ORAP COMMITTEE 2022

Agenda Materials
Thursday, April 21, 2022

- Proposal # 1 -- ORAP 2.05(1) -- Service on Non-Appearing Parties
- Proposal # 2 -- ORAP 3.05(1) -- Remove Automatic Designation of Record
- Proposal # 5 -- ORAP 5.40(8)(c) -- Expand De Novo Review in Court of Appeals
- Proposal # 6 -- ORAP 5.45(6) -- No Combined Brief Sections re: Preservation of Error or Standard of Review
- Proposal # 8 -- ORAP 6.05(3), 6.10(4) -- Allow Pro Se Parties to Argue in Court of Appeals
- Proposal # 8.5 -- ORAP 6.30 -- Mandate In-Person or Remote Viewing of Oral Arguments
- Proposal # 9 -- ORAP 7.05(1) (d), Appendix 7.10-3 -- Change Terminology from "Opposing Counsel" to "Opposing Party"
- Proposals # 10A & 10B -- ORAP 8.45 -- Delete or Amend Duty to Notify Court of Mootness
- Proposal # 11 -- ORAP 10.15 -- Apply Rule to Juvenile Delinquency Cases and Modify Briefing Schedule
- Proposal # 12 -- ORAP 11.35, 11.40 -- Possible Revisions re: Reapportionment Review

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AMENDING RULE(S):	Proposal # 1 -- ORAP 2.05(1) -- Service on Non-Appearing Parties
PROPOSER:	Hon. Meagan A. Flynn, Supreme Court (additional research and details by S Armitage)
WORKGROUP:	Appellate Commissioner Theresa Kidd, Stephen Armitage

EXPLANATION:

WORKGROUP NOTES FOR APRIL 21 MEETING

The question here involves service requirements for a notice of appeal when the trial court rules before another party has appeared in the case.

ORAP 2.05(10)(a), which applies to service of the notice of appeal in civil cases, requires service "on all other parties who appeared in the trial court." That tracks ORS 19.240(2)(a):

> "(2) The appeal shall be taken by causing a notice of appeal, in the form prescribed by ORS 19.250, to be served:
>
> "(a) On all parties who have appeared in the action, suit or proceeding[.]"

ORS 19.270(2)(a) gives a slightly different requirement for service for appellate jurisdiction:

> "(2) The following requirements of ORS 19.240, 19.250 and 19.255 are jurisdictional and may not be waived or extended:
>
> "(a) Service of the notice of appeal ***on all parties identified in the notice of appeal as adverse parties or***, if the notice of appeal does not identify adverse parties, on all parties who have appeared in the action, suit or proceeding, as provided in ORS 19.240 (2)(a), within the time limits prescribed by ORS 19.255."

(Emphasis added.)

Appellate Commissioner Kidd explained that ORS 19.270(2)(a) was changed to make the jurisdictional requirements somewhat less strict. There are cases (*e.g.*, petitions for judicial review of a decision of the Land Use Board of Appeals) where the number of parties who have appeared in the action may be in the dozens, if not hundreds. It is easy for an appellant, under those circumstances, to accidentally fail to serve one of the many parties. The text of ORS 19.270(2)(a) means that that failure is not a jurisdictional defect that will cause the appeal to fail.

It is, however, a defect, and the appellant will still have to serve everyone who appeared. (The Appellate Court Records Section sends deficiency notices for such problems.)

There have been issues with a handful of cases in which the appellant appeals in a case in which no one has appeared below. The proposed rule amendment informs appellants that they still need to serve the designated parties, despite the failure of anyone to appear.

RULE AS AMENDED:

WORKGROUP PROPOSAL

Rule 2.05
CONTENTS OF NOTICE OF APPEAL

The notice of appeal shall be served and filed within the time allowed by ORS 19.255, ORS 138.071, or other applicable statute. Only the original need be filed. The notice of appeal shall be substantially in the form illustrated in Appendix 2.05 and shall contain:

(1) The complete title of the case as it appeared in the trial court, naming all parties completely, including their designations in the trial court (*e.g.*, plaintiff, defendant, cross-plaintiff, intervenor), and designating the parties to the appeal, as appropriate (*e.g.*, appellant, respondent, cross-appellant, cross-respondent). The title also shall include the trial court case number or numbers.

(2) The heading "Notice of Appeal" or "Notice of Cross-Appeal," as appropriate.

(3) A statement that an appeal is taken from the judgment or some specified part of the judgment,[1] the name of the court and county from which the appeal is taken, and the name of the trial judge or judges who signed the judgment being appealed.

(4) A designation of the adverse parties on appeal.

(5) The litigant contact information required by ORAP 1.30.

(6) A designation of those parts of the proceedings to be transcribed[2] and exhibits[3] to be included in the record in addition to the trial court file. If the record includes an audio or video recording played in the trial court, the designation of record should identify the date of the hearing at which the recording was played and, if the appellant wants the transcript to include a transcript of the recording, a statement to that effect.

(7) A plain and concise statement of the points on which the appellant intends to rely; but if the appellant has designated for inclusion in the record all of the testimony and all of the instructions given and requested, no statement of points is necessary.

(8) If more than 30 days has elapsed after the date the judgment was entered, a statement as to why the appeal is nevertheless timely.

(9) If appellate jurisdiction is not free from doubt, citation to statute or case law to support jurisdiction.

(10) Proof of service, specifying the date of service.

(a) In a civil case, the notice of appeal shall contain proof of service on all other parties who appeared in the trial court and on all parties identified in the notice of appeal as adverse parties.

(b) In any civil case in which the adverse party is a governmental unit and an attorney did not appear, either in writing or in person, on behalf of the governmental unit in the proceedings giving rise to the judgment or order being appealed (for instance, in the prosecution of a violation, a contempt proceeding, or a civil commitment proceeding);

(i) The notice of appeal shall contain proof of service on the attorney for the governmental unit (for instance, the city attorney as to a municipality, the district attorney as to a county or the state); and

(ii) If the governmental unit is the state or a county, the notice of appeal shall also contain proof of service on the Attorney General.[4]

(c) In a criminal case, the notice of appeal shall contain proof of service on:

(i) The defendant, in an appeal by the state. The notice of appeal in such an appeal also shall contain proof of service of a copy of the notice of appeal on the Office of Public Defense Services when the defendant was represented by court-appointed counsel.[5]

(ii) The district attorney, in an appeal by the defendant. The notice of appeal in such an appeal also shall contain proof of service of a copy of the notice of appeal on the Attorney General.[6]

(d) In a juvenile dependency case, including a case involving the termination of parental rights, the notice of appeal shall contain proof of service on the Office of Public Defense Services when a parent was represented by court-appointed counsel.[7]

(e) In all cases, in addition to the foregoing requirements, the notice of appeal shall contain proof of service on:

(i) The trial court administrator; and

(ii) The transcript coordinator, if any part of the record of oral proceedings in the trial court has been designated as part of the record on appeal.[8]

(11) A certificate of filing, specifying the date the notice of appeal was filed with the Administrator.

(12) A copy of the judgment, decree or order appealed from and of any other orders pertinent to appellate jurisdiction.

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[1] *See* ORAP 2.10 regarding filing separate notices of appeal when there are multiple judgments entered in a case, including multiple judgments in consolidated cases.

[2] *See* ORAP 3.33 regarding the appellant's responsibility to make financial arrangements with either the court reporter or the transcript coordinator for preparation of a transcript of oral proceedings.

[3] *See* ORAP 3.25 regarding making arrangements for transmitting exhibits to the appellate court for use on appeal. *See also* Uniform Trial Court Rule (UTCR) 6.120(2) and (3) regarding retrieval of exhibits by trial court administrators for use on appeal.

[4] Service of the notice of appeal on the Attorney General is for the purpose of facilitating the appeal and is not jurisdictional. *See* footnote 2 to ORAP 1.35 for the service address of the Attorney General.

[5] Service of the notice of appeal on the Office of Public Defense Services is for the purpose of facilitating the appeal and is not jurisdictional. The service address of the Office of Public Defense Services is 1175 Court Street, NE, Salem, Oregon 97301-4030.

[6] *See* footnote 4 to subparagraph (10)(b)(ii) of this rule.

[7] *See* footnote 5 to subparagraph (10)(c)(i) of this rule.

[8] *See* ORAP 1.35(2)(e).

See ORS 19.240(3) and ORS 19.250; *see also* ORAP 8.20 regarding bankruptcy. In a criminal case, if a defendant appeals a judgment of conviction based only on a plea of guilty or no contest, see ORS 138.085.

See Appendix 2.05 for a form of notice of appeal.

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AMENDING RULE(S): Proposal # 2 -- ORAP 3.05(1) -- Remove Automatic Designation of Record

PROPOSER: Charles Hinkle

WORKGROUP: Travis Eiva, Stacy Harrop, Commissioner Kidd, Daniel Parr

EXPLANATION:

WORKGROUP NOTES FOR APRIL 21 MEETING

[Quoted from workgroup email dated March 30:]

The workgroup for Proposal #2 to the ORAP committee are submitting the attached proposed change to ORAP 3.05(1). The suggested change clarifies that the entire trial court file is always part of the appellate record, but only those parts of the exhibits and transcript that are designated are part of the appellate record. The prior wording tended to suggest the exhibits were part of the appellate record, the same as the trial court file, without designation. This change also makes ORAP 3.05 consistent with ORAP 2.05(6), which provides the notice of appeal shall contain "A designation of those parts of the proceedings to be transcribed and exhibits to be included in the record in addition to the trial court file."

RULE AS AMENDED:

WORKGROUP PROPOSAL

Rule 3.05
TRIAL COURT RECORD ON APPEAL;
SUPPLEMENTING THE RECORD

(1) In any appeal from a trial court, the trial court record on appeal shall consist of the trial court file, and those parts of the~~,~~ exhibits~~,~~ and ~~as much of the~~ record of oral proceedings that~~as~~ have~~s~~ been designated in the notice or notices of appeal filed by the parties.

(2) (a) Except as provided in this subsection, the record of oral proceedings shall be a transcript

(b) When the oral proceedings were recorded by audio or video recording equipment, on motion of a party showing good cause, the appellate court may waive preparation of a transcript and order that the appeal proceed on the audio or video record alone.

(c) When an audio or video recording is played in court, the recording is part of the record, but arrangements may be made for preparation of a transcript of the recording as provided in ORAP 3.33.

(d) The parties may file an agreed narrative statement in lieu of or in addition to a transcript, as provided in ORS 19.380 and ORAP 3.45.

