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

In the Matter of the Adoption	)	
of Amendments to the Oregon	)	Chief Justice Order 20-042
Rules of Appellate Procedure	)	Chief Judge Order 20-05

ORDER ADOPTING PERMANENT AMENDMENTS TO OREGON RULES OF APPELLATE PROCEDURE AND APPENDICES; DELEGATING AUTHORITY TO EDITOR OF RULES

By this order, the Supreme Court and Court of Appeals adopt permanent amendments to the Oregon Rules of Appellate Procedure and appendices, and delegate specified authority to the Editor of the Rules. The amendments and new rule adopted by this order are effective January 1, 2021.

PERMANENT CHANGES TO THE RULES

The Supreme Court and Court of Appeals adopt amendments as follows:

Rules amended: 1.15; 1.35; 1.40; 2.05; 2.15; 2.25; 2.40; 3.10; 3.15; 3.33; 3.40; 3.50; 4.15; 4.20; 4.22; 4.60; 4.64; 4.66; 4.68; 4.70; 4.72; 5.05; 5.45; 5.70; 5.80 Brief Time Chart 1; 5.92; 5.95; 6.10; 7.10; 7.35; 7.55; 8.28; 8.52; 9.05; 10.15; 10.25; 11.05; 11.20; 11.25 (also renumbered); 11.30 (also renumbered); 11.34 (also renumbered); 11.35; 12.05; 12.07; 12.10; 12.20; 15.05; 16.03; 16.10; 16.15; 16.30; Appendix 3.33-1; and Appendix 3.33-2.

Rules rewritten or newly added: 8.15 (rewritten); 10.35 (new); 11.25 (renumbered 12.25 and rewritten); 12.40 (new).

Rules renumbered: 11.25 to 12.25; 11.27 to 12.27; 11.30 to 12.30; 11.32 to 12.32; 11.34 to 12.34; 12.25 to 12.35.

Amended rules and appendices are shown on the attached pages. Marks in the left margin show lines that contain changes. Deleted material is shown in ~~double-strikethrough~~ print; added material is shown in double-underlined print.

AUTHORITY DELEGATED TO EDITOR OF THE OREGON RULES OF APPELLATE PROCEDURE

The Supreme Court and Court of Appeals give the Editor of the Oregon Rules of Appellate Procedure the authority to make the following changes:

- Update references to statutes, rules, and cases to reflect effective versions of those

authorities.

- Correct typographical errors, punctuation errors, numbering errors, and citation form.
- Update references to addresses, phone numbers, and web links.
- Update the table of contents and cross-references within the rules.

Dated this 13th day of November, 2020.

Martha L. Walters
Chief Justice

James C. Egan
Chief Judge

Rule 1.15
TERMINOLOGY

(1) Headings in these rules do not in any manner affect the scope, meaning, or intent of the rules.

(2) Singular and plural shall each include the other, where appropriate.

(3) In these rules, unless expressly qualified or the context or subject matter otherwise requires:

(a) "Administrator" means the Appellate Court Administrator or, as appropriate, the Appellate Court Administrator's designee.[1]

(b) "Agreed narrative statement" means the parties' stipulated account of proceedings in lieu of a transcript or audio record.

(c) "Appeal" includes judicial review.

(d) "Appearing jointly" refers to two or more parties who together file single documents.

(e) "Appellant" means a party who files a notice of appeal or petition for judicial review.

(f) "Appellate court" means the Supreme Court, Court of Appeals, or both, as appropriate.

(g) "Appellate judgment" shall have the meaning set out in ORAP 14.05(1)(a).

(h) "Audio record" means the record of oral proceedings before a trial court or agency made by electronic means and stored or reproduced on audiotape or compact disc.

(i) "Business day" means Monday through Friday excluding legal holidays.

(j) "Cassette" means the cartridge containing the audio or video recording.

(k) (i) "Conventional filing" means the delivery of a paper document to the Administrator for filing via the United States Postal Service, commercial delivery service, or personal delivery.

(ii) "Conventional service" means the delivery of a copy of a document on another person via the United States Postal Service, commercial delivery service, or personal delivery.

(l) "Cross-appellant" means a party, already a party to an appeal, who files an appeal against another party to the case.

(m) "Cross-respondent" means a party who is adverse to a cross-appellant.

(n) "Decision" shall have the meaning set forth in ORAP 14.05(1)(b).

