to what happens when an alternative writ is issued in a matter involving a judge or lower court, easier to understand. ORS 34.150 requires the court that is hearing the mandamus (whether it is the Supreme Court or a different court) to issue an alternative writ using the directives mentioned in ORAP 11.12(2)(b). But ORS 34.250, which specifically applies to proceedings in the Supreme Court, suggests the procedure referenced in ORAP 11.12(2)(c). The revision that follows complies with both statutes but, hopefully, better conveys how things work in practice.
- We added a sentence to ORAP 11.12(3)(c). This sentence is intended to articulate the statutory authority (to decide the matter on the pleadings) and the court's regular practice (to direct the parties to file briefs).
- We added back ORAP 11.15(6). This is in the current rules but was not in the proposed revision included in the March 11 ORAP meeting materials.

- Other small changes were made throughout to increase readability.
- Note: in the print version of the ORAPs, headings like those found in ORAP 11.12(2) and ORAP 11.12(3) are in bold. See, for example, the print version of ORAP 4.20. In the online copy of the ORAPs on the OJD website, however, these types of headings are not bolded. Because we are submitting a Word version of the proposed revision, we did not emphasis them in this proposal. In the print version, it would be appropriate to put those headings in bold. To be specific:

> **(2) Issuance and delivery of an alternative writ of mandamus in a mandamus proceeding challenging the action of a judge or lower court in a particular case; further actions.**
>
> **(3) Issuance and delivery of an alternative writ in any other mandamus proceeding; further actions.**

Workgroup notes for March 11: The workgroup needs additional time to work on some aspects of the proposal, so it asks that the proposal be passed for the April meeting.

Original explanation: Reorganize mandamus rules for clarity and increased ease in reading. Remove some obsolete provisions (e.g., requiring the filing of "originals" and including a separate requirement for service (which is required by other rules)). Close a gap in the rules relating to requiring the parties to notify the court if there is compliance with an alternative writ at any time. See additional notes with each proposed rule change.

RULES:

TRACKED CHANGES VERSION OF THE PROPOSED RULES:
(showing only new changes from March 11 materials)

Rule 11.05
MANDAMUS:
INITIATING A MANDAMUS PROCEEDING

(1) A party seeking a writ of mandamus in the Supreme Court shall apply by filing a petition substantially in the form prescribed by this rule.

(2) Except as otherwise provided in this rule, a petition for writ of mandamus shall comply as to form with ORAP 5.05(3). The petition shall also include, in addition to any matters required by law:

(a) A title page including a caption containing the title of the proceeding, a heading indicating the type of writ requested (*e.g.*, "petition for alternative writ of mandamus," "petition for peremptory writ of mandamus"), and, if the mandamus proceeding arises from a matter before a lower court or administrative agency, the identifying number, if any, assigned to the matter below.

(i) In a mandamus proceeding that challenges the action of a judge ~~in a particular case in the circuit court, the Tax Court, or the Court of Appeals~~or lower court, the case title of the proceeding shall be the same as the case title in the lower court, except that the party seeking relief shall be designated as the "relator" in addition to that party's designation in the ~~trial~~lower court, and the adverse real party in interest shall be designated as the "adverse party" in addition to that party's designation in the ~~trial~~lower court. The judge or court shall not be named as a defendant in the mandamus proceeding.[1]

(ii) In any other mandamus proceeding,[2] the case title of the proceeding shall be "State ex rel _____, Plaintiff-Relator, v. _____, Defendant," which title shall appear on the petition and all other documents filed in the proceeding.[3]

(b) On the title page, the relator shall include the litigant contact information required by ORAP 1.30. If any party is not represented by an attorney, the title page shall include the party's name, mailing address, and telephone number.

(c) A statement in support of the petition, containing:

(i) A concise but complete statement of facts material to a determination of the question or questions presented and the relief sought;

(ii) A statement why the petition is timely.[4]

(iii) A statement why application was not made to the circuit court for relief; and

(iv) A statement why appeal or any other applicable potential remedy is not a plain, speedy and adequate remedy in the ordinary course of law, precluding issuance of the writ.[5]

(d) Proof of service as follows:

(i) In a mandamus proceeding that challenges the action of a judge or lower court in a particular case ~~in the circuit court, the Tax Court, or the Court of Appeals~~, the relator shall accompany the petition with proof of service on the adverse party, any other party (if any) to the proceeding in the lower court, and the judge or court whose action is challenged in the mandamus proceeding.

(ii) In any other mandamus proceeding, the relator shall accompany the petition with proof of service on the defendant and, if the mandamus proceeding arises from another proceeding or controversy, proof of service on any other party to the proceeding or controversy.