(3) The appellate court, on motion of a party or on its own motion, may order that any thing in the record in the trial court whether or not designated as part of the record in the notice of appeal, be transmitted to it or that parts of the oral proceedings be copied or transcribed, certified and transmitted to it.[1]

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[1] *See* ORS 19.365(4) regarding supplementation and correction of the record; *see also* ORAP 3.40 regarding correction of transcripts.

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AMENDING RULE(S): Proposal # 5 -- ORAP 5.40(8)(c) -- Expand De Novo Review in Court of Appeals

PROPOSER: Laura Graser

WORKGROUP: n/a (Judge Kamins to report back).

EXPLANATION:

Judge Kamins will report orally.

RULE AS AMENDED:

ORIGINAL PROPOSAL

Rule 5.40
APPELLANT'S OPENING BRIEF:
STATEMENT OF THE CASE

The appellant's opening brief shall open with a clear and concise statement of the case, which shall set forth in the following order under separate headings:

(1) A statement, without argument, of the nature of the action or proceeding, the relief sought and, in criminal cases, the indictment or information, including citation of the applicable statute.

(2) A statement, without argument, of the nature of the judgment sought to be reviewed and, if trial was held, whether it was before the court or a jury.

(3) A statement of the statutory basis of appellate jurisdiction and, where novelty or possible doubt makes it appropriate, other supporting authority.

(4) A statement of the date of entry of the judgment in the trial court register, the date that the notice of appeal was served and filed, and, if more than 30 days elapsed between those two dates, why the appeal nevertheless was timely filed; and any other information relevant to appellate jurisdiction.

(5) In cases on judicial review from a state or local government agency, a statement of the nature and the jurisdictional basis of the action of the agency and of the trial court, if any.

(6) A brief statement, without argument and in general terms, of questions presented on appeal.

(7) A concise summary of the arguments appearing in the body of the brief.

(8) (a) In those proceedings in which the Court of Appeals has discretion to try the cause anew on the record and the appellant seeks to have the court exercise that discretion, the appellant shall concisely state the reasons why the court should do so.*

(b) In those proceedings in which the Court of Appeals has discretion to make one or more factual findings anew on the record and the appellant seeks to have the court exercise that discretion, the appellant shall identify with particularity the factual findings that the appellant seeks to have the court find anew on the record and shall concisely state the reasons why the court should do so.*

(c) The Court of Appeals will exercise its discretion to try the cause anew on the record or to make one or more factual findings anew on the record only when that is warranted by a need to clarify the scope of the trial court's discretion, or for another need as described by a party to the appeal or by amicus. ~~The Court of Appeals will exercise its discretion to try the cause anew on the record or to make one or more factual findings anew on the record only in exceptional cases. Consistently with that presumption against the exercise of discretion, requests under paragraph (a) or (b) of this section are disfavored.~~

(d) The Court of Appeals considers the items set out below to be relevant to the decision whether to exercise its discretion to try the cause anew on the record or make one or more factual findings anew on the record. These considerations, which are neither exclusive nor binding, are published to inform and assist the bar and the public.

(i) Whether the trial court made express factual findings, including demeanor-based credibility findings.

(ii) Whether the trial court's decision comports with its express factual findings or with uncontroverted evidence in the record.

(iii) Whether the trial court was specifically alerted to a disputed factual matter and the importance of that disputed factual matter to the trial court's ultimate disposition of the case or to the assignment(s) of error raised on appeal.

(iv) Whether the factual finding(s) that the appellant requests the court find anew is important to the trial court's ruling that is at issue on appeal (*i.e.*, whether an appellate determination of the facts in appellant's favor would likely provide a basis for reversing or modifying the trial court's ruling).

(v) Whether the trial court made an erroneous legal ruling, reversal or modification of which would substantially alter the admissible contents of the record (*e.g.*, a ruling on the admissibility of evidence), and determination of factual issues on the altered record in the Court of Appeals, rather than remand to the trial court for reconsideration, would be judicially efficient.

(9) A concise summary, without argument, of all the facts of the case material to determination of the appeal. The summary shall be in narrative form with references to the places in the transcript, narrative statement, audio record, record, or excerpt where such facts appear.

(10) In a dissolution proceeding or a proceeding involving modification of a dissolution judgment, the summary of facts shall begin with the date of the marriage, the ages of the parties, the ages of any minor children of the parties, the custody status of any minor children, the amount and terms of any spousal or child support ordered, and the party required to pay support.

(11) Any significant motion filed in the appeal and the disposition of the motion. A party need not file an amended brief to set forth any significant motion filed after that party's brief has been filed.

(12) Any other matters necessary to inform the court concerning the questions and contentions raised on the appeal, insofar as such matters are a part of the record, with reference to the parts of the record where such matters appear.

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[*] *See* ORS 19.415(3)(b) regarding discretion of the Court of Appeals to try the cause *de novo* or make one or more factual findings anew on appeal in some equitable proceedings; *see also* ORAP 5.45(5) concerning the identification of standards of review for each assignment of error on appeal.

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AMENDING RULE(S):	Proposal # 6 -- ORAP 5.45(6) -- No Combined Brief Sections re: Preservation of Error or Standard of Review
PROPOSER:	Hon Robyn Ridler Aoyagi, Court of Appeals
WORKGROUP:	Crystal Chase, Travis Eiva, Ben Gutman, Ernest Lannet, Bill Kabeiseman

EXPLANATION:

ORIGINAL NOTES (no additional workgroup notes)

[Quoted with minor edits from Judge Aoyagi's email:]

> My understanding of the intent of the current rule is that a party may do a combined ***argument*** section but not combined ***preservation*** or ***standard of review*** sections. But people don't read it that way, which often results in inadequate "combined" preservation and standard of review sections that make a lot more work for the Court of Appeals, particularly in civil cases (and noncriminal cases generally). And I think that the current phrasing of the rule is somewhat ambiguous, so one can't fault parties too much.
>
> The proposal would be to make the point clear by adding a sentence to existing ORAP 5.45(6).

RULE AS AMENDED:

WORKGROUP PROPOSAL

Rule 5.45
ASSIGNMENTS OF ERROR AND ARGUMENT

(1) Assignments of error are required in all opening briefs of appellants and cross-appellants. No matter claimed as error will be considered on appeal unless the claim of error was preserved in the lower court and is assigned as error in the opening brief in accordance with this rule, provided that the appellate court may, in its discretion, consider a plain error.[1]

(2) Each assignment of error must be separately stated under a numbered heading.

The arrangement and form of assignments of error, together with reference to pages of the record, should conform to the illustrations in Appendix 5.45.

(3) Each assignment of error must identify precisely the legal, procedural, factual, or other ruling that is being challenged.

(4) (a) Each assignment of error must demonstrate that the question or issue presented by the assignment of error timely and properly was raised and preserved in the lower court. The court may decline to consider any assignment of error that requires the court to search the record to find the error or to determine if the error properly was raised and preserved. Under the subheading "Preservation of Error":

(i) Each assignment of error, as appropriate, must specify the stage in the proceedings when the question or issue presented by the assignment of error was raised in the lower court, the method or manner of raising it, and the way in which it was resolved or passed on by the lower court.

(ii) Each assignment of error must set out pertinent quotations of the record where the question or issue was raised and the challenged ruling was made, together with reference to the pages of the transcript or other parts of the record quoted or to the excerpt of record if the material quoted is set out in the excerpt of record. When the parts of the record relied on under this clause are lengthy, they must be included in the excerpt of record instead of the body of the brief.

(iii) If an assignment of error challenges an evidentiary ruling, the assignment of error must quote or summarize the evidence that appellant believes was erroneously admitted or excluded. If an assignment of error challenges the exclusion of evidence, appellant also must identify in the record where the trial court excluded the evidence and where the offer of proof was made; if an assignment of error challenges the admission of evidence, appellant also must identify where in the record the evidence was admitted.

(iv) Preservation statements for multiple assignments of error may not combined under one subheading unless (a) the subheading expressly identifies that the preservation statement applies to multiple assignments of error, and (b) the first statement under the subheading certifies that all of the questions or issues were raised and resolved contemporaneously.

(b) Where a party has requested that the court review a claimed error as plain error, the party must identify the precise error, specify the state of the proceedings when the error was made, and set forth pertinent quotations of the record where the challenged error was made.

(5) Under the subheading "Standard of Review," each assignment of error must

identify the applicable standard or standards of review, supported by citation to the statute, case law, or other legal authority for each standard of review.[2] Standards of review for multiple assignments of error may not be combined under one subheading unless (a) the subheading expressly identifies that the standard of review applies to multiple assignments of error, and (b) the first statement under the subheading certifies that the standard of review is identical for those assignments of error.

(6) Each assignment of error must be followed by the argument. If several assignments of error present essentially the same legal question, the argument in support of them may be combined so far as practicable.

(7) The court may decline to exercise its discretion to consider plain error absent a request explaining the reasons that the court should consider the error.[3]

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[1] For an error to be plain error, it must be an error of law, obvious and not reasonably in dispute, and apparent on the record without requiring the court to choose among competing inferences; in determining whether to exercise its discretion to consider an error that qualifies as a plain error, the court takes into account a non-exclusive list of factors, including the interests of the parties, the nature of the case, the gravity of the error, and the ends of justice in the particular case. *See State v. Vanornum*, 354 Or 614, 629-30, 317 P3d 889 (2013).

[2] Standards of review include but are not limited to *de novo* review and substantial evidence for factual issues, errors of law and abuse of discretion for legal issues, and special statutory standards of review such as those found in the Administrative Procedures Act, ORS 183.400(4), and ORS 183.482(7) and (8). *See also* ORS 19.415(1), which provides that, generally, "upon an appeal in an action or proceeding, without regard to whether the action or proceeding was triable to the court or a jury," the court's review "shall be as provided in section 3, Article VII (Amended) of the Oregon Constitution"; ORS 19.415(3)(b) regarding discretion of the Court of Appeals to try the cause *de novo* or make one or more factual findings anew on appeal in some equitable proceedings; *see also* ORAP 5.40(8) concerning appellant's request for the court to exercise *de novo* review and providing a list of nonexclusive items Court of Appeals may consider in deciding whether to exercise its discretion.

[3] *See State v. Ardizzone*, 270 Or App 666, 673, 349 P3d 597, *rev den*, 358 Or 145 (2015) (declining to review for plain error absent a request from the appellant).

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AMENDING RULE(S): Proposal # 8 -- ORAP 6.05(3), 6.10(4) -- Allow Pro Se Parties to Argue in Court of Appeals

PROPOSER: Thomas M. Christ

WORKGROUP: n/a (Judge Kamins to report back).

EXPLANATION:

Judge Kamins will report orally.