(o) "Domestic relations case" includes but is not necessarily limited to these kinds of cases: dissolution of marriage, dissolution of domestic partnership, filiation, paternity, child support enforcement, child custody, modification of judgment of dissolution of marriage or domestic partnership, and adoption.

(p) "Judgment" means any judgment document or order that is appealable under ORS 19.205, ORS chapter 138, or other provision of law.

(q) "Legal advisor" means an attorney in a criminal case assisting a defendant who has waived counsel, as provided in ORS 138.504(2).

(r) "Notice of appeal" includes a petition for judicial review and a notice of cross-appeal.

(s) "Optical disk" means compact disk (CD), digital versatile disk (DVD), or comparable medium approved by the Administrator for use in filing an electronic version of a transcript or other part of a trial court or agency record.

(t) "Original" in reference to any thing to be served or filed shall mean the thing signed by the appropriate attorney or party and submitted for filing.

(u) "Out-of-state attorney" means an attorney admitted to the practice of law in another jurisdiction, but not in Oregon, who appears by brief or argues the cause under ORAP 6.10(4) or ORAP 8.10(4).

(v) "Petitioner" means a party who files a petition.

(w) "Respondent" means the party adverse to an appellant or a petitioner.

(x) "Transcript" means a typewritten, printed, or electronic transcription of oral proceedings before a trial court or agency.

(y) "Trial court" means the court or agency from which an appeal or judicial review is taken.

(z) "Video record" means the audio and visual record of proceedings before a trial court or agency made by electronic means and stored or reproduced on videotape or compact disc.

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[1] *See* ORS 8.120 regarding duties of the State Court Administrator to act as court administrator for the Supreme Court and Court of Appeals, and authority of the State Court Administrator to delegate powers, by written designation, to officers and employees of the Oregon Judicial

Department. Effective January 11, 2018, ~~May 1, 2008,~~ the State Court Administrator delegated, by written designation, to the current Appellate Court Administrator the duties to act as court administrator for the Supreme Court and Court of Appeals.

Rule 1.35
FILING AND SERVICE

(1) Filing

(a) Filing Defined: Delivery, Receipt, and Acceptance

(i) A person intending to file a document in the appellate court must cause the document to be delivered to the Appellate Court Administrator.

(ii) Delivery may be made as follows and otherwise as provided under subsection (2) of this rule:

(A) Unless an exception applies under ORAP 16.30 or ORAP 16.60(2), an active member of the Oregon State Bar must deliver any document for filing using the appellate courts' eFiling system.[1]

(B) Any other person must file any document in conventional form, by delivering the document via U.S. Postal Service or commercial delivery service to the Appellate Court Administrator, Appellate Court Records Section, 1163 State Street, Salem, Oregon 97301-2563 or in person to the Appellate Court Administrator, Appellate Court Records Section, 2850 Broadway St NE, Salem, Oregon 97303-6500.

(iii) The Administrator or the Administrator's designee must endorse upon any document delivered for filing the day and month, and the year the Administrator received the document.

(iv) Filing is complete when the Administrator has accepted the document. Except as otherwise provided by law or these rules, when the Administrator has accepted a document for filing, the filing date relates back to the date the Administrator received the document for filing.

(v) A correction to a previously filed document must be made by filing the entire corrected or amended document with the court. The caption of a corrected or amended document must prominently display the word "CORRECTED" or "AMENDED," as applicable.

(b) Manner of Filing

(i) "Initiating document" means any document that initiates a case, including but not limited to a notice of appeal; a petition for judicial review; a

petition for a writ of mandamus, habeas corpus or quo warranto; and a recommendation for discipline from the Oregon State Bar or the Commission on Judicial Fitness and Disability. As used in this rule, "initiating document" does not include a petition for review under ORAP 9.05[2] or a motion for extension of the time to file a petition for review under ORAP 9.05.

(ii) Using Appellate Courts' eFiling System

Delivery for filing using the eFiling system is subject to Chapter 16 of these rules.

(iii) Using United States Postal Service or Commercial Delivery Service

(A) A person may deliver an initiating document for filing via the U.S. Postal Service, and delivery is complete on the date of mailing if mailed or dispatched for delivery in accordance with ORS 19.260(1)(a). If the Administrator receives the initiating document within the time prescribed by law, the person need not submit proof of the date of mailing. If the Administrator does not receive the document within the time prescribed law and the person must rely on the date of mailing as the date of delivery, the person must file with the Administrator acceptable proof from the U.S. Postal Service of the date of mailing. Acceptable proof from the U.S. Postal Service of the date of mailing must be a receipt for certified or registered mail or other class of service for delivery within three calendar days, with the mail number on the envelope or on the item being mailed, and the date of mailing either stamped by the U.S. Postal Service on the receipt or shown by a U.S. Postal Service postage validated imprint on the envelope received by the Administrator or the U.S. Postal Service's online tracking system.