(iii) If the state, a state officer, or a state agency is a party to the case, proceeding, or controversy from which the mandamus proceeding arises, the relator shall include proof of service on the Attorney General.[6]

(e) If the relator seeks a stay in the proceedings from which the mandamus proceeding arises, the caption shall indicate "STAY REQUESTED," and the relator shall show, in the statement in support of the petition, that the relator requested a stay from the court, judge, or administrative agency or official whose order or decision is being challenged and that the request for a stay was denied, or that it would be futile to request a stay from the court, judge, or administrative agency or official. If the relator seeks to have the Supreme Court stay the proceedings from which the mandamus proceeding arises, the relator shall file a motion pursuant to chapter 7 of the Oregon Rules of Appellate Procedure.

(f) If the mandamus proceeding challenges a written order or decision, a copy of the order or decision shall be attached to the petition.

(3) The relator shall accompany the petition:

(a) With a memorandum of law with supporting arguments and citations. The form of the memorandum shall comply with ORAP 7.10(1) and (2).

(b) If the mandamus proceeding arises from a matter in which a record has been made, the relator must assemble an excerpt of record containing such parts of the record relating to the matter as is necessary for a determination of the question or questions presented and the relief sought. The excerpt of record must comply with ORAP 5.50(5).

(c) In a mandamus proceeding that challenges the action of ~~the Court of Appeals, the Tax Court, or~~ a judge or lower court in a particular case ~~in the circuit court~~,

the relator need not accompany the petition with a proposed form of writ of mandamus; in any other mandamus proceeding, the relator shall do so.

(4) (a) The caption of any memorandum, motion, or any other document filed in the mandamus proceeding, except the petition for a writ of mandamus, shall display prominently the words "MANDAMUS PROCEEDING."[7]

(b) If no record was made below, the petition, memorandum, and other supporting material may be submitted as a single document.

(c) If a record was made in the matter from which the mandamus proceeding has arisen, the relator shall assemble and submit the petition, the memorandum in support of the petition, and the excerpt of record as separate documents.

(d) The original petition and accompanying documents shall be filed with the Administrator.

(5) If the petition, memorandum, or an accompanying motion in a mandamus proceeding includes an attachment containing material that is, by statute or court order, confidential, sealed, or otherwise exempt from disclosure,[8] the filing must comply with the requirements of ORAP 8.52.

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[1] *See* Illustration 1a in Appendix 11.05.

[2] For example, mandamus proceedings that challenge the act or failure to act of a public official or administrative agency, or that challenge administrative action of a judge or other action of a court of an institutional nature.

[3] *See* Illustrations 2 and 3 in Appendix 11.05.

[4] *See State ex rel Redden v. Van Hoomissen*, 281 Or 647, 576 P2d 355 (1978), and *State ex rel Fidanque v. Paulus*, 297 Or 711, 688 P2d 1303 (1984), regarding timeliness. As a rule of thumb, the relator usually should file the petition within 30 days after the date of the action that the relator seeks to challenge in mandamus.

[5] *See* ORS 34.110; *State ex rel Automotive Emporium v. Murchison*, 289 Or 265, 611 P2d 1169 (1980).

[6] *See* footnote 2 to ORAP 1.35 for the service address of the Attorney General.

[7] *See* Illustration 1b in Appendix 11.05.

[8] *See, e.g.*, ORS 36.222(5) regarding confidential mediation communications and agreements; ORS 135.139, ORS 433.045(3), and ORS 433.055 regarding records revealing HIV test information; ORS 137.077 regarding presentence investigation reports; ORS 179.495 and ORS 179.505 regarding medical records maintained by state institutions; ORS 412.094 regarding nonsupport investigation records; ORS 419B.035 regarding abuse investigation records; ORS 426.160 and ORS 426.370 regarding records in civil commitment cases; and ORS 430.399(6) regarding alcohol and drug abuse records. *See generally* ORAP 16.15(5)(b) for procedure for eFiling attachments that are confidential or otherwise exempt from disclosure.

See ORS 34.105 to 34.240 regarding mandamus proceedings generally; ORS 34.120(2) regarding the Supreme Court's original mandamus jurisdiction; and ORS 34.200 and 34.250 regarding procedure in Supreme Court mandamus proceedings.

See ORS 21.010(1), (5) regarding filing fees.

Rule 11.10

MANDAMUS:
RESPONSE BY ADVERSE PARTY; REPLY MEMORANDUM

(1) Unless the court directs otherwise, the adverse party in a mandamus proceeding that challenges the action of a judge or lower court in a particular case ~~in the circuit court, the Tax Court, or the Court of Appeals~~, or the defendant in any other mandamus proceeding, may file a memorandum in opposition.[1] The form of the memorandum must comply with ORAP 7.10(1) and (2). Any such memorandum must be filed within 14 days after the date the petition was filed.