ORIGINAL EXPLANATION

[See also similar 2020 proposal, explanation for which is also quoted below. The 2020 proposal was tabled by the committee for the Court of Appeals to conduct a pilot project.]

[Quoted from Mr. Christ's letter:]

> One [proposal] is to change the rule that denies pro se litigants the opportunity for oral argument as a matter of right. See ORAP 6.10(4) ("Only active members of the Oregon State Bar shall argue unless the court, on motion***, orders otherwise."). I believe oral argument is an important part of appellate practice, especially for appellants. It's their last chance to persuade the Court of Appeals that something went awry in the proceedings below, and their only chance to respond to any questions or concerns the judges might have about their argument for reversal. It shouldn't be left to the court's discretion whether to offer oral argument to unrepresented litigants. That opportunity is as important to their cases on appeal as it is to their cases in the trial courts, where there are no lawyer-only restrictions on oral argument. Just today, while sitting as a pro tern judge in Multnomah County Circuit Court, I heard two arguments by pro se litigants. They weren't the best arguments I've ever heard, but they were still helpful to me in understanding their cases. Indeed, I might not have understood them without those arguments and their answers to my questions from the bench, given the quality of their written submissions. So, allowing them to be heard improved my decision-making. The generally poor quality of written submissions by non lawyers is, if you think about it, all the more reason to allow them to argue their cases orally.
>
> I've heard concerns that nonlawyers can be disruptive when allowed to speak in court, but that has not been my experience. To be sure, they are less familiar with procedures and

protocols, like when to speak and when not. But, on the whole, I've found them no more difficult than some members of the Bar.

The real benefit, however, to allowing nonlawyer litigants to argue their cases is that it will help them to feel that they got a fair hearing - that they were given as much respect and courtesy as litigants who can afford counsel. And that, in turn, will help promote confidence in the judiciary and respect for its rulings.

[2020 proposal, quoted from Wells O'Byrne's email:]

Strike ORAP 6.05(3), so that self-represented litigants can present oral arguments to the Oregon Court of Appeals as a matter of standard procedure. Although ORAP 1.20(5) states that the Court can waive any rule at any time for good cause under a motion of the court or any party, self-represented litigants are typically not well-versed enough to know that this includes providing them a right to oral arguments when ORAP 6.05(3) currently specifically denies them this privilege. Similar to Oregon's extension of appellate-court eFiling privileges to attorneys but not to self-represented litigants as discussed above, our research indicates that Oregon is the only state in the U.S. Ninth Circuit jurisdiction whose appellate-court procedure rules deny self-represented litigants the opportunity to present oral arguments before the state's Court of Appeals while allowing attorneys to do so. And similar to Oregon's extension of appellate-court eFiling privileges to attorneys but not to self-represented litigants as discussed above, denying self-represented parties the opportunity to present oral arguments before the Oregon Court of Appeals while allowing attorneys to do so arguably also violates self-represented litigants' federal constitutional due-process and equal-protection rights. Such potential federal constitutional violations may be particularly substantial given the pivotal role that oral arguments can play in litigation. Given their possible constitutional violations, potential substantial detriments to self-represented litigants, and clear anomalies from other states' appellate-court procedure rules, Oregon's extension of appellate court eFiling and Court of Appeals oral-argument privileges to attorneys but not to self-represented litigants could suggest that the ORAP Committee lacks adequate fairness and impartiality towards self-represented litigants.

RULE AS AMENDED:

None. Current rules provide:

Rule 6.05
REQUEST FOR ORAL ARGUMENT;
SUBMISSION WITHOUT ARGUMENT

(1) This rule applies to proceedings in the Court of Appeals.

(2) (a) The Administrator will send the parties notice of the date that a case is scheduled to be submitted to the court ("the submission date"). Parties to the case may request oral argument by filing a "Request for Oral Argument" in the form illustrated in Appendix 6.05 and directed to the attention of the court's calendar clerk. If a party files a timely request for oral argument, the case will be argued on the submission date and all parties who have filed a brief may argue. If no party files a timely request for oral argument, the case shall be submitted on the briefs on the submission date without oral argument, unless the court directs otherwise.

(b) A party wanting oral argument must file the request for oral argument and serve it on every other party to the appeal within the number of days specified in this subsection after the date the notice from the Administrator:

(i) On appeal in juvenile dependency (including termination of parental rights) and adoption cases within the meaning of ORAP 10.15, and on judicial review in land use cases as defined in ORAP 4.60(1)(b), 14 days after the date of the notice;

(ii) In all other cases, 28 days after the date of the notice.

(3) Notwithstanding subsection (2) of this rule, if a self-represented party files a brief, the case will be submitted without argument by any party. An attorney representing himself or herself is not considered to be a self-represented party for the purpose of this rule.

(4) Notwithstanding subsection (2) of this rule, when a respondent submits an answering brief confessing error as to all assignments of error and not objecting to the relief sought in the opening brief, the respondent shall so inform the court by letter when the brief is filed or at any time thereafter. On receipt of respondent's notice that a brief confesses error, the case will be submitted without oral argument. The appellant may by letter bring to the court's attention that a respondent's brief appears to confess error. If the court concurs, the case will be submitted without oral argument.

Rule 6.10
WHO MAY ARGUE;
FAILURE TO APPEAR AT ARGUMENT

(1) A party may present oral argument only if the party has filed a brief.

(2) An *amicus curiae* may present oral argument only if permitted by the court on motion or on its own motion.

(3) An attorney who was a witness for a party, except as to merely formal matters such as attestation or custody of an instrument, shall not argue the cause without leave of the court.

(4) Only active members of the Oregon State Bar shall argue unless the court, on motion filed not less than 21 days before the date for argument, orders otherwise. If the court has allowed a lawyer from another jurisdiction to appear on appeal for a particular case under ORAP 8.10(4), the lawyer does not need leave of the court to participate in oral argument of the case.

(5) (a) After any party has filed and served a request for oral argument pursuant to ORAP 6.05(2), any party who decides to waive oral argument or cannot attend oral argument shall give the court and all other parties participating in oral argument at least 48 hours' notice that the party will not be appearing for oral argument.

(b) If a party fails to appear at oral argument, the court may deem the cause submitted without oral argument as to that party. A party's failure to appear shall not preclude oral argument by any other party.

(c) If a party fails to give at least 48 hours' notice of nonappearance at argument, the court may order counsel for that party to pay the costs and attorney fees that reasonably would not have been incurred but for failure to give timely notice of nonappearance.

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AMENDING RULE(S):	Proposal # 8.5 -- ORAP 6.30 -- Mandate In-Person or Remote Viewing of Oral Arguments
PROPOSER:	Tiffany Keast
WORKGROUP:	Ben Gutman, Tiffany Keast, Ernest Lannet, Lisa Norris-Lampe, Daniel Parr

EXPLANATION:

Workgroup believes they have a solution that does not require an ORAP amendment. Tiffany Keast will provide a short summary.

RULE AS AMENDED:

ORIGINAL PROPOSAL

Rule 6.30
SPECIAL RULES FOR ORAL ARGUMENTS:
MODE OF ARGUMENT AND ARGUMENTS CONDUCTED BY REMOTE MEANS

(1) For purposes of this rule,

(a) "In person" refers to an oral argument to be conducted with all parties appearing in person, in either a courtroom or an alternative physical location being used as a courtroom; and

(b) "Remote means" refers to an oral argument conducted by video conference with all parties and justices or judges appearing remotely.

(2) Proceedings in the Supreme Court and the Court of Appeals will be accessible for observation by parties to the appeal personally, as well as to interested members of the bench, bar, and public, whether the argument is conducted in person or by remote means.

(a) When argument is in person, the parties to the appeal personally, as well as interested members of the bench, bar, and public, may observe the argument by attending in-person.

(b) When argument is conducted by remote means and is webcast, the parties to the appeal personally, as well as interested members of the bench, bar, and public, may observe the argument by accessing the webcast.

(c) When argument is conducted by remote means and is not webcast, the parties to the appeal personally, as well as interested members of the bench, bar, and public, shall be provided remote access to observe the argument. In confidential cases, the court and the attorneys presenting argument shall not refer to the parties by name.

(32) This subsection applies to proceedings in the Court of Appeals.

(a) Except for cases designated as expedited under ORAP 4.60 and ORAP 10.15, within 21 days after the filing of an answering brief, the parties may file a joint notice that they are amenable to oral argument by remote means. Unless the court directs otherwise, when a joint notice under this rule has been filed and a party files a timely request for oral argument under ORAP 6.05(2), the case will be scheduled for argument by remote means.

(b) Notwithstanding paragraph (a) of this subsection the court may direct that oral argument in a case or set of cases occur by remote means, which includes setting remote oral argument sessions in the ordinary course or directing that oral arguments occur remotely in response to inclement weather or other unforeseen circumstances. If the court directs that an oral argument occur by remote means, a party may request an in-person argument as follows:

(i) A party may move the court for an order that an oral argument should proceed in person. The motion must be filed at least 14 days before the scheduled date of the oral argument. The motion must state the scheduled date and time of the oral argument and explain the circumstances that support the request.

(ii) Any party may file a response to the motion. The response must be filed within seven days after the filing of the motion.

(iii) The court may, for good cause shown, shorten the time for filing a motion or response.

(c) If an argument scheduled to proceed by remote means cannot occur due to technical difficulties, the court will reset the argument for a later date.

(d) A live audio and video feed of oral arguments that are being conducted by remote means will be available in the principal location for the sitting of the Court of Appeals.[1] Seating in the courtroom at the principal location to view a live audio and

video feed of oral arguments that are being conducted by remote means will be limited to the number of persons that is posted at the Marshal's Station at the building entrance.

(~~3~~4) This subsection applies to proceedings in the Supreme Court.

(a) The court will ordinarily schedule oral argument to be conducted in person.

(b) (i) A party may file a motion requesting that an argument scheduled to be conducted in person be conducted by remote means. Such a motion must be filed at least 21 days before the scheduled date of the oral argument and must state the scheduled date and time of the oral argument and explain the circumstances that support the request.

(ii) Any party may file a response to the motion. The response must be filed within seven days after the filing of the motion.

(54) Except as otherwise provided in ORAP 8.35, electronic recording of an appellate oral argument being conducted by remote means is not permitted without express prior approval of the court. "Electronic recording" includes, but is not limited to, video recording, audio recording, live streaming, and still photography by cell phone, tablet, computer, camera, recorder, or any other means.

(6~~5~~) Absent permission from the court or, in the Court of Appeals, the presiding judge of the panel to proceed otherwise, when appearing for an oral argument to be conducted by remote means, all attorneys and court officials must wear appropriate attire, remain on camera, and conduct themselves as if they were appearing in person in the courtroom.