(B) A person may deliver an initiating document for filing via commercial delivery service, and the delivery is complete on the date of dispatch for delivery by the delivery service if dispatched for delivery in accordance with ORS 19.260(1)(a). If the Administrator receives the initiating document within the time prescribed by law, the person need not submit proof of the date of delivery for dispatch. If the Administrator does not receive the document within the time prescribed by law and if the person must rely on the date of delivery for dispatch, the person must file with the Administrator proof from the commercial delivery service of the date of delivery for dispatch, which may include the commercial delivery service's online tracking service.

(C) A person involuntarily confined in a state or local government facility may deliver an initiating document for filing via the U.S. Postal Service and the date of filing relates back to the date of delivery for mailing if the person complies with ORS 19.260(3). If the person relies on the date of delivery for mailing, the person must certify

the date of delivery to the person or place designated by the facility for handling outgoing mail.

(D) Filing of any other document required to be filed within a prescribed time, including any brief, petition for attorney fees, statement of costs and disbursements, motion, or petition for review, is complete if mailed via the U.S. Postal Service or dispatched via commercial delivery service on or before the due date if the class of mail or delivery is calculated to result in the Administrator receiving the document within three calendar days.

(iv) Conventional Filing Not Using U.S. Postal Service or Commercial Delivery Service

If a person does not deliver a document for filing via the eFiling system, the U.S. Postal Service, or commercial delivery service as provided in this paragraph, then the document is not deemed filed until the document is actually received by the Administrator.

(v) Delivery by email is not permitted unless specifically authorized elsewhere in these rules.

(2) Service

(a) (i) Except as provided in clause (2)(a)(ii) of this subsection, a party filing a document with the court must serve a true copy of the document on each other party or attorney for a party to the case.[3]

(ii) A party filing a motion for waiver or deferral of court fees and costs under ORS 21.682 need not serve on any other party to the case a copy of the motion or any accompanying documentation of financial eligibility.[4] After the court has ruled on the motion, if another party to the case requests a copy of the motion or documentation of financial eligibility for the purpose of challenging the court's ruling, the filing party must comply with the request but may redact protected personal information as described in ORAP 8.50(1). As used in this clause, "documentation of financial eligibility" means a document showing eligibility for a government benefit based on financial need or an affidavit or declaration showing the income, assets, and financial obligations of a party and the party's household.

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

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

(ii) Electronic service via the eFiling system is permitted only on

attorneys who are authorized users of the eFiling system and only as provided in ORAP 16.45.

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

(c) Each service copy must include a certificate showing the date that the party delivered the document for filing.

(d) Any document filed with the Administrator must contain either an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service, and the names and addresses of the persons served, certified by the person who made service, except that:

(i) If a person was served by the appellate courts' eFiling system, the certificate must state that service was accomplished at the person's email address as recorded on the date of service in the appellate eFiling system, and need not include the person's email address or mailing address.

(ii) If a person was served by email or by facsimile communication, the proof of service must state the email address or telephone number used to serve the person, as applicable, and need not include the person's mailing address.

(e) Service on Trial Court Administrators and Transcript Coordinators

(i) When a copy of a notice of appeal is required to be served on the trial court administrator, service is sufficient if it is mailed or delivered to the person serving in the capacity of trial court administrator for the county in which the judgment or appealable order is entered.

(ii) When a copy of a notice of appeal is required to be served on the transcript coordinator, service is sufficient if it is mailed or delivered to the office of the trial court administrator, addressed to "transcript coordinator."

(iii) An authorized user of the trial court electronic filing system may serve a copy of a notice of appeal on the trial court administrator and the transcript coordinator by using the "Courtesy Copies" email function of that system. The email address for each judicial district's trial court administrator and transcript coordinator are available on the judicial district's website.

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[1] At this time, only a ~~an active~~ member of the Oregon State Bar may become an authorized user of the appellate courts' eFiling system. Therefore, self-represented litigants and attorneys who are not ~~active~~ members of the Oregon State Bar may not file a document with the appellate court using the eFiling System.

[2] ORAP 1.35 defines "initiating document" for purposes of conventional filing. For those purposes, the term does *not* include a petition for review under ORAP 9.05. ORAP 16.05

defines "initiating document" for purposes of eFiling and eService. For those purposes, the term *does* include a petition for review under ORAP 9.05. ORAP 16.05(8).