(2) A relator may not file a reply memorandum unless the court has requested one.

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[1] *See* ORS 34.130(4) regarding an attorney for a party in an underlying proceeding appearing on behalf of a judge who is the defendant in a mandamus proceeding. *See* ORS 34.250(4) regarding a judge who is not the named defendant in a mandamus proceeding but whose action is challenged in the proceeding moving to intervene as a party.

Rule 11.12

MANDAMUS:
CONSIDERATION BY THE COURT; ISSUANCE OF WRIT, AND RESPONSE TO WRIT

(1) The court will consider the petition and any memoranda in opposition without oral argument unless otherwise ordered. If the court ~~determines~~decides to accept jurisdiction, it ~~shall~~will issue an order allowing the petition, together with either an alternative or peremptory writ.

(2) Issuance and delivery of an alternative writ of mandamus in a mandamus proceeding challenging the action of a judge or lower court in a particular case ~~in the circuit court, the Tax Court, or the Court of Appeals~~; further actions~~:~~.

(a) If the court issues an alternative writ of mandamus, the Administrator ~~shall~~will transmit copies of the order allowing the petition and the alternative writ of mandamus to the relator, to the adverse party, to any intervenor, and to the judge or lower court whose action is challenged in the petition. Proof of service of an alternative writ of mandamus need not be filed with the court.

(b) If the court issues an alternative writ of mandamus, the writ will include a date by which the Supreme Court commands that the judge or lower court must either perform ~~the~~a specified act ~~required to be performed~~ or ~~show~~that cause be shown why the judge or lower court ~~has~~should not ~~done~~be required to do so.

(c) ~~Notwithstanding the language in the alternative writ and consistent with ORS 34.250, unless~~Unless the alternative writ of mandamus ~~specifically~~expressly requires ~~that a return, answer, or responsive pleading be filed,~~otherwise, the alternative writ's direction to show cause does not require the judge or court to ~~which the writ is issued need not~~ file ~~a~~any return, answer, or responsive pleading. If the judge or court does not perform the act required by the alternative writ by the date referenced in subsection (b), the mandamus case will proceed to briefing and oral argument as provided in ORAP 11.15~~.~~, without the judge or lower court showing cause.[2]

(d) If, at any time, the judge or court to which the alternative writ was issued performs the act required by the writ, the relator must file in the mandamus proceeding either a motion to dismiss or a notice explaining why relator contends the Supreme Court should nevertheless retain jurisdiction. The relator must file the motion or notice within three judicial days of the entry date of the judge's or court's compliance.

(3) Issuance and delivery of an alternative writ in any other mandamus proceeding; further actions~~:~~.

(a) If the court issues an alternative writ of mandamus, the Administrator ~~shall~~will transmit copies of the order allowing the petition and the alternative writ of mandamus to the relator, to the defendant, and to any intervenor.

(b) If the court issues an alternative writ of mandamus, the writ will include a return date by which the Supreme Court commands that the defendant must either file a certificate of compliance or show cause by answer or motion to dismiss as provided by ORS 34.170.[1]

(c) If the defendant fails to either file a certificate of compliance or show cause on or before the return date, the court, without further notice to the parties, may issue a peremptory writ of mandamus, as provided in ORS 34.180. Alternatively, the court may resolve the case on the pleadings or direct the parties to proceed to briefing and oral argument as provided in ORAP 11.15.

(4) Unless subsection (2)(d) of this rule already applies, if, at any time, the defendant, judge, or court performs the act sought in the petition or required by the alternative writ, the relator shall notify, and the defendant, judge, court, or any other party to the lower court case may notify, the court of that compliance.

(5) Upon receiving any notice or certificate of compliance, the court on motion of any party or on its own motion may dismiss the mandamus proceeding.

~~1~~[1] *See generally* ORS 34.250

[2] *See generally* ORS 34.170 through 34.190.

Rule 11.15

MANDAMUS:
BRIEFS AND ORAL ARGUMENT

(1) Unless otherwise directed by the court, and provided that the court does not receive notice of compliance with the alternative writ of mandamus by the defendant, judge, or lower court to whom the writ was issued, the ~~relator shall file and serve the~~relator's opening brief must be filed and served within 28 days after the date ~~of issuance of~~ the alternative writ of mandamus issued.

(2) The adverse party ~~in a mandamus proceeding that challenges the action of a judge in a particular case in the circuit court, the Tax Court, or the Court of Appeals,~~ or the defendant~~-~~

~~in~~, as appropriate, must file and serve any ~~other mandamus proceeding, shall have~~answering brief within 28 days after the date the relator files the opening brief ~~to file the answering brief~~.

(3) The relator may file a reply brief only with leave of the court. A motion requesting leave to file a reply brief shall be filed within seven days after the filing of the brief to which permission to reply is sought. The content of a reply brief shall be confined to matters raised in the answering brief, and the form shall be similar to an answering brief, but need not contain a summary of argument.

