OREGON JUDICIAL DEPARTMENT
Appellate Court Records Section, 503-986-5555

INFORMATION ON FILING A PETITION FOR JUDICIAL REVIEW
(DRIVER & MOTOR VEHICLE SERVICES DIVISION)

In response to your request, we have enclosed information on how to file a petition for judicial review and the forms necessary to do so.

GENERAL INFORMATION

1. Please understand that filing and pursuing a case with the appellate court is technical legal work. Read all of these instructions, completely and carefully, because you must follow the relevant Oregon Revised Statutes (ORS) and the Oregon Rules of Appellate Procedure (ORAP). We strongly urge you to consider use of an attorney to help you with your case. The Supreme Court, Court of Appeals, or Appellate Court Administrator's Office cannot change the rules for you because you act as your own lawyer. You will have to follow all the rules and meet all deadlines, without exception.

   Provisions of ORS Chapter 183 apply to Driver & Motor Vehicle Services Division (DMV) cases. ORAP 4.05 to 4.40 applies to Court of Appeals review of administrative agency cases in general.

   You may wish to access reference materials, including the ORS or ORAP online at www.courts.oregon.gov/programs/acrs/Pages/default.aspx. To access the ORS or ORAP, go to http://www.courts.oregon.gov/programs/acrs/resources/Pages/default.aspx and choose "Oregon Revised Statutes (ORS)", or choose "Oregon Rules of Appellate Procedure (ORAP)". The ORS and ORAP are also available in law libraries and some public libraries.

   If you need additional information about procedures, you may call the Records Section at 503-986-5555; however, while the staff can try to answer procedural questions, staff cannot provide legal advice. In other words, they will not substitute in any way for a lawyer's assistance.

   If you wish to seek legal advice, you may contact the Oregon State Bar at 503-620-0222 or toll free in Oregon at 1-800-452-8260 for information as to appellate attorneys. You may contact the Lawyer Referral Service at 503-684-3763, or toll free in Oregon at 1-800-452-7636.

2. Generally, you will not be able to introduce new evidence to the appellate court. The court will review the record (testimony, documents, legal argument) that was received into the agency's record.

3. **Motions:** A "motion" is any request by a party that the court take some action. All motions must be served on the adverse party and the adverse party has 14 days from the date a motion is filed to serve a response. A response allows the court to consider the adverse party's point of view in deciding what action to take concerning the motion. *See* ORAP 7.05 to 7.55 for rules concerning motions. ORAP 7.30 lists the motions that toll the time for filing the next event. The court will usually issue a decision on a motion in the form of a written order.

4. **Any document filed with the Court of Appeals must be served on all parties to the case or, if a party is represented by an attorney, on that party's attorney.** *See* ORAP 1.35(2); ORCP 9 B. The document being filed must include a statement of service ("proof of service") which states that the document has been served on all parties.

WHERE TO FILE

To request judicial review of a DMV decision, you must file an original petition for judicial review with the Court of Appeals by submitting it to the following address:

ATTN: Records Section
Appellate Court Administrator
Supreme Court Building
1163 State Street
Salem, OR 97301-2563

WHEN TO FILE

A petition for judicial review from a DMV order usually must be filed within 60 days of the date the order was mailed to you. Most DMV orders contain a notice of judicial review rights, including the time within which a petition for judicial review must be filed. **Unless a petition for judicial review is filed and served within the time required by statute, the Court of Appeals will not be able to consider your case.** "Filed" means that the petition must either 1) be in the possession of the Office of the Appellate Court Administrator on or before the date it is due, or 2) it must be mailed by certified or registered mail on or before the date it is due, with proof from the United States Post Office of such mailing date. ORS 19.260(1) and ORAP 1.35. (If you choose option 2, be sure to retain the proof of mailing, because you may be asked to send it in if the timeliness of your appeal is ever questioned). "Served" means that an exact copy of the original document(s) that is being filed at the Court of Appeals, is mailed or personally delivered to all other necessary parties and participants according to the applicable statutes. Some statutes require service to be accomplished by certified or registered mail.

HOW TO FILE

1. File an original petition for judicial review with the Court of Appeals. You should attach to the petition for judicial review a copy of the DMV decision that you wish to have reviewed.

2. You must pay a $391.00 filing fee. *See* ORS 21.010; HB 2795. Make checks payable to: "State Court Administrator." Failure to pay the filing fee can eventually result in

dismissal of your appeal (ORAP 1.20(4)). However, you may be eligible to receive a waiver (elimination) of the fee, or you may be eligible to defer (delay) payment of the fee. To have the court determine whether you may be entitled to such waiver or deferral, you must complete a "Motion and Declaration for Waiver or Deferral of Fees," and file it with the Court of Appeals. You can download the motion and instructions at: http://www.courts.oregon.gov/programs/acrs/forms/Pages/filing-fee.aspx. If the court defers the filing fee, you still owe it. If it is not paid by the time the appeal is complete, the unpaid filing fee will become a judgment against you. *See* ORS 21.605(1)(c). You must file the motion along with the petition for judicial review. Do not include payment if you file the motion.