[3] Whenever these rules authorize or require service of a copy of any document on the Attorney General, the copy must be served at this address: Attorney General of the State of Oregon, Office of the Solicitor General, 400 Justice Building, 1162 Court Street, NE, Salem, Oregon 97301-4096.

[4] *See* Chief Justice Order No. 07-056 (order adopted pursuant to ORS 21.682(4) prescribing standards and practices for waiver or deferral of court fees and costs).

[4] *See, e.g.*, ORS 183.482(2), relating to cases arising under the Administrative Procedures Act~~, and ORS 197.850(4), relating to judicial review of Land Use Board of Appeals orders, each of~~ which requires service of petitions for judicial review by registered or certified mail, and ORS 197.850(4), relating to judicial review of Land Use Board of Appeals orders, which requires service of petitions for judicial review by first class, registered, or certified mail.

Rule 1.40
VERIFICATION; DECLARATIONS; ADOPTING ORCP 17

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

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

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

(b) signed and dated by the person; and

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

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

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

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

See generally ORS 138.090 regarding the signing of notices of appeal in criminal cases, ORS 19.250(1)(g)~~(f)~~ regarding the signing of notices of appeal in civil cases, and ORAP 5.05(3)(e) ~~ORAP 5.05(4)(g)~~ regarding the signing of briefs.

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.

(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 5 to subparagraph (10)(b)(ii) of this rule.

[7] *See* footnote 6 to subparagraph (10)(c)(i) of this rule.

[8] *See* footnote 5 to subparagraph (10)(b)(ii) of this rule.

See ORS 19.240(3)~~,~~ and ORS 19.250~~, and ORS 138.081~~; *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.

Rule 2.15
FILING FEES IN CIVIL CASES

(1) This rule:

(a) does not apply to appeals or petitions for judicial review in criminal, habeas corpus, post-conviction relief, juvenile court, civil commitment of persons with mental illness (as defined in ORS 426.005) or persons with an intellectual or developmental disability (as those terms are defined in ORS 427.005), Psychiatric Security Review Board, and State Board of Parole cases;[1]

(b) does apply to appeals and petitions for judicial review in all other civil proceedings.[2]

(2) One filing fee is required for each appellant appearing separately or for two or more appellants appearing jointly. When two or more notices of appeal are filed under ORAP 2.10(1), a filing fee is required for each notice of appeal. When a notice of appeal has been filed and a notice of appeal subsequently is filed in circumstances resulting in the creation of a new appellate court case,[3] the appellant is required to pay a filing fee at the time of the subsequent

notice of appeal.

(3) Except as provided in subsection (4) of this rule, a respondent's appearance fee is required for each respondent appearing separately or for two or more respondents appearing jointly. When a notice of appeal has been filed and a notice of appeal subsequently is filed in circumstances resulting in the creation of a new appellate court case, the respondent shall pay an appearance fee at the time of the appearance in the subsequent appeal.

(4) (a) If two or more respondents appearing jointly submit a single brief or other first appearance, only one appearance fee is required.

(b) If a respondent concurs in a brief but does not join in submitting it, no appearance fee is required from the concurring respondent but the concurring respondent is deemed to have waived appearance and oral argument.

(c) After a brief is filed, if a stipulation is filed allowing a second respondent to join in the brief, the second respondent is deemed to have appeared, and an appearance fee is required from that party.

(5) If a party fails to pay the appearance fee, the court will not consider any thing filed by that party, and that party will not be allowed to argue the appeal.

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[1] *See* ORS 21.010(2).

[2] *See generally* ORS 21.010(1)~~, ORS 21.480(3)~~. *See* ORS 21.010(3) regarding filing fees in an appeal from an appeal to a circuit court from a justice or municipal court involving a state violation or infraction or involving violation of a city charter or ordinance. *See* ORS 21.010(4) regarding filing fees in contempt cases.

[3] For example, appeals taken from judgments entered under ORCP 67 B at significantly different times.

Rule 2.25
CASE TITLES;
CHANGES TO CASE TITLES

(1) With respect to appeals from courts:

(a) The case title shall include all parties or entities ever named in the case, including parties or entities dismissed from the case, notwithstanding that the title of the judgment being appealed may not refer to all parties in the case.