(4) In complex cases, such as cases with multiple parties, multiple writs, or both, the parties may confer and suggest an alternative briefing schedule as provided in ORAP 5.80(8).

(5) All briefs shall be prepared in substantial conformity with ORAP 5.35 through 5.50.

(6) After the briefs are filed, unless the court directs that the writ will be considered without oral argument, the court will set the matter for oral argument as in cases on appeal. At oral argument, the parties shall argue in the order in which their briefs were filed.

Rule 11.17

MANDAMUS:
ISSUANCE OF COMBINED
PEREMPTORY WRIT OF MANDAMUS
AND APPELLATE JUDGMENT

If the court has determined that the relator is entitled to a peremptory writ of mandamus, the court shall direct the Administrator to issue the writ. The peremptory writ may be combined with the appellate judgment and issued together as a single document. If the peremptory writ and the appellate judgment are combined, the relator need not file proof of service of the writ with the court, and the judge or lower court to which the writ is issued in a mandamus proceeding that challenges the action of a judge or lower court in a particular case ~~in the circuit court, the Tax Court, or the Court of Appeals~~ or the defendant in any other mandamus proceeding need not file a return showing compliance with the writ.

See ORS 34.250(8).

CLEAN VERSION OF THE PROPOSED RULES:

Rule 11.05
MANDAMUS:
INITIATING A MANDAMUS PROCEEDING

(1) A party seeking a writ of mandamus in the Supreme Court shall apply by filing a petition substantially in the form prescribed by this rule.

(2) Except as otherwise provided in this rule, a petition for writ of mandamus shall comply as to form with ORAP 5.05(3). The petition shall also include, in addition to any matters required by law:

(a) A title page including a caption containing the title of the proceeding, a heading indicating the type of writ requested (*e.g.*, "petition for alternative writ of mandamus," "petition for peremptory writ of mandamus"), and, if the mandamus proceeding arises from a matter before a lower court or administrative agency, the identifying number, if any, assigned to the matter below.

(i) In a mandamus proceeding that challenges the action of a judge or lower court, the case title of the proceeding shall be the same as the case title in the lower court, except that the party seeking relief shall be designated as the "relator" in addition to that party's designation in the lower court, and the adverse real party in interest shall be designated as the "adverse party" in addition to that party's designation in the lower court. The judge or court shall not be named as a defendant in the mandamus proceeding.[1]

(ii) In any other mandamus proceeding,[2] the case title of the proceeding shall be "State ex rel _____, Plaintiff-Relator, v. _____, Defendant," which title shall appear on the petition and all other documents filed in the proceeding.[3]

(b) On the title page, the relator shall include the litigant contact information required by ORAP 1.30. If any party is not represented by an attorney, the title page shall include the party's name, mailing address, and telephone number.

(c) A statement in support of the petition, containing:

(i) A concise but complete statement of facts material to a determination of the question or questions presented and the relief sought;

(ii) A statement why the petition is timely.[4]

(iii) A statement why application was not made to the circuit court for relief; and

(iv) A statement why appeal or any other applicable potential remedy is not a plain, speedy and adequate remedy in the ordinary course of law, precluding issuance of the writ.[5]

(d) Proof of service as follows:

(i) In a mandamus proceeding that challenges the action of a judge or lower court in a particular case, the relator shall accompany the petition with proof of service on the adverse party, any other party (if any) to the proceeding in the lower court, and the judge or court whose action is challenged in the mandamus proceeding.

(ii) In any other mandamus proceeding, the relator shall accompany the petition with proof of service on the defendant and, if the mandamus proceeding arises from another proceeding or controversy, proof of service on any other party to the proceeding or controversy.

(iii) If the state, a state officer, or a state agency is a party to the case, proceeding, or controversy from which the mandamus proceeding arises, the relator shall include proof of service on the Attorney General.[6]

(e) If the relator seeks a stay in the proceedings from which the mandamus proceeding arises, the caption shall indicate "STAY REQUESTED," and the relator shall show, in the statement in support of the petition, that the relator requested a stay from the court, judge, or administrative agency or official whose order or decision is being challenged and that the request for a stay was denied, or that it would be futile to request a stay from the court, judge, or administrative agency or official. If the relator seeks to have the Supreme Court stay the proceedings from which the mandamus proceeding arises, the relator shall file a motion pursuant to chapter 7 of the Oregon Rules of Appellate Procedure.

(f) If the mandamus proceeding challenges a written order or decision, a copy of the order or decision shall be attached to the petition.

(3) The relator shall accompany the petition:

(a) With a memorandum of law with supporting arguments and citations. The form of the memorandum shall comply with ORAP 7.10(1) and (2).