3. You must complete a Certificate of Filing that indicates the date that you filed your petition, and the method that you used to file your petition.

4. You must serve copies of the petition and all attachments that you file with the Court of Appeals, to all other parties (or to their lawyers) to the case, no matter how many there are via certified or registered mail (ORS 183.482(2)). *See* ORAP 1.35(2); ORCP 9 B. However, you do NOT need to serve the Declaration for Waiver or Deferral of Fees or any documents pertaining to government assistance such as food stamps, Social Security Income, Oregon Health Plan eligibility, Temporary Assistance to Needy Families, etc. In the case of DMV cases, you must also serve the DMV, the Attorney General, and any other parties listed on the DMV decision. The document(s) being filed must also include a certificate (or proof) of service, that identifies everybody you have served. A sample of the certificate of service is enclosed for your use.

WHAT HAPPENS NEXT?

1. The record is prepared: After you file and serve the petition for judicial review, the DMV has 30 days in which to prepare and file the agency record (the transcript of the testimony of the hearing, copies of documents that were received into evidence, etc.). You have 15 days to review that record and seek to correct it; when the record is an accurate reflection of the agency record, the record will be considered "settled." *See* ORAP 4.22.

2. Briefs are prepared: A "brief" is a statement of your side of the case. You must follow the format required by the rules. *See* ORAP 5.05 through 5.80 for more information about the procedures concerning briefs. Sample briefs are available at: http://www.courts.oregon.gov/programs/acrs/briefs-motions/Pages/briefs.aspx. You are required to file an "opening brief" within 49 days of the date that the record is settled. The opening brief must include a statement of the facts of the case. Each statement of fact must refer to the record and show where that fact appears. If it does not, the court may strike the entire brief or disregard your argument. Appeals are for the purpose of reviewing claimed legal errors committed by the agency in rulings on motions or in the final decision. Appeals are not for the purpose of introducing new factual evidence to support your point of view. Therefore, if you try to include new evidence on appeal, it will not be considered and the court may decide not to consider your brief or argument at all. You must serve two copies of your brief on all parties to the judicial review, and your brief must contain a certificate of service.

The rules also require that you tell the court, in your brief, what mistake you believe the agency made. These are called "assignments of error," and they must be very specific. The rules require that you set out in the brief the exact words used by the agency when it made what you claim to be an error. After each "assignment of error," you have to make your "argument." This is a brief statement of the legal reasons why the agency was wrong. You ordinarily may not include in your brief a statement about anything that has happened after the date of the agency order that you are appealing.

The "answering briefs" (briefs from the opposing party(ies) are due 49 days after you file your opening brief. All briefs must be prepared according to the ORAP and applicable statutes, or they may be stricken. A respondent filing a brief must serve two copies of the answering brief on you.

3. After briefing and oral argument, if there is one, your case is submitted for decision. See ORAP 5.60, 6.05(2), and 6.10(4) concerning who may argue. It will ordinarily take from one week to several months for the court to decide your case. Many cases are decided without a full written "opinion." This means that the court may decide your case without writing any explanation of the reasons for its decision. You will receive a copy of the court's decision.

WHAT IF I DISAGREE WITH THE COURT OF APPEALS?

If you disagree with the Court of Appeals decision, you have 14 days to file for reconsideration with the Court of Appeals. If you do file for reconsideration and you disagree with that decision, you may file a petition for review with the Supreme Court within 35 days from that decision date under ORAP 9.05. If you do not file for reconsideration of the Court of Appeals decision, your petition for review to the Supreme Court is due 35 days from the date of the Court of Appeals decision. Filing a petition for review gives you a chance to tell the Supreme Court why you believe that the Court of Appeals made a mistake when it issued its decision on your appeal.

The Oregon Supreme Court does not have to hear the case. If a timely petition for review has been filed by any party, the appellate judgment in the case cannot issue from the Records Section until the Oregon Supreme Court decides to allow or deny review. If the Oregon Supreme Court denies your petition for review, or the petition for review filed by the other side, that is ordinarily the end of the case in the Oregon courts.

The Records Section of the Appellate Court Administrator's Office will issue the "appellate judgment." The appellate judgment is the document that officially notifies the DMV of the appellate court's decision and transmits the case back to the DMV.

A case before the Court of Appeals or Supreme Court may result in a published opinion that includes the names of the parties involved, and often times recites facts of the case. If you do not want such information distributed in print or on the Internet, you may wish to review the applicable administrative rules and/or consult with legal counsel to explore whether it may be possible to limit this distribution.

INSTRUCTIONS FOR COMPLETING PETITION FOR JUDICIAL REVIEW

CAPTION
On line 1, fill in your name. You are the "Petitioner." The "Respondent" is the party or parties that will be opposing your petition. If there are additional respondents, other than DMV, fill them in on line 2.

DRIVER & MOTOR VEHICLE SERVICES DIVISION CASE NUMBER
Fill in the DMV case number on the line provided. You will find this number on the first page of the DMV decision.