(b) All parties should be named completely and should be identified by their designations in the trial court (*e.g.*, plaintiff, defendant, cross-plaintiff, intervenor) and on appeal, as appropriate (*e.g.*, appellant, respondent, cross-appellant, cross-respondent). A party to the case who is not a party on appeal should be designated only by that party's

designation in the trial court.

(c) Parties to a cross-claim, third-party claim or counterclaim should be set forth in a separate case title under the original case title.

(d) Where the trial court has used an "In Re" or other similar case title that does not identify the adverse parties to the proceeding, such as in probate and juvenile court cases, the contesting parties should be set forth in a separate case title under the original case title.

(e) The title shall include the trial court case number or numbers.[1]

(2) The Administrator may correct the title of the case on appeal or judicial review to include all persons who were parties to the proceeding below and to designate properly the parties according to their status on appeal or judicial review. If the Administrator corrects the title, the Administrator shall give notice and opportunity to respond to all parties to the appeal or judicial review.

(3) (a) A person who was a party to the case in the tribunal from which the appeal was taken but who was not designated in the notice of appeal as a party to the appeal may appear as of right as a party to the appeal by filing a notice of intent to participate as a party.

(b) If the notice of appeal in a juvenile court, guardianship, conservatorship or other similar proceeding does not identify the juvenile or protected person as a party to the appeal, the juvenile or protected person may appear as of right as a party to the appeal by filing a notice of intent to participate as a party.

(c) A notice of intent to participate on appeal under paragraph (a) or (b) of this subsection shall be filed within 21 days after the date of filing of the notice of appeal, or within such further time as may be allowed by the court, and shall be served on all other parties to the appeal and on the court reporter or transcriber, if any, preparing the transcript.

(d) A party who appears on appeal under paragraph (a) or (b) of this subsection may recover costs and attorney fees, if any, and is liable for costs and attorney fees, if any, the same as any party to an appeal.

(4) (a) In an adoption, juvenile court, or civil commitment case, when the notice of appeal is filed, the court will modify the case title on appeal for the purpose of avoiding public disclosure of the identity of natural persons who are parties to the case.[2] For the same purpose, in all other cases, on motion of a party or on its own motion, and for good cause shown, the court may modify the case title or the version of the court's opinion published on the Judicial Department's website.[3]

(b) In all cases, notwithstanding paragraph (a) of this subsection, the appellate judgment will contain the full case title.

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[1] *See* ORAP 4.15(2) regarding case titles on judicial review of agency orders.

[2] *See* ORS 109.319 ~~ORS 107.211~~ (adoption cases); ORS 419A.255 and ORS 419A.256 (juvenile court cases, including termination of parental rights cases); ORS 426.160 and ORS 427.293 (civil commitment cases).

[3] *See* Chief Justice Order 10-060 / Chief Judge Order 10-06 published on the Judicial Department's website at <https://www.courts.oregon.gov/publications/other/MiscellaneousNotifications/RULE177.pdf> for a nonexclusive list of factors that the court may consider in determining whether a party has shown good cause for modifying a case title or body of the court's opinion for the purpose of avoiding public disclosure of the identity of a party to the case. Regarding requests by persons in all cases, including adoption, juvenile court, and civil commitment, whose names may appear in published opinions but who are not parties to cases, *see* Chief Justice Order 10-060/ Chief Judge Order 10-06 published on the Judicial Department's website at <https://www.courts.oregon.gov/publications/other/MiscellaneousNotifications/RULE177.pdf>.

Appellate court opinions also are published in the softbound *Oregon Appellate Courts Advance Sheets* and thereafter in the hardbound *Oregon Reports*. The version of an opinion in those publications cannot be modified after publication. Appellate court opinions also are collected and published, in book form or electronically or both, by various persons and entities, including private legal research entities. The court has no control over whether those persons and entities will honor the court's post-publication modification of an opinion.

See Appendix 2.25.

Rule 2.40
NOTICE OF APPEAL IN GUILTY OR NO CONTEST PLEA, PROBATION OR SENTENCE SUSPENSION REVOCATION, AND RESENTENCING CASES

(1) Except as provided in subsections (2) and (3) of this rule, in addition to the notice of appeal requirements contained in ORAP 2.05, when a defendant in a criminal case appeals from a judgment following

- a guilty plea
- a no contest plea
- resentencing pursuant to a remand from an appellate court
- resentencing pursuant to the judgment of a court granting post-conviction relief

or from an order or judgment

- revoking probation or sentence suspension
- extending a period of probation
- imposing a new condition of probation

- modifying an existing condition of probation:

(a) The caption of the notice of appeal shall identify the notice as a "Notice of Appeal Pursuant to ORS 138.085~~ORAP 2.40~~."