(b) If the mandamus proceeding arises from a matter in which a record has been made, the relator must assemble an excerpt of record containing such parts of the record relating to the matter as is necessary for a determination of the question or questions presented and the relief sought. The excerpt of record must comply with ORAP 5.50(5).

(c) In a mandamus proceeding that challenges the action of a judge or lower court in a particular case, the relator need not accompany the petition with a proposed form of writ of mandamus; in any other mandamus proceeding, the relator shall do so.

(4) (a) The caption of any memorandum, motion, or any other document filed in the mandamus proceeding, except the petition for a writ of mandamus, shall display prominently the words "MANDAMUS PROCEEDING."[7]

(b) If no record was made below, the petition, memorandum, and other supporting material may be submitted as a single document.

(c) If a record was made in the matter from which the mandamus proceeding has arisen, the relator shall assemble and submit the petition, the memorandum in support of the petition, and the excerpt of record as separate documents.

(d) The original petition and accompanying documents shall be filed with the Administrator.

(5) If the petition, memorandum, or an accompanying motion in a mandamus proceeding includes an attachment containing material that is, by statute or court order, confidential, sealed, or otherwise exempt from disclosure,[8] the filing must comply with the requirements of ORAP 8.52.

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[1] *See* Illustration 1a in Appendix 11.05.

[2] For example, mandamus proceedings that challenge the act or failure to act of a public official or administrative agency, or that challenge administrative action of a judge or other action of a court of an institutional nature.

[3] *See* Illustrations 2 and 3 in Appendix 11.05.

[4] *See State ex rel Redden v. Van Hoomissen*, 281 Or 647, 576 P2d 355 (1978), and *State ex rel Fidanque v. Paulus*, 297 Or 711, 688 P2d 1303 (1984), regarding timeliness. As a rule of thumb, the relator usually should file the petition within 30 days after the date of the action that the relator seeks to challenge in mandamus.

[5] *See* ORS 34.110; *State ex rel Automotive Emporium v. Murchison*, 289 Or 265, 611 P2d 1169 (1980).

[6] *See* footnote 2 to ORAP 1.35 for the service address of the Attorney General.

[7] *See* Illustration 1b in Appendix 11.05.

[8] *See, e.g.*, ORS 36.222(5) regarding confidential mediation communications and agreements; ORS 135.139, ORS 433.045(3), and ORS 433.055 regarding records revealing HIV test information; ORS 137.077 regarding presentence investigation reports; ORS 179.495 and ORS 179.505 regarding medical records maintained by state institutions; ORS 412.094 regarding nonsupport investigation records; ORS 419B.035 regarding abuse investigation records; ORS 426.160 and ORS 426.370 regarding records in civil commitment cases; and ORS 430.399(6) regarding alcohol and drug abuse records. *See generally* ORAP 16.15(5)(b) for procedure for eFiling attachments that are confidential or otherwise exempt from disclosure.

See ORS 34.105 to 34.240 regarding mandamus proceedings generally; ORS 34.120(2) regarding the Supreme Court's original mandamus jurisdiction; and ORS 34.200 and 34.250 regarding procedure in Supreme Court mandamus proceedings.

See ORS 21.010(1), (5) regarding filing fees.

Rule 11.10

MANDAMUS:
RESPONSE BY ADVERSE PARTY; REPLY MEMORANDUM

(1) Unless the court directs otherwise, the adverse party in a mandamus proceeding that challenges the action of a judge or lower court in a particular case, or the defendant in any other mandamus proceeding, may file a memorandum in opposition.[1] The form of the memorandum must comply with ORAP 7.10(1) and (2). Any such memorandum must be filed within 14 days after the date the petition was filed.

(2) A relator may not file a reply memorandum unless the court has requested one.

[1] *See* ORS 34.130(4) regarding an attorney for a party in an underlying proceeding appearing on behalf of a judge who is the defendant in a mandamus proceeding. *See* ORS 34.250(4) regarding

a judge who is not the named defendant in a mandamus proceeding but whose action is challenged in the proceeding moving to intervene as a party.

Rule 11.12

MANDAMUS:
CONSIDERATION BY THE COURT; ISSUANCE OF WRIT, AND RESPONSE TO WRIT

(1) The court will consider the petition and any memoranda in opposition without oral argument unless otherwise ordered. If the court decides to accept jurisdiction, it will issue an order allowing the petition, together with either an alternative or peremptory writ.

(2) Issuance and delivery of an alternative writ of mandamus in a mandamus proceeding challenging the action of a judge or lower court in a particular case; further actions.

(a) If the court issues an alternative writ of mandamus, the Administrator will transmit copies of the order allowing the petition and the alternative writ of mandamus to the relator, to the adverse party, to any intervenor, and to the judge or lower court whose action is challenged in the petition. Proof of service of an alternative writ of mandamus need not be filed with the court.