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[1] *See* Chief Justice Order 19-053 (providing that the principal location for the sitting of the Court of Appeals is currently 1162 Court Street NE, Salem, OR 97301) or any subsequent order of the Chief Justice that amends or supersedes that order.

ORAP COMMITTEE 2022
April 21 Materials

AMENDING RULE(S): Proposal # 9 -- ORAP 7.05(1)(d), Appendix 7.10-3 -- Change Terminology from "Opposing Counsel" to "Opposing Party"

PROPOSER: Daniel Parr, Appellate Court Administrator

WORKGROUP: Julie A. Smith

EXPLANATION:

WORKGROUP NOTES FOR APRIL 21 MEETING

[The proposal was to change "opposing counsel" to "opposing party" and add a clarification that, if a party was represented, counsel should be contacted. Julie Smith expressed some concern about the proffered wording and offers the following explanation for her revised version (quoted from email)]:

> 1. I think it makes sense for this conferral rule to track the conferral language used in UTCR 5.010(1), which requires that "the moving party, before filing the motion, makes a good faith effort to confer with the other party(ies) concerning the issues in dispute."
>
> 2. As originally drafted, the proposal only required the moving party to confer with the "opposing party." In a multi-party appeal, it's not always clear who the "opposing party" is. In my experience, some parties are aligned on some issues and not others. And, even if a party is otherwise aligned with the movant, that party might have good reason to oppose a particular motion.

RULE AS AMENDED:

WORKGROUP "TRACK CHANGES" VERSION

Rule 7.05
MOTIONS IN GENERAL

(1) (a) Unless a statute or these rules provide another form of application, a

request for an order or other relief must be made by filing a motion in writing.

(b) A party seeking to challenge the failure of another party to comply with any of the requirements of a statute or these rules must do so by motion.

(c) A party may raise an issue of the jurisdiction of the appellate court by motion at any time during the appellate process.

(d) Other than a first motion for an extension of time of 28 days or less to file a brief, before filing a motion, the moving party must make a good faith effort to confer with the other party(ies) to determine whether the other party(ies) ~~a motion must contain a statement whether opposing counsel~~ object~~s~~ to, concur~~s~~ in, or ha~~ves~~ no position regarding the motion. In the event of an objection, the moving party must state in the motion ~~If opposing counsel objects to the motion, the motion must include a statement~~ whether the objecting party ~~opposing counsel~~ intends to file a response to the motion. If the moving party is unable to obtain the other party(ies) position(s), ~~has not been able to learn opposing counsel's position on the motion,~~ then the motion must so state.

(2) (a) Generally, a party seeking relief in a case pending on appeal should file the motion in the court in which the case is pending.[1] A party seeking relief from a court other than the court in which the case is pending must, on the first page of the motion, separately and conspicuously state that the party is seeking relief from a court other than the court in which the case is pending.

(b) A case is considered filed in the Supreme Court if the motion is captioned "In the Supreme Court of the State of Oregon" and in the Court of Appeals if the motion is captioned "In the Court of Appeals of the State of Oregon." Notwithstanding the caption, the Administrator has the authority to file a motion in the appropriate court, provided that the Administrator must give notice thereof to the parties.

(3) Any party may, within 14 days after the filing of a motion, file a response.[2] The court may shorten the time for filing a response and may grant temporary relief pending the filing of a response, as circumstances may require.

(4) The moving party may, within seven days after the filing of a response, file a reply. The filing of a reply is discouraged; a reply should not merely restate argument made in the motion, and should be confined to new matter raised in the response.

(5) Unless the court directs otherwise, all motions will be considered without oral argument.

(6) Parties must be referred to by their designation in the appellate court. Hyphenated

designations are discouraged. However, in motions in domestic relations cases, parties must be referred to as husband or wife, mother or father, or other appropriate specific designations.

[1] *See* ORAP 9.30 to determine in which appellate court a case is pending when a petition for review has or may be filed.

[2] *But see* ORAP 7.25(6) regarding time for responding to a motion for an extension of time.

APPENDIX 7.10-3

Illustration for ORAP 7.10(1)(c) and ORAP 7.25–Motions for Extension of Time

Illustration 1

IN THE SUPREME COURT (COURT OF APPEALS)
OF THE STATE OF OREGON

_____,	)	
Plaintiff-Appellant,	)	
(or Plaintiff-Respondent)	)	_____ County Circuit
	)	Court No. _____
	)	
v.	)	
_____,	)	(SC or CA) _____
Defendant-Respondent.	)	
(or Defendant-Appellant)	)	

APPELLANT'S [RESPONDENT'S] MOET–
FILE OPENING [ANSWERING] BRIEF
(OR OTHER ITEM–SEE LIST OF
MOET TITLES IN APPENDIX 7.10-1)

Appellant (Respondent) moves this court for an extension of time of ____ days, from ___ through ____, within which to serve and file the appellant's opening (or respondent's answering) brief (or other item) in this case.

The Notice of Appeal in this case was filed on __[date]__ . The brief (or other item) is due on __[date]__. This is the first (or second or third) request for a time extension and one is now sought because [set out the reason].

[In a criminal case, indicate whether defendant is incarcerated or under what terms defendant has been released.]

Opposing (party/counsel) in this case informs me that (the party/counsel) (has no objection to/concurs in/has no comment on) this request for extension of time.

Date _____

_____
Attorney for Petitioner
[Sign and print/type name,
bar number, address,
telephone number, and email address]

ORAP COMMITTEE 2022
April 21 Materials

AMENDING RULE(S):	Proposals # 10A & 10B -- ORAP 8.45 -- Delete or Amend Duty to Notify Court of Mootness
PROPOSER:	Ernest Lannet, Office of Public Defense Services
WORKGROUP:	Ben Gutman, Commissioner Kidd, Ernest Lannet, Lisa Norris-Lampe

EXPLANATION:

WORKGROUP NOTES FOR APRIL 21 MEETING

[Workgroup will report orally at meeting.]

RULE AS AMENDED:

WORKGROUP PROPOSAL

[Rule is almost entirely rewritten, so only clean copy is provided.]

RULE 8.45
DUTY TO FILE MOTION OR GIVE NOTICE WHEN FACTS RENDER APPEAL MOOT

(1) When a party becomes aware of facts that render an appeal moot,[1] except as to facts the disclosure of which is barred by the attorney-client privilege, and the party believes that the correct disposition of the appeal is dismissal,

(a) Unless subsection (1)(b) applies, that party must move to dismiss the appeal.[2]

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[1] For example, the death of the defendant in a criminal case, the release from custody of the plaintiff in a habeas corpus case, or settlement of a civil case.

[2] An appeal is generally considered moot if the court's decision would have no practical effect on the rights of the parties, including no legally cognizable

(b) If the party believes that the correct disposition under a reasonable extension or modification of current law would not be dismissal, that party need not move to dismiss the appeal.

(2) When an appellant believes that the appeal is moot based on privileged facts, that party may move to dismiss the appeal as moot, but need not reveal the privileged facts.

(3) ORAP 7.05 governs any response to a motion to dismiss as moot under subsection (1) or (2), and any reply in support of the motion, except that the filing of a reply is not discouraged if the party filing the reply has the burden of persuasion. Notwithstanding ORAP 7.05(1)(d), if no party files a response to a motion to dismiss as moot within 14 days, the court may treat the motion as unopposed.

(4) (a) If a party becomes aware of nonprivileged facts that probably render an appeal moot and has reason to believe that the other party or parties are unaware of those facts, the party shall promptly inform the other party or parties of those facts.

(b) If no notice is given under subsection (4)(a) and the court later dismisses the appeal as moot based on those facts, the court, on motion of an aggrieved party, may award costs and attorney fees incurred by the aggrieved party incurred after notice should have been given of the facts probably rendering the appeal moot, payable by the party who had knowledge of those facts.

CURRENT RULE

Rule 8.45
DUTY TO SERVE NOTICE OR
FILE MOTION ON OCCURRENCE OF EVENT
RENDERING APPEAL MOOT

Except as to facts the disclosure of which is barred by the attorney-client privilege, when a party becomes aware of facts that probably render an appeal moot,[1] that party shall provide

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collateral consequences of the ruling challenged on appeal. *See, e.g.*, *Dept. of Human Services v. P.D.*, 368 Or 627, 496 P3d 1029 (2021); *Garges v. Premo* , 362 Or 797, 421 P3d 345 (2018); *State v. K.J.B.*, 362 Or 777, 416 P3d 291 (2018); *Dept. of Human Services v. A.B.*, 362 Or 412, 412 P3d 1169 (2018).

notice of the facts to the court and to the other party or parties to the appeal, and may file a motion to dismiss the appeal. If a party becomes aware of facts that probably render an appeal moot and fails promptly to inform the other party or parties to the appeal and the court dismisses the appeal as moot, the court, on motion of the aggrieved party, may award costs and attorney fees incurred by the aggrieved party incurred after notice should have been given of the facts probably rendering the appeal moot, payable by the party who had knowledge of the facts.

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[1] For example, the death of the defendant in a criminal case, the release from custody of the plaintiff in a habeas corpus case, or settlement of a civil case.

ORAP COMMITTEE 2022
April 21 Materials

AMENDING RULE(S):	Proposal # 11 -- ORAP 10.15 -- Apply Rule to Juvenile Delinquency Cases and Modify Briefing Schedule
PROPOSER:	Tiffany Keast
WORKGROUP:	n/a (Justice Meagan Flynn and Judge Jacqueline Kamins to report back)

EXPLANATION:

WORKGROUP NOTES FOR APRIL 21 MEETING

Justice Flynn and Judge Kamins will report orally.

The committee received a comment from Youth Rights & Justice. The letter is inserted on the following pages, followed by the summary positions provided by DOJ and OPDS.

Youth, Rights & Justice

ATTORNEYS AT LAW

March 11, 2022

Members of the ORAP Committee:

Youth, Rights & Justice (YRJ) is a non-profit law firm that has been representing children, parents, and youth in juvenile delinquency and dependency appeals for more than four decades. YRJ provides most of the appellate representation for Oregon youth in delinquency cases. This letter is intended to express our position on Proposal #11, under consideration by the committee. As discussed below, YRJ supports the proposal insofar as it applies ORAP 10.15 to juvenile delinquency appeals, but YRJ opposes the proposed modifications to the briefing schedule in juvenile dependency cases that would extend the standard extension and provide for additional extensions.