(b) The body of the notice of appeal shall:

(i) Identify the type of proceeding from which the appeal arises (*e.g.*, guilty plea, no contest plea, probation revocation, etc.); and

(ii) Identify at least one colorable claim of error from the proceeding reviewable under ORS 138.105 or state that the defendant has reserved an issue for appeal under ORS 135.335.[1]

(2) (a) Except as provided in paragraph (b) of this subsection, if, concurrently with filing a notice of appeal in a case subject to subsection (1) of this rule, the defendant has filed a motion for delayed appeal under ORS 138.071(5), the defendant may refer to ~~need not identify~~ a colorable claim of error identified in the notice of appeal.

(b) Where the defendant is unable timely to file a notice of appeal because of the need to identify a colorable claim of error in the case, the defendant requesting leave to file a delayed appeal under ORS 138.071(5) may do so by filing a combined notice of appeal and motion for late appeal. The document shall be entitled "Notice of Appeal; Motion -- File Late Appeal" and shall contain a statement, if true in the case, to the effect that the delay in filing the notice of appeal was attributable to the need to identify a colorable claim of error in the case. In the absence of opposition from the state filed within 14 days after filing of the combined notice of appeal and motion for delayed appeal, the motion shall be deemed to have been granted by the court.

~~(3) If the defendant entered a conditional guilty or no contest plea under ORS 135.335(3), the defendant need not comply with paragraphs (1)(a) and (b) of this rule, but the caption of the notice of appeal shall identify the case as a "Conditional Plea Case."[2]~~

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[1] *See* ORS 138.005(3) defining ~~*State ex rel Dept. of Human Services v. Rardin*, 338 Or 399, 406-08, 110 P3d 580 (2005), for a description of~~ "colorable claim of error." *See* Appendix 2.40 for illustrations of colorable claims of error.

~~[2] *See* ORAP 5.50(3)(b) regarding how a defendant must establish on appeal that the defendant's guilty or no contest plea was conditional.~~

~~*See generally* ORS 138.050, ORS 138.053(3), and ORS 138.222(7).~~

Rule 3.10
DUTIES OF TRIAL COURT ADMINISTRATOR

REGARDING JUDGMENTS AND ORDERS
ENTERED AFTER NOTICE OF APPEAL

(1) The trial court administrator shall promptly send to the Administrator and to each party to the appeal a copy of any order denying a motion to correct or add to the transcript and settling the transcript.[1] If the date of entry in the register is not apparent from the order, the trial court administrator shall state on the order the date of entry.

(2) In criminal and other cases in which the trial court appoints an attorney to represent a party or authorizes preparation of a transcript at state expense, the trial court administrator shall promptly send to the Administrator and provide to the transcript coordinator a copy of any order appointing an attorney on appeal or authorizing preparation of a transcript at state expense.

(3) In a criminal case, after a notice of appeal is filed, if the trial court, on motion of a party or on its own motion, enters a judgment or a modified, corrected or amended judgment, the trial court administrator promptly shall send a copy of the judgment to the Administrator, to the defendant or to the attorney for the defendant if the defendant is represented by counsel, to the district attorney, and to the Solicitor General of the Department of Justice.[2]

(4) If a case is transferred to another circuit court after a notice of appeal is filed, the trial court administrator in the originating circuit court shall promptly notify the Administrator of the date of the transfer and the circuit court to which the case has been transferred.

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[1] *See* ORS 19.370(6)(b) and ORAP 3.40(5)(c)~~ORAP 3.40(4)~~.

[2] *See*, for instance, a modified judgment to correct arithmetic or clerical errors or to delete or modify any erroneous term in the judgment under ORS 137.172; ~~ORS 138.083(1);~~an amended judgment specifying the amount of restitution to be paid by the defendant under ORS 137.105; ~~ORS 138.083(2); a modified sentence under ORS 137.712(1) or the temporary provisions of Oregon Laws 1997, chapter 852, sections 5 to 7a (printed following ORS 137.712);~~ a modified judgment under ORS 137.754~~,~~ and a judgment or new or amended judgment under ORS 19.270(4).

Rule 3.15
PREPARATION AND FILING OF
THE RECORD ON APPEAL

(1) The trial court administrator shall prepare and file the record in the same manner in all appeals.