SECTION 1(b)
Fill in the date of the DMV decision for which you are seeking judicial review.

SECTION 2
Fill in your name, address, phone number, and email address. If you use the form provided by the court and provide your email address, you are agreeing to receive all correspondence from the court by email. If you do not use the court's form, you must specifically ask that the court use your email address. You can do this by writing a statement next to your email address that you agree to receive all court correspondence by email. (**Note**: You cannot file documents through email. Your email address will only be used by the court to send documents to you.) In addition, you agree that you will keep your email address current with the court. If you later wish to discontinue receiving court correspondences via email, you must notify the court and provide a mailing address. Also, fill in the name and address for any respondents in addition to DMV.

SECTION 3
Attach a copy of the DMV decision for which you are seeking judicial review.

SECTION 4
Read section four before signing the petition.

SECTION 5
Mark the appropriate statement indicating your designation of record. The first statement designates <u>all</u> portions of the agency record. The second statement designates only certain portions of the agency record, in which case, you need to indicate, on the lines provided, what portions of the agency record you wish to have as the record on appeal. Self-represented parties who consent to service of the agency record by SFTP (electronic delivery) as provided in ORAP 4.20 must so state in the petition for judicial review and provide the party's email address in the petition.

Sign the petition; only original signatures are accepted. Enter the date that you signed the petition. You must file the original, signed document with the Appellate Court Administrator.

INSTRUCTIONS FOR COMPLETING CERTIFICATE OF FILING

- Fill in the date that you filed the petition with the Appellate Court Administrator.
- Mark the method of filing that you used to file the petition.
- Sign the certificate of filing.

INSTRUCTIONS FOR COMPLETING CERTIFICATE OF SERVICE

- Fill in the date that you served copies of the petition, and all other related documents, to the other parties.
- Although the names and addresses for some of the parties have been provided, you will need to fill in the name and address for any additional parties (if any).
- Mark the method of service that you used to serve the parties.
- Sign the certificate of service.

Sign the certificates of service and of filing; only original signatures are accepted. Enter the date that you signed both certificates. You must provide copies, of all documents that you file with the Appellate Court Administrator, to the other parties who are listed on the certificate of service.

IN THE COURT OF APPEALS OF THE STATE OF OREGON

_____,
[LINE 1 - YOUR NAME] Petitioner

v.

DRIVER AND MOTOR VEHICLE SERVICES DIVISION (DMV), a Division of the Department of Transportation,
[LINE 2] Respondent(s).

Driver & Motor Vehicle Services Division Case No. _____.

PETITION FOR JUDICIAL REVIEW

1.

Petitioner seeks judicial review of the final order of the Driver & Motor Vehicle Services Division in this case, dated _____.
1(b)

2.

The parties to this review are:

_____
YOUR NAME, ADDRESS, and PHONE NUMBER (and EMAIL ADDRESS if you agree to receive all court correspondences by email)
(Petitioner)

Driver and Motor Vehicle Services Division, 1905 Lana Avenue NE, Salem, Oregon, 97314
_____
(Respondent(s))

3.

Attached to this petition is a copy of the agency order for which judicial review is sought.

4.

Petitioner was a party to the administrative proceeding that resulted in the order for which review is sought.

5.

DESIGNATION OF RECORD

☐ Petitioner is not willing to stipulate that the agency record may be shortened.

☐ Petitioner is willing to stipulate that the agency record may be shortened and designates only the following portions to be included in the record:

_____

_____

Provide email address if Petitioner is willing to accept electronic service of the agency record.

_____

DATE:_____ SIGNATURE:_____

CERTIFICATE OF FILING

I certify that on _____[DATE], I filed the original of the petition for judicial review with the Appellate Court Administrator at the following address:

ATTN: Records Section
Appellate Court Administrator
Supreme Court Building
1163 State Street
Salem, OR 97301-2563

by the following method of filing:

INDICATE METHOD OF FILING

☐ United States Postal Service, ordinary first class mail.

☐ United States Postal Service, certified or registered mail, return receipt requested.

☐ Hand delivery

☐ Electronic Filing through the court's eFiling system

☐ Other (specify):_____

CERTIFICATE OF SERVICE

I certify that on _____(DATE), I served a true copy of the petition for judicial review to the following parties at the addresses set forth below. **NOTE:** If an address is not already provided below then you must fill in the address for each party that you serve. If no address is present then the court will assume that you did not serve that party.

DRIVER & MOTOR VEHICLE SERVICES DIVISION: 1905 Lana Ave. NE, Salem, Oregon, 97314

ATTORNEY GENERAL, Office of the Solicitor General, 400 Justice Building, 1162 Court Street NE, Salem, Oregon, 97301

OTHER PARTIES: NAME AND ADDRESS_____

_____

by the following method of service:

INDICATE METHOD OF SERVICE

☐ United States Postal Service, ordinary first class mail.

☐ United States Postal Service, certified or registered mail, return receipt requested.

☐ Hand delivery

☐ Electronic Filing through the court's eFiling system

☐ Other (specify):_____

DATE:_____ SIGNATURE:_____