Lengthening the Briefing Schedule in Dependency Appeals

Proposal #11 would modify the schedule for dependency appeals by lengthening the standard briefing extension from 14 to 28 days, expressly authorizing additional extensions, and removing any limit on extensions for petitions for review. Apart from the provision extending the timeline for reply briefs from 7 to 21 days (which does require an additional change to the oral argument schedule), YRJ opposes the proposed changes to the dependency timelines. The changes would create an additional delay of a month and a half as a matter of normal procedure, plus easier access to further unlimited extensions.

This proposed change is contrary to the recommendation of the National Council of Juvenile and Family Court Judges (NCJFCJ), which has stated: "Limiting the time required to bring [child welfare] cases to their conclusion limits the exposure of children, parents, and families to the stress caused by uncertainty and indecision."[1] It is well-established that prolonged stress leads to long-term developmental problems for children.[2]

One of the unique aspects of dependency cases is that there are many stages in each case that result in appealable judgments and orders, including jurisdictional hearings, dispositional or review hearings, post-jurisdiction removal hearings, permanency hearings, and termination-of-parental-rights proceedings. When parties appeal at each stage—and additional delay is added to the resolution of each appeal—the cumulative effect is significantly longer periods of uncertainty for families involved in the dependency system.

There is also no need to expressly authorize extensions beyond the standard extensions in dependency cases. Under ORAP 1.20(5), the court may "on its own motion or on motion of any party" waive any rule. Thus, ORAP 1.20(5) already provides a mechanism for a party to request additional extensions when good cause warrants them, including in circumstances where the record is exceptionally long or the legal issues presented are exceptionally complex. A rule enumerating circumstances that constitute good cause for further extensions will only serve to encourage litigants to seek such extensions, creating further delays in the resolution of dependency appeals.

Expediting Juvenile Delinquency Appeals

Under the current version of the ORAPs, the briefing schedule in juvenile delinquency appeals is the same as for adult criminal cases. Under that schedule, delinquency appeals are not resolved swiftly, leaving youth in uncertainty for extended periods of time.[3] Those lengthy delays in resolution are inconsistent with the express purposes of the delinquency system as found in ORS 419C.001, *i.e.*, that the delinquency system "shall provide a continuum of services that emphasize prevention of further criminal activity by the use of *early and certain* sanctions, reformation and rehabilitation programs[,] and *swift and decisive* intervention in delinquent behavior." (Emphases added.) Appeals in delinquency cases involve a variety of issues, including whether sufficient evidence supported the youth's adjudication, whether the juvenile court was authorized to remove the youth from his family and place him in a state institution, and whether the youth will be required to report as a sex offender. Protracted delays in the appeal process cause justice-involved youth to experience the ongoing consequences of potentially erroneous rulings for significant portions of their formative years. Such delays also leave youth in a state of uncertainty, which can hinder their progress in rehabilitative services, including by forcing them to choose between progressing in services and avoiding additional legal exposure in the event that their appeal is successful. Moreover, a lengthy appellate process discourages appeals in delinquency cases, which in turn inhibits the development of delinquency case law.[4]

Proposal #11 would apply ORAP 10.15 to delinquency appeals, which would expedite the briefing schedule and limit parties to filing one 14-day extension. This aspect of the proposal is consistent with the recommendation of the National Council of Juvenile and Family Court Judges (NCJFCJ) that delinquency appeals be expedited.[5] According to NCJFCJ, "the juvenile justice process will not achieve its goals if the process is not timely," given the developmental stage of youth offenders.[6] Further, the

lack of a timely process produces "prolonged uncertainty" for youth and increases their anxiety, which can "negatively impact trust and a sense of fairness" and "damage the youth's cognitive development."[7] In other words, resolving delinquency appeals after lengthy delays undermines the rehabilitative and corrective purposes of juvenile delinquency proceedings.

Relatively speaking, there are very few delinquency appeals (43 in 2021, some of which were consolidated for briefing),[8] so the proposed change would not significantly impact the appellate system as a whole. For those reasons, YRJ urges the committee to adopt Proposal #11 insofar as it applies ORAP 10.15 to delinquency appeals.

Thank you for considering our position on Proposal #11.

Sincerely,

Erica Hayne Friedman Christa Obold Eshleman Ginger Fitch
Youth, Rights & Justice, Attorneys at Law

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[1] NCJFCJ, *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*, at 31 (2016), *available at* https://tinyurl.com/ms3f4m23 (accessed March 9, 2022)).
[2] National Scientific Council on the Developing Child, *Excessive Stress Disrupts the Architecture of the Developing Brain*, (Jan. 2014), *available at* https://developingchild harvard.edu/wp-content/uploads/2005/05/Stress_Disrupts_Architecture_Developing_Brain-1.pdf) (accessed March 10, 2022)
[3] *See, e.g.*, *State v. J. R.*, 318 Or App 21 (2022) (874 days between notice of appeal and issuance of opinion); *State v. A. E. J.*, 317 Or App 363 (2022) (1,120 days); *State v. J. J. W.-H.*, 316 Or App 694 (2021) (491 days); *State v. G. E. S.*, 316 Or App 294 (2021) (826 days); *State v. C. L. E.*, 316 Or App 5 (2021) (852 days); *State v. A. R. H.*, 314 Or App 672 (2021) (721 days); *State v. S. M. E.*, 314 Or App 113 (2021) (691 days).
[4] *See* Jacqueline L. Bullard & Kimberly E. Dvorchak, *Juvenile Appeals: A Promising Legal Strategy to Reduce Youth Incarceration*, 8 Marshall L J 403, 421 (Spring 2015) ("By the time an appellate court reviews a child's commitment order, that sentence may be at or near completion. As a result, a lengthy appellate process discourages appeals and renders many sentencing issues moot.").
[5] *See* NCJFCJ, *Enhanced Juvenile Justice Guidelines* (2018), at 229, *available at* https://tinyurl.com/yc5zuuhe (accessed March 7, 2022) (recommending that appellate courts "establish timeframe requirements, including the preparation of the record and the filing of briefs, that will shorten the process to the minimum possible length of time and strictly enforce the timeframes").
[6] *Id.* at 222.
[7] *Id.* at 223.
[8] Appellate Case Management System (search for juvenile delinquency appeals in 2021). The vast majority of these were appeals by YRJ clients.

EXPLANATION (cont'd):

The Department of Justice commented (email dated March 23):

> DOJ shares YRJ's concern about amendments that would extend the time it takes for dependency appeals to be heard and decided. Those appeals add to the time it takes to resolve the underlying proceedings and, particularly with termination-of-parental-rights appeals, add months or years of delay in which children are in limbo. Those delays are harmful and increase the chances of a child's permanent placement being disrupted before it can be implemented. During the COVID-19 state of emergency, DOJ has not been objecting to certain extensions of time that exceed what ORAP 10.15 allows, recognizing the difficulties that the pandemic caused opposing counsel. But we hope to see the court return to the ORAP timeframes in the near future and oppose making those extraordinary extensions the permanent norm.
>
> The proposed amendments to ORAP 10.15 also would lead to inequitable briefing schedules in the Court of Appeals unless the appeals were further delayed. ORAP 10.15 requires the court to schedule a dependency appeal for oral argument within 63 days of the opening brief. The standard 28 days for the respondents' brief, plus the 14-day extension allowed by ORAP 10.15, plus 7 days for a reply adds up to 49 days – making the briefing completed at most two weeks before argument.
>
> Allowing longer extensions as a matter of course will either require adding to the 63-day schedule for oral argument or will mean that those extensions are generally available only for appellants and not for respondents.
>
> As for delinquency appeals, DOJ will work to comply with expedited briefing schedules if the court decides that they should be prioritized over criminal cases, which is historically how they have been treated for scheduling purposes. Because expediting those case will require attorneys to reprioritize their dockets and adjust their expectations, I suggest that any change apply only prospectively to appeals filed after a certain date.

The Office of Public Defense Services commented (email dated April 7):

> OPDS Appellate Division supports the proposed amendments as drafted.
>
> As to dependency and TPR cases, the proposed amendments mirror what has been

the existing practice for the past two years and we believe the ORAPs should reflect and codify existing practice. OPDS Appellate Division is not concerned that continuing and codifying existing practice will unnecessarily delay achieving family reunification because appeals from juvenile dependency and TPR proceedings do not stay the underlying proceedings. Thus, it is not uncommon for a child's wardship to be terminated and for the child to be reunified with her family while an appeal is pending.

To the extent that respondents are concerned about continuing existing practice, OPDS Appellate Division would agree to further amending ORAP 10.15 to require respondent's briefs to be filed within 28 days of the filing of the opening brief and to allow no extensions. Appellants must compile the record, secure the exhibits, review the record for errors of law and ineffective assistance of counsel, and of course, select the issues to be briefed and brief them. Respondents must merely respond.

In any event, OPDS Appellate Division believes that the ORAPs should clarify that NFE orders are not intended to impair court-appointed counsel's ability to adequately represent the client. Court-appointed counsel manage high volume caseloads attending to multiple open cases on appeal at all stages of the appellate proceedings. The ORAPS should reflect that bona fide circumstances requiring additional time to adequately file an opening brief exist, and that upon such a showing, counsel can expect the Court of Appeals to grant counsel such additional time.

RULE AS AMENDED:

ORIGINAL PROPOSAL

Rule 10.15
JUVENILE DEPENDENCY AND ADOPTION CASES

(1) (a) Subsections (2) through (10) of this rule apply to an adoption case and a juvenile dependency case under ORS 419B.100, including but not limited to a case involving jurisdiction, disposition, permanency, or termination of parental rights, and to a juvenile delinquency case under ORS 419C.005, but excluding a support judgment under ORS 419B.400 to 419B.408.

(b) On motion of a party or on the court's own motion, the Court of Appeals may direct that a juvenile dependency case under ORS 419B.100, except a termination of parental rights case, be exempt from subsections (2) through (10) of this rule.

(2) The caption of the notice of appeal, notice of cross-appeal, motion, or any other thing filed either in the Court of Appeals or the Supreme Court shall prominently display the words "EXPEDITED JUVENILE DEPENDENCY CASE (NOT TPR)," "EXPEDITED TERMINATION OF PARENTAL RIGHTS CASE," "EXPEDITED JUVENILE DELINQUENCY CASE," "JUVENILE DEPENDENCY SUPPORT CASE (NOT EXPEDITED)," or "EXPEDITED ADOPTION CASE," as appropriate.[1]

(3) (a) In an adoption case or in a juvenile dependency case in which the appellant is proceeding without counsel or is represented by retained counsel, appellant shall make arrangements for preparation of the transcript within seven days after filing the notice of appeal.