(2) The trial court administrator shall identify separately by certificate and promptly forward on request of the appellate court:

(a) the trial court file, or part thereof designated by the parties if less than the entire file has been designated;

(b) the exhibits specified in the designation of record;

(c) if applicable, the audio or video record specified in the designation of record, or agreed narrative statement;[1] and

(d) any part of the trial court record ordered by the appellate court pursuant to ORAP 3.05(3).

(3) If the record of oral proceedings is an audio record and the appellate court has directed that the appeal proceed on the audio record without a transcript, the trial court administrator shall place the original audio record and the official log and reporter's certificate in an envelope or other suitable container, clearly identified as containing the audio record and official log, and forward the envelope or other container to the Administrator along with the trial court file.

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[1] If the record of oral proceedings is a transcript, the transcript shall be transmitted to the appellate court as provided in ORAP 3.33.

See ORS 19.005, ORS 19.365, and ORS 138.015~~ORS 138.185(1)~~.

See ORAP 3.63 regarding the trial court record in proceedings recorded by videotape equipment.

Rule 3.33
PREPARATION, SERVICE,
AND FILING OF TRANSCRIPT

(1) On being served with a copy of a notice of appeal, the transcript coordinator shall examine the notice of appeal and determine:

(a) Whether the party has designated a record of oral proceedings as part of the record on appeal;

(b) Whether preparation of a transcript of the designated proceedings is required by law or these rules;

(c) Whether the proceedings were reported by a court reporter or recorded by audio or video recording equipment, or both; and

(d) Whether the party has designated an audio or video recording played in the court as part of the record on appeal and, if so, whether the party has requested preparation of a transcript of the recording.

(2) (a) When a party has designated as part of the record on appeal a transcript of oral proceedings reported by:

(i) A court reporter, the transcript coordinator shall forward a copy of the notice of appeal to the court reporter or reporters who reported the proceedings designated as part of the record on appeal and inform the reporter(s) of the due date of the transcript.

(ii) Audio or video recording, the transcript coordinator shall identify one or more qualified transcribers, forward a copy of the notice of appeal to the transcriber(s) along with a certified copy of the audio or video tape recording, and inform the transcriber(s) of the due date of the transcript.

(b) Except as provided in paragraph (c) of this subsection, the party shall make financial arrangements with the court reporter(s) or transcriber(s) for preparation of the transcript.

(c) When the appellant is eligible for court-appointed counsel on appeal, authorization for the preparation of the transcript at state expense is governed by the policies and procedures of the Office of Public Defense Services.[1]

(d) If the transcript coordinator has not forwarded the notice of appeal to the court reporter(s) or has not forwarded the notice of appeal and a certified copy of the audio or video tape recording to a transcriber before the transcript due date, the transcript coordinator shall notify the appellate court of that fact.

(3) After making arrangements with the court reporter(s) or transcriber(s) as provided in subsection (2) of this rule, the transcript coordinator shall notify the appellate court and the parties to the appeal of the name, address, telephone number, and email address of each court reporter or transcriber, or both, as appropriate, who will be preparing all or a part of the transcript.

(4) It shall be the responsibility of each court reporter or transcriber with whom arrangements have been made to prepare a transcript to:

(a) Cause the transcript to be prepared in conformity with ORAP 3.35.

(b) Include in the transcript a transcript of any audio or video recording played in the trial court, if the designation of record in a notice of appeal requests a transcript of the recording.

(i) If the court reporter who reported a proceeding did not make a verbatim record of the audio part of any recording played in the proceeding or if the recording is not audible from the audio or video record provided the transcript coordinator, the court reporter or transcriber must request the transcript coordinator to provide a copy of the recording in an appropriate format. Upon receipt of the court reporter's or transcriber's request, the transcript coordinator must request, and the party that offered the audio or video recording as evidence must provide, a copy of the recording in an appropriate format. "Appropriate format" means a format that a reasonable transcriber using equipment customary in the industry can use to prepare a transcript of the recording.

(ii) If the party offering the recording as evidence is unable to make a copy of the recording in an appropriate format, with the consent of the adverse party, the party offering the recording may prepare a transcript of the recording in the format required by ORAP 3.35. The adverse party must not unreasonably withhold consent.

(c) Serve a copy of the transcript on each party required by ORS 19.370 and file with the Administrator and serve on each party, the trial court administrator, and the transcript coordinator a certificate of preparation and service of transcript[2] within the time provided in ORS 19.370. The certificate of preparation and service of the transcript must list the dates of all proceedings transcribed, the volume numbers of the transcript(s), and the page numbers specific to each transcript. In a criminal case, the state's copy of the transcript shall be served on the Attorney General.[3] If the transcript is not served and the certificate is not served and filed within that time, the court reporter or transcriber shall move for an extension of time.