(b) If the court issues an alternative writ of mandamus, the writ will include a date by which the Supreme Court commands that the judge or lower court must either perform a specified act or that cause be shown why the judge or lower court should not be required to do so.

(c) Unless the alternative writ of mandamus expressly requires otherwise, the alternative writ's direction to show cause does not require the judge or court to file any return, answer, or responsive pleading. If the judge or court does not perform the act required by the alternative writ by the date referenced in subsection (b), the mandamus case will proceed to briefing and oral argument as provided in ORAP 11.15, without the judge or lower court showing cause.[2]

(d) If, at any time, the judge or court to which the alternative writ was issued performs the act required by the writ, the relator must file in the mandamus proceeding either a motion to dismiss or a notice explaining why relator contends the Supreme Court should nevertheless retain jurisdiction. The relator must file the motion or notice within three judicial days of the entry date of the judge's or court's compliance.

(3) Issuance and delivery of an alternative writ in any other mandamus proceeding; further actions.

(a) If the court issues an alternative writ of mandamus, the Administrator will transmit copies of the order allowing the petition and the alternative writ of mandamus to the relator, to the defendant, and to any intervenor.

(b) If the court issues an alternative writ of mandamus, the writ will include a return date by which the Supreme Court commands that the defendant must either file a certificate of compliance or show cause by answer or motion to dismiss as provided by ORS 34.170.[1]

(c) If the defendant fails to either file a certificate of compliance or show cause on or before the return date, the court, without further notice to the parties, may issue a peremptory writ of mandamus, as provided in ORS 34.180. Alternatively, the court may resolve the case on the pleadings or direct the parties to proceed to briefing and oral argument as provided in ORAP 11.15.

(4) Unless subsection (2)(d) of this rule already applies, if, at any time, the defendant, judge, or court performs the act sought in the petition or required by the alternative writ, the relator shall notify, and the defendant, judge, court, or any other party to the lower court case may notify, the court of that compliance.

(5) Upon receiving any notice or certificate of compliance, the court on motion of any party or on its own motion may dismiss the mandamus proceeding.

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[1] *See generally* ORS 34.250

[2] *See generally* ORS 34.170 through 34.190.

Rule 11.15

MANDAMUS:
BRIEFS AND ORAL ARGUMENT

(1) Unless otherwise directed by the court, and provided that the court does not receive notice of compliance with the alternative writ of mandamus by the defendant, judge, or lower court to whom the writ was issued, the relator's opening brief must be filed and served within 28 days after the date the alternative writ of mandamus issued.

(2) The adverse party or the defendant, as appropriate, must file and serve any answering brief within 28 days after the date the relator files the opening brief.

(3) The relator may file a reply brief only with leave of the court. A motion requesting leave to file a reply brief shall be filed within seven days after the filing of the brief to which permission to reply is sought. The content of a reply brief shall be confined to matters raised in the answering brief, and the form shall be similar to an answering brief, but need not contain a summary of argument.

(4) In complex cases, such as cases with multiple parties, multiple writs, or both, the parties may confer and suggest an alternative briefing schedule as provided in ORAP 5.80(8).

(5) All briefs shall be prepared in substantial conformity with ORAP 5.35 through 5.50.

(6) After the briefs are filed, unless the court directs that the writ will be considered without oral argument, the court will set the matter for oral argument as in cases on appeal. At oral argument, the parties shall argue in the order in which their briefs were filed.

Rule 11.17

MANDAMUS:
ISSUANCE OF COMBINED
PEREMPTORY WRIT OF MANDAMUS
AND APPELLATE JUDGMENT

If the court has determined that the relator is entitled to a peremptory writ of mandamus, the court shall direct the Administrator to issue the writ. The peremptory writ may be combined with the appellate judgment and issued together as a single document. If the peremptory writ and the appellate judgment are combined, the relator need not file proof of service of the writ with the court, and the judge or lower court to which the writ is issued in a mandamus proceeding that challenges the action of a judge or lower court in a particular case or the defendant in any other mandamus proceeding need not file a return showing compliance with the writ.

See ORS 34.250(8).

ORAP COMMITTEE 2026
April 16 Materials
Technical Agenda Item

AMENDING RULE(S):	Proposal # 15 -- ORAP 5.50, 3.35, 5.05 -- Streamline Excerpts of Record
PROPOSER:	Hon. Jacqueline S. Kamins, Court of Appeals
WORKGROUP:	Judge Kamins, Ernest Lannet, Ryan Kahn, Julie Smith, Travis Eiva

EXPLANATION:

Summary for April 16 meeting (by SP Armitage based on information from Judge Kamins): This matter was passed for the technical agenda to make the following changes.

