

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of the Adoption)
of Temporary Amendments to) Chief Judge Order 22-07
Oregon Rules of Appellate)
Procedure 6.05, 6.20, and 6.30)

**ORDER ADOPTING TEMPORARY AMENDMENTS TO OREGON RULES OF APPELLATE
PROCEDURE 6.05, 6.20, and 6.30**

Pursuant to ORAP 1.10(3), the Court of Appeals may, from time to time, adopt temporary rules and temporary amendments to the Oregon Rules of Appellate Procedure.

By this order, the Court of Appeals adopts temporary amendments to Rules 6.05, 6.20, and 6.30.

The amendments are shown on the attached pages. Deleted material is shown in ~~strikeout~~ print; added material is shown in double underline print.

The amendments adopted by this order become effective on November 10, 2022. They will expire on December 31, 2024, if not previously adopted as permanent amendments or superseded by the adoption of other rules.

Dated this 10th day of November 2022.



Erin C. Lagesen
Chief Judge

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 cause shall be submitted on the briefs on the submission date without oral argument, unless the court directs otherwise. The notice will include a form "Response to Notice of Submission" requesting the information described below. Within 14 days of receiving the notice, any party requesting oral argument must complete, file, and serve on every party to the appeal the form "Response to Notice of Submission." The information required by the form Response to Notice of Submission is the following:~~

(i) that the party requests oral argument;

(ii) the name of the attorney who will argue the case;

(iii) whether the party requests in-person oral argument as described in ORAP 6.30(1)(a);

(iv) whether the party has conferred with all other parties regarding in-person oral argument and, if so, whether any party objects.

(b) ~~Submission will occur as follows~~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) 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.

(ii) Except as otherwise provided in subparagraph (iii), if a timely request for oral argument is made, then the case will be set for remote argument pursuant to ORAP 6.30 on the submission date and all parties who have filed a brief may argue.

(iii) Unless the court determines that remote argument better meets the needs of the court, (a) if a party submits a timely request for in-person argument, and certifies that the party has conferred with all other parties and that no party objects to in-person argument, or (b) if all parties submit requests for in-person argument, then the case will be set for in-person argument pursuant to ORAP 6.30 on the

submission date and all parties who have filed a brief may argue.

(iv) Notwithstanding subparagraph (iii), a party may move the court for an order that an oral argument should proceed in person. The motion must be filed within seven days after the deadline for filing a Response to Notice of Submission and must explain the circumstances that support the request and demonstrate good cause for arguing in-person; good cause does not include a mere preference for in-person argument. Any party may file a response to the motion; the response must be filed within seven days after the filing of the motion.

~~(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, in any case, the court may, on its own motion, determine that the needs of the court will be best served by either in-person argument or remote argument, and order that the parties appear for argument in the manner directed. If the court orders the parties to appear remotely after the case has previously been set for in-person argument under subparagraph (2)(b)(iii), any party may file a motion as described in subparagraph (2)(b)(iv) within a reasonable time of the court's order.

~~(34) 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.~~

~~(45) 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 6.20

ARGUMENT IN SALEM, AND OTHER LOCATIONS, AND BY REMOTE MEANS

The Court of Appeals will set most ~~eases for in-person~~ oral arguments in Salem, but, pursuant to Chief Justice Order ~~19-05322-020~~, dated ~~September 17, 2019~~October 7, 2022, the court may set cases for oral argument in other locations throughout the state, and, pursuant to Chief Justice Order 22-012, dated June 23, 2022, ~~which includes setting~~may set cases for oral argument by remote means. For purposes of this rule, "remote means" refers to an oral argument conducted by video conference with all parties and judges appearing remotely.

See ORS 2.560(1) and ORS 1.085(2).

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

(a) Except as otherwise provided in ORAP 6.05(2)(b)(iii) or ORAP 6.05(3), ~~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.~~

(e**b**) 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**c**) 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) 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.

(4) 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.

(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.

¹ See Chief Justice Order ~~19-05322-020~~ (providing that the principal location for the sitting of the Court of Appeals is currently ~~4162 Court Street NE~~ 1163 State Street, Salem, OR 97301) or any subsequent order of the Chief Justice that amends or supersedes that order.

APPENDIX 6.05

Illustration for ORAP 6.05

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

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

REQUEST FOR ORAL ARGUMENT

To the Calendar Clerk for the Court of Appeals:

_____ [Appellant/Respondent/Other Party] hereby requests that the above captioned case, scheduled to be submitted to the court on ___[date]___, be scheduled for oral argument before the Oregon Court of Appeals on that date. The name and bar number of the attorney who will appear on behalf of [appellant / respondent] at oral argument are ___[name]___, [bar number].

Date _____

Attorney for [Appellant/Respondent/Other Party]
[Sign and print/type name, bar number,
address, telephone number, and email address]