(b) When the appellant is eligible for court-appointed counsel on appeal, the preparation of transcript at state expense is governed by the policies and procedures of the Office of Public Defense Services.[2]

(c) In a disposition proceeding pursuant to ORS 419B.325, a dispositional review proceeding pursuant to ORS 419B.449, a permanency proceeding pursuant to ORS 419B.470 to 419B.476, or a termination of parental rights proceeding, respecting the record in the trial court, the appellant may designate as part of the record on appeal only the transcripts of the proceedings giving rise to the judgment or order being appealed, the exhibits in the proceeding, and the list prepared by the trial court under ORS 419A.253(2) and all reports, materials, or documents identified on the list. A party may file a motion to supplement the record with additional material pursuant to ORS 19.365(4) and ORAP 3.05(3).

(4) (a) The court shall not extend the time for filing the transcript under ORAP 3.30 or for filing of an agreed narrative statement under ORAP 3.45 for more than 14 days.[3]

(b) Except on a showing of exceptional circumstances, the court shall not grant an extension of time to request correction of the transcript.[4]

(5) The trial court administrator shall file the trial court record within 14 days after the date of the State Court Administrator's request for the record.

(6) (a) Appellant's opening brief and excerpt of record shall be served and filed within 28 days after the events specified in ORAP 5.80(1)(a) to (f).

(b) Respondent's answering brief shall be served and filed within 28 days after the filing of the appellant's opening brief.

(c) A reply brief, if any, shall be served and filed within 21 days after the

filing of the respondent's answering brief and no later than 7 days before the date set for oral argument or submission to the court. ~~Any reply brief must be filed within 7 days after the filing of the respondent's answering brief.~~

(d) The court shall not grant an extension of time of more than 28 ~~14~~ days for the filing of any opening or answering brief, nor shall the court grant more than one extension of time except upon a showing that the record is exceptionally long, the legal issue presented is novel and requires additional time to adequately brief, or other circumstances demonstrating that additional time is needed to adequately present the appeal.. The court shall not grant an extension of time for the filing of a reply brief.

(7) The court will set the case for oral argument within 63 days after the filing of the opening brief.

(8) Notwithstanding ORAP 7.30, a motion made before oral argument shall not toll the time for transmission of the record, filing of briefs, or hearing argument.

(9) ~~The Supreme Court shall not grant an extension or extensions of time totaling more than 21 days to file a petition for review.~~

~~(10)~~ (a) Notwithstanding any provision to the contrary in ORAP 14.05(3):

(i) The Administrator forthwith shall issue the appellate judgment based on a decision of the Court of Appeals on expiration of the 35-day period to file a petition for review, unless there is pending in the case a motion or petition for reconsideration on the merits, or a petition for review on the merits, or a party has been granted an extension of time to file a motion or petition for reconsideration on the merits or a petition for review on the merits. If any party has filed a petition for review on the merits and the Supreme Court denies review, the Administrator forthwith shall issue the appellate judgment.

(ii) The Administrator shall issue the appellate judgment based on a decision of the Supreme Court on the merits as soon as practicable after the decision is rendered and without regard to the opportunity of any party to file a petition for reconsideration.

(b) If an appellate judgment has been issued on an expedited basis under paragraph (a) of this subsection, the Administrator may recall the appellate judgment or issue an amended appellate judgment as justice may require for the purpose of making effective a decision of the Supreme Court or the Court of Appeals made after issuance of the appellate judgment, including but not necessarily limited to a decision on costs on appeal or review.

[1] *See* Appendix 10.15.

[2] *See* ORS 419A.211(3).

[3] *See* ORS 19.370(2); ORS 19.395.

[4] *See* ORS 19.370(5).

ORAP COMMITTEE 2022
April 21 Materials

AMENDING RULE(S):	Proposal # 12 -- ORAP 11.35, 11.40 -- Possible Revisions re: Reapportionment Review
PROPOSER:	Ben Gutman, Solicitor General
WORKGROUP:	Ben Gutman, Lisa Norris-Lampe, Daniel Parr

EXPLANATION:

WORKGROUP NOTES FOR APRIL 21 MEETING

In general, the updates are intended to:

-- Align both rules with the constitutional and permanent statutory provisions that govern these proceedings (in a typical reapportionment year in which the census data was not delayed)

-- Incorporate a couple of "lessons learned" changes from the 2021 cycle (ex: more time to correct deficient documents; clarification on documentation that must be attached)

-- Clean up some differences between the two rules (11.35 involves a petition challenge, in an original proceeding; 11.40 involves a notice of appeal from a special judicial panel decision, in a direct appeal).

-- Incorporate a few additional ease-of-reading updates

Additional note:

-- In 11.40, the statutory timelines that ordinarily apply (in ORS 188.125) are extraordinarily tight. If the legislature amends those timelines before the next reapportionment, then this rule would need to be amended to reflect any changes.

RULE AS AMENDED:

WORKGROUP PROPOSAL -- CLEAN COPY

RULE 11.35

REAPPORTIONMENT REVIEW: STATE SENATORS AND REPRESENTATIVES

The practice and procedure for Supreme Court review of a reapportionment of Senators and Representatives serving in the Oregon Legislative Assembly shall be as follows:

(1) Any qualified elector of the state seeking review of a reapportionment enacted by the Legislative Assembly shall file a petition with the Administrator no later than August 1 of the year in which the Legislative Assembly enacts the reapportionment.[1]

(2) The petition shall contain:

(a) A title page containing a caption identifying the person seeking review of the reapportionment as the petitioner and the Legislative Assembly as the respondent;

(b) A statement showing that the petitioner is a qualified elector of the state;

(c) A prayer for specific relief; and

(d) The signature of the petitioner or the petitioner's attorney.

(3) The petition shall include one or more attachments setting out such part of the reapportionment as is necessary for a determination of both the question presented as well as the relief sought, including any proposed alternative reapportionment.[2]

(4) The petition shall include proof of service on the Secretary of the Senate, the Chief Clerk of the House of Representatives, the Secretary of State, and the Attorney General.[3] The petition shall be accompanied by the filing fee prescribed in ORS 21.010(5).

(5) The petitioner shall file an opening brief in support on the same date that the petitioner files the petition. The brief shall include proof of service on the Secretary of the Senate, the Chief Clerk of the House of Representatives, the Secretary of State, and the Attorney General.

(6) (a) The Legislative Assembly, the Secretary of State, or any other person who desires to oppose a petition shall, no later than 10 business days after the date the petitioner's opening brief is due, file with the Administrator an answering brief and, if not exempt from payment of filing fees, pay the respondent's first appearance fee prescribed in ORS 21.010(5). Any party who files an answering brief shall be identified as a "respondent."

(b) The respondent shall serve the answering brief on the petitioner and also on the individuals described in subsections (4) and (5). If the answering brief responds to a petition filed by more than one petitioner, service of the brief is required on only one of the following:

(i) The attorney for the petitioner whose name is first identified in the caption as a petitioner, or that petitioner if not represented; or

(ii) If one attorney represents all petitioners, that attorney.

(7) Reply briefs are discouraged, but, if a petitioner chooses to file a reply brief, the brief shall be filed no later than five business days after the respondent's answering brief is due. The petitioner shall serve any reply brief on the respondent and also on any individual described in subsection (4) and (5) who is not a respondent.

(8) *Amicus curiae* appearances are discouraged, but, if a person applies for leave to file an *amicus curiae* brief, the person shall file the application, accompanied by the brief tendered for filing, no later than the date that the respondent's answering brief is due. The following provisions of ORAP 8.15 apply to *amicus curiae* filings under this rule: ORAP 8.15(1), (2), (3), (5)(a)(iii), (6), (7), and (8), except that the provisions of ORAP 8.15(8) regarding time to appear and prescribing due dates do not apply.

(9) Any brief in support of or in opposition to a petition, to the extent practicable, shall be filed in the same form as a brief on appeal in a civil action under these rules.

(10) The following requirements apply to any petition, brief, or other document required or permitted to be filed under this rule:

(a) All documents shall contain the litigant contact information required by ORAP 1.30, including, whether the filing party is represented or not, an email address at which the party can be served filings by others pursuant to ORCP 9 G and can receive notices and other communications from the court.

(b) All documents shall be filed by 5:00 p.m. Pacific Time (PT) on the deadline day, using one of the following filing methods and no other method:

(i) An attorney required to eFile a document pursuant to ORAP 16.60 shall submit it for eFiling by 5:00 p.m. PT on the deadline day, notwithstanding ORAP 16.25(1);

(ii) A party not required to eFile a document under ORAP 16.60, including a self-represented party, may physically deliver it by 5:00 p.m. PT to the Appellate Court Administrator, Appellate Court Records Section, 2850 Broadway St. NE, Salem, Oregon 97303-6500; or

(iii) A self-represented party may email a document by 5:00 p.m. PT to appealsclerk@ojd.state.or.us, with the following subject line: "Case Filing under ORAP 11.35(10)(b)," notwithstanding ORAP 1.35(1)(a) and ORAP 1.32(1)(b) and (c). Any document that is filed by email shall comply, to the extent practicable, with the format requirements set out in ORAP 16.15. A party who files a document by email under this subsection shall comply with any subsequent instruction regarding payment of an applicable filing fee and shall respond to and comply with any other inquiry or direction sent from the Administrator or the Administrator's designee.

(c) Any document rejected based on a filing deficiency shall be corrected and refiled by 7:00 p.m. (PT) on the deadline day.

(d) Any document that is filed shall be served on the other parties, and on any other person required in this rule, on the same day the document is filed and, if filed on the deadline day, by 5:00 p.m. Pacific Time (PT). The serving party shall use one of the following service methods and no other method:

(i) If applicable, electronic service pursuant to ORAP 16.45;

(ii) Email service pursuant to ORCP 9 G; or

(iii) Hand delivery.

(e) Any document that is filed shall include proof of service, describing the person or persons served, the date of service, and the method of service as required by subsection (10)(d).

(11) The court may invite oral argument from any petitioner or respondent.

(12) A petition for reconsideration may be filed for only the purpose of correcting a misstatement or inaccuracy. Any such petition is due within one judicial day after issuance of a decision. The Administrator shall not accept for filing, and the court

will not consider, any petition tendered for filing after a reapportionment has become operative under Article IV, section 6, of the Oregon Constitution.

(13) The court's review of a reapportionment made by the Secretary of State under Article IV, section 6, subsection (3), of the Oregon Constitution shall be the same as for a reapportionment enacted by the Legislative Assembly, and all other provisions of this rule accordingly apply, except that:

(a) The caption of the petition shall identify the Secretary of State as the respondent; and

(b) The petition and opening brief shall be filed no later than September 15 of the year of reapportionment.