* In ORAP 5.50(2)(c), splitting into two numbered subparagraphs the requirements for "[a]ll parts of the record relevant for deciding the appeal" and qualifying new sub (ii) with party's belief that the transcript pages are central to the appeal.

* In ORAP 5.50(3), deleted the sentence "The supplemental excerpt of record should not include anything already contained in the excerpt of record."

Those changes have been incorporated into "track changes" version of the rules shown below. The deletion from ORAP 5.50(3) is not separately marked.

Workgroup notes for March 11 meeting: Additional edits to ORAP 3.35 and ORAP 5.05 were needed, so those rules have been added.

Original explanation: The rule proposes streamlining ORAP 5.50 governing the excerpts of record. These revisions emphasize the importance of including all decisions under review, provide an overall organizational structure, and stress that parties are not to include legal memoranda in the excerpts. The court routinely receives excerpts that are not in any kind of order, that do not include the decision under review, and that include all the legal memoranda filed in the trial court. The revisions also address the changing reality that the court now has access to the record in advance of argument and submission, but the transcripts are difficult to navigate and thus the rule encourages including transcript pages cited in the briefs in the excerpts of record. The rule also harmonizes the state appellate rule with the federal rule which should streamline practices for practitioners that appear in both courts.

RULE AS AMENDED:

Rule 5.50
THE EXCERPT OF RECORD

(1) Except in the case of a self-represented party, the appellant must ~~include in the opening brief~~file an excerpt of record at the same time as the opening brief.[1] The parties to an appeal are encouraged to confer regarding the content of the excerpt of record, including whether to file a joint excerpt of record to be ~~included in~~filed with the opening brief.

(2) The excerpt of record must contain:[2]

(a) The judgment or order on appeal or judicial review.

(b) ~~Each assignment of error must identify precisely~~The portion of the record containing the legal, procedural, factual, or other ruling being appealed, reviewed, or collaterally challenged, whether oral or written, final or interim. If the decision was an oral one, the relevant transcript pages must be included ~~Any written or oral rulings by the lower tribunal or agency addressing the issues presented by the assignments of error.~~

(c) ~~Any pleading or excerpt of pleadings, particular part of the transcript, exhibit, evidentiary submission and other filing necessary for reviewing and understanding the assignments of error in advance of oral argument, if the parties anticipate that the case will be orally argued~~All parts of the record relevant for deciding the appeal, including

(i) all parts of the trial court record cited or referenced in the briefs, and

(ii) ~~as well as~~ any transcript pages a party believes to be central to the issue on appeal.[3]

(d) If~~,~~ , and only if, there is a reasonable likelihood that preservation of error ~~is or is likely to~~will be disputed in the case, ~~parts~~ the portions of memoranda and the transcript pages pertinent to the issue of preservation presented by the case. Legal memoranda should not be otherwise be included in the excerpts of record.

(e) A copy of the eCourt Case Information register of actions, if the case arose in an Oregon circuit court.

(f) In criminal cases in which the defendant appealed after entering a conditional plea of guilty or no contest under ORS 135.335(3), the defendant must include in the excerpt of record the writing in which the defendant reserved for review on appeal the trial court's adverse determination of a pretrial motion.

~~(3) The excerpt of record must not contain memoranda of law filed in the trial court unless such memoranda are pertinent to a disputed or likely to be disputed issue of preservation.~~

(3~~4~~) A respondent may file, ~~as part of~~with the respondent's brief, and an appellant may file, with the reply brief, a supplemental excerpt of record containing those materials required by subsection (2) of this rule that were omitted from the excerpt of record.

(4~~5~~) The excerpt of record and any supplemental excerpt of record must be in the following form:

(a) All documents or parts of documents must be copies of documents included in the record, rather than summarized or paraphrased. Omissions, if not apparent, must be noted. No matter may be omitted if to do so would change the meaning of the matter included.

(b) The excerpt of record and any supplemental excerpt of record must be filed as a separate filing.

(c~~b~~) Contents must be set forth in chronological order, except that the decisions being appealed must be the first document(s) in the excerpt of record and the OECI case register must be the last document in the excerpt of record. The excerpt must be consecutively paginated, with the caption~~first~~ page ~~being page~~paginated as ER-1 and every subsequent page shall be consecutively numbered, including but not limited to the table of contents of the excerpt, caption pages and blank pages, such that the page numbering is consistent with the PDF numbering. The excerpt must begin with an index organized ~~chronologically~~in chronological order, describing each item and identifying where the item may be found in the trial court or agency record, and the page where the item may be found in the excerpt. The index may include bookmarks as described in ORAP 16.50. A supplemental excerpt of record must substantially conform to the same requirements, except that a supplemental excerpt must be paginated using "SER," *e.g.*, SER-1, SER-2, SER-3.