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[1] If the deadline for filing a petition is a Saturday or Sunday, the Oregon Constitution may prohibit extending the deadline to the next business day. *See Hartung v. Bradbury*, 332 Or 570, 595 n 23, 33 P3d 972 (2001).

[2] For example, if the petition is challenging only a particular district (or districts) and contends that its boundaries should be drawn differently, then the attachment or attachments must set out both the part of the reapportionment that enacted the district and a proposed map or description of how the district's boundaries should be drawn differently. If, however, the petition is challenging the entire reapportionment, but not proposing any particular redrawing of district boundaries, then the attachment must set out the entire reapportionment that the legislature enacted, but not any alternative boundaries.

[3] Delivery to the listed officials should be made to the addresses, or email addresses, listed on the court's website, [link to be added].

RULE 11.40

REAPPORTIONMENT REVIEW: CONGRESSIONAL DISTRICTS

The practice and procedure for a direct appeal to the Supreme Court concerning reapportionment of the state into congressional districts under ORS 188.125 shall be as follows:

(1) Notice of appeal

(a) A notice of appeal filed under ORS 188.125(9)(b), challenging a decision of the special judicial panel appointed pursuant to ORS 188.125(6) and (7) that dismissed a petition under ORS 188.125(9)(a), shall be filed with the Administrator no later than September 15 of the year in which the Legislative Assembly enacts the reapportionment.

(b) A notice of appeal filed under ORS 188.125(10)(b), challenging a decision of the special judicial panel appointed pursuant to ORS 188.125(6) and (7) under ORS 188.125(10)(a), other than dismissal under ORS 188.15(9)(a), shall be filed with the Administrator no later than October 15 of the year in which the Legislative Assembly enacts the reapportionment.

(c) The notice of appeal shall:

(i) Comply, to the extent practicable, with ORAP 2.05, ORAP 2.10, and ORAP 2.25; and

(ii) Be accompanied by the filing fee prescribed in ORS 21.010(5).

(2) The appellant in an appeal under either subsection (1)(a) or (b) shall file an opening brief in support on the same date that the appellant files the notice of appeal. The brief shall attach an excerpt of record that includes:

(a) Such part of the reapportionment as is necessary for a determination of the question presented and the relief sought; and

(b) Any other part of the record necessary for a determination of the question presented and the relief sought, including any proposed alternative reapportionment.[1]

(3) The respondent in an appeal under either subsection (1)(a) or (b) shall file an answering brief no later than five judicial days after the opening brief is filed.

(4) Reply briefs are discouraged, but, if an appellant in an appeal under either subsection (1)(a) or (b) chooses to file a reply brief, the brief shall be filed no later than two judicial days after the answering brief is filed.

(5) *Amicus curiae* appearances are discouraged, but, if a person applies for leave to file an *amicus curiae* brief, the person shall file the application, accompanied by the brief tendered for filing, no later than the date that the respondent's answering brief is due. The following provisions of ORAP 8.15 apply to *amicus curiae* filings under this rule: ORAP 8.15(1), (2), (3), (5)(a)(iii), (6), (7), and (8), except that the provisions of ORAP 8.15(8) regarding time to appear and prescribing due dates do not apply.

(6) Any brief in support of or in opposition to a petition, to the extent practicable, shall be filed in the same form as a brief on appeal in a civil action under these rules.

(7) The following requirements apply to any petition, brief, or other document required or permitted to be filed under this rule:

(a) All documents shall contain the litigant contact information required by ORAP 1.30, including, whether the filing party is represented or not, an email address at which the party can be served filings by others pursuant to ORCP 9 G and can receive notices and other communications from the court.

(b) All documents shall be filed by 5:00 p.m. Pacific Time (PT) on the deadline day, using one of the following filing methods and no other method:

(i) An attorney required to eFile a document pursuant to ORAP 16.60 shall submit it for eFiling by 5:00 p.m. PT on the deadline day, notwithstanding ORAP 16.25(1);

(ii) A party not required to eFile a document under ORAP 16.60, including a self-represented party, may physically deliver it by 5:00 p.m. PT to the Appellate Court Administrator, Appellate Court Records Section, 2850 Broadway St NE, Salem, Oregon 97303-6500; or

(iii) A self-represented party may email a document by 5:00 p.m. PT to appealsclerk@ojd.state.or.us, with the following subject line: "Case Filing under ORAP 11.40(7)(b)," notwithstanding ORAP 1.35(1)(a) and ORAP 1.32(1)(b) and (c). Any document that is filed by email shall comply, to the extent practicable, with the format requirements set out in ORAP 16.15. A party who files a document by email under this subsection shall comply with any subsequent instruction regarding payment of an applicable filing fee and shall respond to and comply with any other inquiry or direction sent from the Administrator or the Administrator's designee.

(c) Any document rejected based on a filing deficiency shall be corrected and refiled by 7:00 p.m. on the deadline day (PT).

(d) Any document that is filed shall be served on the other parties, and on any other person required in this rule, on the same day the document is filed and, if filed on the deadline day, by 5:00 p.m. Pacific Time (PT). The serving party shall use one of the following service methods and no other method:

(i) If applicable, electronic service pursuant to ORAP 16.45;

(ii) Email service pursuant to ORCP 9 G; or

(iii) Hand delivery.

(e) Any document that is filed shall include proof of service, describing the person or persons served, the date of service, and the method of service as required by subsection (7)(d).

(8) The court may invite oral argument from any appellant or respondent.

(9) A petition for reconsideration may be filed for only the purpose of correcting a misstatement or inaccuracy. Any such petition is due within one judicial day after issuance of a decision. The Administrator shall not accept for filing, and the court will not consider, any petition tendered for filing after a reapportionment has become operative under ORS 188.125(14).

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[1] For example, if the petition is challenging only a particular district (or districts) and contends that its boundaries should be drawn differently, then the excerpt of record must set out both the part of the reapportionment that enacted the district and a proposed map or description of how the district's boundaries should be drawn differently. If, however, the petition is challenging the entire reapportionment, but not proposing any particular redrawing of district boundaries, then the excerpt of record must set out the entire reapportionment that the legislature enacted, but not any alternative boundaries.

WORKGROUP PROPOSAL -- "TRACK CHANGES" COPY (from 2021 temporary amendments)

RULE 11.35

REAPPORTIONMENT REVIEW: STATE SENATORS AND REPRESENTATIVES

The practice and procedure for Supreme Court review of a reapportionment of Senators and Representatives serving in the Oregon Legislative Assembly ~~under Article IV, section 6, of the Oregon Constitution, for the reapportionment year 2021,[1]~~ shall be as follows:

(1) Any qualified elector of the state seeking review of a reapportionment enacted by the Legislative Assembly ~~in 2021~~ shall file a petition with the Administrator no later than ~~October 25, 2021.~~August 1 of the year in which the Legislative Assembly enacts the reapportionment.[1]

(2) The petition shall contain:

(a) A title page containing a caption identifying the person seeking review of the reapportionment as the petitioner and the Legislative Assembly as the respondent;

(b) A statement showing that the petitioner is a qualified elector of the state;

(c) A prayer for specific relief; and

(d) The signature of the petitioner or the petitioner's attorney.

(3) The petition shall include ~~an attachment~~one or more attachments setting out such part of the reapportionment as is necessary for a determination of both the question presented ~~and~~as well as the relief sought~~.~~, including any proposed alternative reapportionment.[2]

(4) The petition shall include proof of service on the Secretary of the Senate, the Chief Clerk of the House of Representatives, the Secretary of State, and the Attorney General.~~[2]~~[3] The petition shall be accompanied by the filing fee prescribed in ORS 21.010(5).

(5) The petitioner shall file an opening brief ~~in support~~ on the same date that the petitioner files the petition. The brief shall include proof of service on the

Secretary of the Senate, the Chief Clerk of the House of Representatives, the Secretary of State, and the Attorney General.

(6) (a) The Legislative Assembly, the Secretary of State, or any other person who desires to oppose a petition shall, no later than ~~November 8, 2021, file with the Administrator~~10 business days after the date the petitioner's opening brief is due, file an answering brief and, if not exempt from payment of filing fees, pay the respondent's first appearance fee prescribed in ORS 21.010(5). Any party who files an answering brief shall be identified as a "respondent."

(b) The respondent shall serve the answering brief on the petitioner and also on the individuals described in ~~subsections~~subsections (4) and (5). If the answering brief responds to a petition filed by more than one petitioner, service of the brief is required on only one of the following:

(i) The attorney for the petitioner whose name is first identified in the caption as a petitioner, or that petitioner if not represented; or

(ii) If one attorney represents all petitioners, that attorney.

~~(7~~(7) Reply briefs are discouraged, but, if a petitioner chooses to file a reply brief, the brief shall be filed no later than five business days after the respondent's answering brief is due. The petitioner shall serve any reply brief on the respondent and also on any individual described in subsection (4) and (5) who is not a respondent.

(8) *Amicus curiae* appearances are discouraged, but, if a person applies for leave to file an *amicus curiae* brief, the person shall file the application, accompanied by the brief tendered for filing, no later than ~~November 8, 2021.~~the date that the respondent's answering brief is due. The following provisions of ORAP 8.15 apply to *amicus curiae* filings under this rule: ORAP 8.15(1), (2), (3), (5)(a)(iii), (6), (7), and (8), except that the provisions of ORAP 8.15(8) regarding time to appear and prescribing due dates do not apply.

~~(8) Reply briefs are discouraged, but, if a petitioner chooses to file a reply brief, the brief shall be filed no later than November 15, 2021. The petitioner shall serve any reply brief on the respondent and also on any individual described in subsection (4) who is not a respondent.~~

(9) Any brief in support of or in opposition to a petition, to the extent practicable, shall be filed in the same form as a brief on appeal in a civil action under these rules.

(10) The following requirements apply to any petition, brief, or other document required or permitted to be filed under this rule:

(a) All documents shall contain the litigant contact information required by ORAP 1.30, including, whether the filing party is represented or not, an email address at which the party can be served filings by others pursuant to ORCP 9 G and can receive notices and other communications from the court.

(b) All documents shall be filed by 5:00 p.m. Pacific Time (PT) on the deadline day, using one of the following filing methods and no other method:

(i) An attorney required to eFile a document pursuant to ORAP 16.60 shall submit it for eFiling by 5:00 p.m. PT on the deadline day, notwithstanding ORAP 16.25(1);

(ii) A party not required to eFile a document under ORAP 16.60, including a self-represented party, may physically deliver it by 5:00 p.m. PT to the Appellate Court Administrator, Appellate Court Records Section, 2850 Broadway St. NE, Salem, Oregon 97303-6500; or

(iii) A self-represented party may email a document by 5:00 p.m. PT to appealsclerk@ojd.state.or.us, with the following subject line: "Case Filing under ORAP 11.35(10)(b)," notwithstanding ORAP 1.35(1)(a) and ORAP 1.32(1)(b) and (c). Any document that is filed by email shall comply, to the extent practicable, with the format requirements set out in ORAP 16.15. A party who files a document by email under this subsection shall comply with any subsequent instruction regarding payment of an applicable filing fee and shall respond to ~~or~~and comply with any other inquiry or direction sent from the Administrator or the Administrator's designee.

(c) Any document rejected based on a filing deficiency shall be corrected and refiled by ~~6~~7:00 p.m. (PT) on the deadline day.

(d) Any document that is filed shall be served on the other parties, and on any other person required in this rule, on the same day the document is filed~~,~~ ~~using~~ and, if filed on the deadline day, by 5:00 p.m. Pacific Time (PT). The serving party shall use one of the following service methods and no other method:

(i) If applicable, electronic service pursuant to ORAP 16.45;

(ii) Email service pursuant to ORCP 9 G; or

(iii) Hand delivery.

(e) Any document that is filed shall include proof of service, describing the person or persons served, the date of service, and the method of service as required by subsection (10)(d).

(11) The court may invite oral argument from any petitioner or respondent. ~~If so, ORAP 6.10 governs who will be allowed to argue.~~

(12) A petition for reconsideration may be filed for only the purpose of correcting a misstatement or inaccuracy. Any such petition is due within ~~1~~one judicial day after issuance of a decision. The Administrator shall not accept for filing, and the court will not consider, any petition tendered for filing after a reapportionment has become operative under Article IV, section 6, of the Oregon Constitution~~, and *State ex rel Representative Tina Kotek v. Shemia Fagan*, 367 Or 803, 484 P3d 1058 (2021).~~.

(13) ~~Supreme Court~~The court's review of a reapportionment made by the Secretary of State under Article IV, section 6, subsection (3), of the Oregon Constitution shall be the same as for a reapportionment enacted by the Legislative Assembly, and all other provisions of this rule accordingly apply, except that:

(a) The caption of the petition shall identify the Secretary of State as the respondent; and

(b) The petition and opening brief shall be filed no later than ~~November~~September 15~~, 2021;~~

~~(c) The answering brief shall be filed no later than November 29, 2021;~~

~~(d) *Amicus curiae* applications and accompanying briefs, although discouraged, are due no later than November 29, 2021; and~~

~~(e) Reply briefs, although discouraged, are due no later than December 6, 2021.~~

~~1~~ ~~*See State ex rel Representative Tina Kotek v. Shemia Fagan*, 367 Or 803, 484 P3d 1058 (2021) (adopting revised schedule under Article I, section 6,~~ of the ~~Oregon Constitution, for the~~year of reapportionment ~~year 2021).~~.

~~2~~

[1] If the deadline for filing a petition is a Saturday or Sunday, the Oregon Constitution may prohibit extending the deadline to the next business day. *See Hartung v. Bradbury*, 332 Or 570, 595 n 23, 33 P3d 972 (2001).

[2] For example, if the petition is challenging only a particular district (or districts) and contends that its boundaries should be drawn differently, then the attachment or attachments must set out both the part of the reapportionment that enacted the district and a proposed map or description of how the district's boundaries should be drawn differently. If, however, the petition is challenging the entire reapportionment, but not proposing any particular redrawing of district boundaries, then the attachment must set out the entire reapportionment that the legislature enacted, but not any alternative proposal.

[3] Delivery to the listed officials should be made ~~as follows:~~

~~(1) Secretary of the Oregon Senate, 900 Court Street NE, Salem, Oregon, or Lori.l.brocker@oregonlegislature.gov;~~

~~(2) Chief Clerk of the Oregon House of Representatives, 900 Court Street NE, Salem, Oregon, or Tim.sekerak@oregonlegislature.gov;~~

~~(3) Oregon Secretary of State, 900 Court Street NE, Capitol Room 136, Salem, Oregon, or LegalService.sos@oregon.gov; and~~

~~(4) Oregon Attorney General, 1162 Court St NE, Salem, Oregon, or AppellateService@doj.state.~~to the addresses, or~~.us~~ email addresses, listed on the court's website, [to be added].

RULE 11.40

REAPPORTIONMENT REVIEW: CONGRESSIONAL DISTRICTS

The practice and procedure for a direct appeal to the Supreme Court concerning reapportionment of the state into congressional districts under ORS 188.125~~, as amended by Oregon Laws 2021, chapter 419, for the reapportionment year 2021,~~ shall be as follows:

~~(1~~(1) Notice of appeal

(a) A notice of appeal filed under ORS 188.125(9)(~~c) or (10)(b), as amended by Oregon Laws 2021, chapter 419,~~b), challenging a decision of the special judicial panel appointed pursuant to ORS 188.125(6~~), as amended by Oregon Laws 2021, chapter 419,~~) and (7) that dismissed a petition under ORS 188.125(9)(a), shall be filed with the Administrator no later than

~~November 29, 2021.~~ September 15 of the year in which the Legislative Assembly enacts the reapportionment.

(b) A notice of appeal filed under ORS 188.125(10)(b), challenging a decision of the special judicial panel appointed pursuant to ORS 188.125(6) and (7) under ORS 188.125(10)(a), other than dismissal under ORS 188.15(9)(a), shall be filed with the Administrator no later than October 15 of the year in which the Legislative Assembly enacts the reapportionment.

(c) The notice of appeal shall ~~comply~~:

(i) Comply, to the extent practicable, with ORAP 2.05, ORAP 2.10, and ORAP 2.25~~.~~; and

~~(2) The notice of appeal shall be~~ (ii) Be accompanied by the filing fee prescribed in ORS 21.010(5).

(~~3~~2) The appellant in an appeal under either subsection (1)(a) or (b) shall file an opening brief ~~no later than December 8, 2021. The appellate~~on the same date that the appellant files the notice of appeal. The brief shall attach an excerpt of record that includes:

(a) Such part of the reapportionment as is necessary for a determination of the question presented and the relief sought; and

(b) Any other part of the record necessary for a determination of the question presented and the relief sought~~.~~, including any proposed alternative reapportionment.[1]

(43) The respondent in an appeal under either subsection (1)(a) or (b) shall file an answering brief no later than ~~December 17, 2021.~~ five judicial days after the opening brief is filed.

(4) Reply briefs are discouraged, but, if an appellant in an appeal under either subsection (1)(a) or (b) chooses to file a reply brief, the brief shall be filed no later than two judicial days after the answering brief is filed.

(5) *Amicus curiae* appearances are discouraged, but, if a person applies for leave to file an *amicus curiae* brief, the person shall file the application, accompanied by the brief tendered for filing, no later than ~~December 17, 2021.~~the date that the respondent's answering brief is due. The following provisions of ORAP 8.15 apply to *amicus curiae* filings under this rule: ORAP 8.15(1), (2), (3), (5)(a)(iii), (6), (7), and (8), except that the provisions of ORAP 8.15(8) regarding time to appear and prescribing due dates do not apply.

~~(6) Reply briefs are discouraged, but, if an appellant chooses to file a reply brief, the brief shall be filed no later than December 20, 2021.~~

~~(7~~(6) Any brief in support of or in opposition to a ~~petition~~notice of appeal, to the extent practicable, shall be filed in the same form as a brief on appeal in a civil action under these rules.

(~~8~~7) The following requirements apply to any ~~petition~~notice of appeal, brief, or other document required or permitted to be filed under this rule:

(a) All documents shall contain the litigant contact information required by ORAP 1.30, including, whether the filing party is represented or not, an email address at which the party can be served filings by others pursuant to ORCP 9 G and can receive notices and other communications from the court.

(b) All documents shall be filed by 5:00 p.m. Pacific Time (PT) on the deadline day, using one of the following filing methods and no other method:

(i) An attorney required to eFile a document pursuant to ORAP 16.60 shall submit it for eFiling by 5:00 p.m. PT on the deadline day, notwithstanding ORAP 16.25(1);

(ii) A party not required to eFile a document under ORAP 16.60, including a self-represented party, may physically deliver it by 5:00 p.m. PT to the Appellate Court Administrator, Appellate Court Records Section, 2850 Broadway St NE, Salem, Oregon 97303-6500; or

(iii) A self-represented party may email a document by 5:00 p.m. PT to appealsclerk@ojd.state.or.us, with the following subject line: "Case Filing under ORAP 11.40(~~8~~7)(b)," notwithstanding ORAP 1.35(1)(a) and ORAP 1.32(1)(b) and (c). Any document that is filed by email shall comply, to the extent practicable, with the format requirements set out in ORAP 16.15. A party who files a document by email under this subsection shall comply with any subsequent instruction regarding payment of an applicable filing fee and shall respond to and comply with any other inquiry or direction sent from the Administrator or the Administrator's designee.

(c) Any document rejected based on a filing deficiency shall be corrected and refiled by ~~6~~7:00 p.m. on the deadline day (PT).

(d) Any document that is filed shall be served on ~~all~~the other parties ~~to the appeal~~, and on any other person required in this rule, on the same day the

document is filed~~, using~~ and, if filed on the deadline day, by 5:00 p.m. Pacific Time (PT). The serving party shall use one of the following service methods and no other method:

(i) If applicable, electronic service pursuant to ORAP 16.45;

(ii) Email service pursuant to ORCP 9 G; or

(iii) Hand delivery.

(e) Any document that is filed shall include proof of service, describing the person or persons served, the date of service, and the method of service as required by subsection (~~8~~7)(d).

(~~9~~8) The court may invite oral argument from any appellant or respondent. ~~If so, ORAP 6.10 governs who will be allowed to argue.~~

(~~10~~9) A petition for reconsideration may be filed for only the purpose of correcting a misstatement or inaccuracy. Any such petition is due within ~~1~~one judicial day after issuance of a decision. The Administrator shall not accept for filing, and the court will not consider, any petition tendered for filing after a reapportionment has become operative under ~~Or Laws 2021, chapter 419.~~ ORS 188.125(14).

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[1] For example, if the notice of appeal is challenging a decision of the special judicial panel concerning only a particular district (or districts) and contends that its boundaries should be drawn differently, then the excerpt of record must set out both the part of the reapportionment that enacted or adopted the district, and a proposed map or description of how the district's boundaries should be drawn differently. If, however, the notice of appeal is challenging a decision of the special judicial panel as to the entire reapportionment, but not proposing any particular redrawing of district boundaries, then the excerpt of record must set out the entire reapportionment that the legislature enacted or the panel adopted, but not any alternative proposal.