(~~c~~d) The materials included must be reproduced on 8-1/2 x 11 inch white paper by any duplicating or copying process that produces a clear, black, legible image.

(~~d~~e) The excerpt of record must comply with the applicable requirements of ORAP 5.05.

(5~~6~~) Self-represented parties are not required to file an excerpt of record or a supplemental excerpt of record. If a self-represented party files an excerpt of record or a supplemental excerpt of record, it must contain only those documents specified in ORAP 5.50(2)(a) and (b), must contain no other documents, and must otherwise comply with this rule.

(6~~7~~) The appellate court may strike any excerpt of record or supplemental excerpt of

record that does not substantially comply with the requirements of this rule.

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[1] Any brief containing an excerpt of record filed through the eFiling system that exceeds 25 megabytes must be filed in compliance with ORAP 16.15(1).

[2] For other requirements for the excerpt of record in Land Use Board of Appeals cases, *see* ORAP 4.67.

[3] *See* Appendix 5.50, which sets forth examples of documents that a party should consider including in the excerpt of record depending on the nature of the issues raised in the briefs. ~~The full record is available and used by the court after submission of a case; therefore, the excerpt of record need include only those parts of the record that will be helpful to the court and the parties in preparing for and conducting oral argument.~~

Rule 3.35
FORM OF TRANSCRIPT

(1) A transcript shall meet these specifications:

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(k) If a transcript exceeds 200 pages, it shall be bound into volumes of approximately equal size of not more than 200 pages each. Volumes shall be consecutively numbered on their covers.

(2) The electronic version of the transcript filed with the Administrator as required by ORAP 3.33(4)(c) shall be in the following form:

(a) The electronic transcript shall be in Portable Document Format (PDF) that allows text searching, and copying and pasting into another document. The pagination of the transcript served on the parties shall correspond to the pagination of the electronic transcript filed with the court.

(b) ~~If the transcript exceeds 200 pages, the electronic transcript shall be broken into separate PDF files of approximately equal length not to exceed 200 pages.~~ Absent good cause, a transcript shall be filed as a single PDF file. If the proceedings were recorded by multiple transcribers, there may be as many pdf files as there are transcribers. Regardless of whether a transcript consists of one or more PDF files, each file shall be named in accordance with the file naming conventions set out in Appendix 3.35. If a PDF file contains more than one proceeding date, the beginning of each proceeding shall be bookmarked.~~Absent good cause, a transcript shall be filed as a single PDF file.~~ The page numbering of each pdf transcript file shall begin with the caption page counted as number 1, and every subsequent page shall be consecutively numbered. Alternative numbering formats—e.g., using roman numerals or starting each volume with

page 1—may not be used. Although caption pages must be included in the consecutive numbering, the page number need not be printed on caption pages. All pages shall be included in the consecutive numbering, including but not limited to caption pages and blank pages such that the page numbering is consistent with the PDF numbering.

(c) ~~If the transcript is in two volumes or less, it~~A transcript may be filed by attaching the electronic transcript to an email directed to appealsclerk@ojd.state.or.us. If the Administrator determines that an electronic transcript must be rejected for security reasons (*e.g.*, virus or malware), or because the transcript file exceeds the size limits for transmitting by email, the court reporter or transcriber shall resubmit the transcript as directed by the Administrator. ~~If the transcript is more than two volumes, it shall be filed by optical disk.~~

(d) The electronic transcript shall comply with ORAP 3.35(1)(a), (c), (d), (e), (f), (g), and (h). The electronic transcript also shall comply with ORAP 3.35(1)(b), except that it will not be printed. Notwithstanding ORAP 3.33(5)(c), the electronic transcript filed with the court shall be prepared in the one page of transcript per one standard page format.

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[1] *See* ORAP 4.20 regarding use of previously prepared single-sided transcripts in judicial review cases.

Rule 5.05
SPECIFICATIONS FOR BRIEFS

(1) (a) Except as provided in paragraph (1)(c) of this subsection, an opening, answering, combined, or reply brief must comply with the word-count limitation in paragraph (1)(b) of this subsection.[1] Headings, footnotes, and quoted material count toward the word-count limitation. The front cover, index of contents and appendices, index of authorities referred to, ~~excerpt of record,~~ appendices, certificate of service, any other certificates, and the signature block do not count toward the word-count limitation.

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(c) Pages must be consecutively numbered at the top of the page within 3/8 inch from the top of the page. ~~Pages of an excerpt of record included with a brief must be numbered independently of the body of the brief, and each page number must be preceded by "ER," *e.g.*, ER-1, ER-2, ER-3.~~ Pages of appendices must be preceded by "App," *e.g.*, App-1, App-2, App-3.

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