(d) Upon notice from the Administrator of the settlement of the transcript, file with the Administrator an electronic version of the transcript in the form required by ORAP 3.35(2) and, at the same time, file with the Administrator and serve on each party a certificate of filing of transcript.[4] The certificate of filing must list the dates of all proceedings transcribed, the volume numbers of the transcript(s), and the page numbers specific to each transcript, and must be a separate document ~~and may~~ not ~~be~~ included as part of the electronic version of the transcript. Filing an electronic version of the transcript with the Administrator is in lieu of filing a paper transcript and shall be in the form provided in ORAP 3.35(2).

(5) (a) The court reporter or transcriber shall serve the appellant and the respondent each with a copy of the transcript as follows:

(i) If a party is represented by an attorney, unless the attorney has made other arrangements with the court reporter or transcriber, the court reporter or transcriber shall serve the transcript in electronic form on the attorney at the email address identified in the notice of appeal as required by ORAP 2.05(5). If a party is not represented by an attorney, unless the party has made other arrangements with the court reporter or transcriber, the court reporter or transcriber shall serve a paper copy of the transcript on the party. In addition to or in lieu of service by email or by paper copy, an attorney or party may make arrangements with the court reporter or transcriber to provide a copy of the transcript to that attorney or party on an optical disk or USB drive, or in other comparable medium.

(ii) If two or more respondents not represented by attorneys must be served by paper copy as provided in clause (5)(a)(i) of this rule, the court reporter or transcriber shall provide one copy of the transcript to the trial court administrator for use by all such respondents. The copy of the transcript provided to the trial court administrator under this clause shall be in the medium (*e.g.*, paper or optical disk) requested by the trial court.

(b) If a party or attorney negotiates with a court reporter or transcriber to provide the transcript in a medium, other than paper or email, provided by the court reporter or transcriber, the court reporter or transcriber may request payment of no more than $5.00 per optical disk, USB drive, or other comparable medium.

(c) A party may specify in the party's designation of record or other request for preparation of a transcript on appeal that the version of the transcript to be provided to that party be prepared by reducing the pages of the transcript in such a manner as to fit up to four pages of transcript onto a single 8-1/2 x 11 inch page or in the one page of transcript per one standard page format. If a party not responsible for arranging for preparation of a transcript is served with a transcript containing four reduced pages of transcript on one standard page, that party may arrange with the court reporter or transcriber, at the party's own expense, for preparation of a transcript in the one page of transcript per one standard page format.[5]

(6) The court reporter or transcriber may not charge for preparing more than one original transcript and may charge only at the rate for copying a transcript for any additional transcript that may be needed for an appeal or appeals:

(a) When two or more cases are heard simultaneously in the circuit court from which one or more appeals are taken, either as consolidated cases or otherwise; or

(b) When two or more cases not heard simultaneously in the circuit court are consolidated on appeal before the transcripts are prepared.

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[1] *See* ORS 138.500(3).

[2] *See* Appendix 3.33-1 for form of certificate of preparation and service of a transcript.

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

[4] *See* Appendix 3.33-2 for form of certificate of filing of a transcript.

[5] *See* ORAP 3.35(2)(d) regarding prohibition of the four pages of transcript per one standard page format in version of transcript filed with the court.

Rule 3.40
ADDITION TO OR CORRECTION OF TRANSCRIPT

(1) (a) When multiple parts of the oral record have been designated as part of the record on appeal or if more than one court reporter or transcriber is preparing the transcript, the transcript is not deemed prepared until the last part of the transcript due on appeal is prepared.

(b) A party desiring to correct or add to the transcript shall file a motion in the

trial court within 15 days after either the date that the certificate of preparation of the transcript is filed with the Administrator or the date that any order holding the appeal in abeyance for the appellate settlement program expires.[1] The party must serve a copy of the motion on the Administrator, the transcript coordinator, and the court reporter or transcriber. An authorized user of the trial court electronic filing system may serve a copy of the motion on the transcript coordinator by using the "Courtesy Copies" email function of that system. The email address for each judicial district's transcript coordinator is available on the Oregon Judicial Department's website.

(c) The party must submit a proposed order relating to the motion to correct or add to the transcript that includes:

(i) If the motion is granted, a date by which the corrected or additional transcript must be prepared.

(ii) If the motion is denied, a statement that the transcript is settled.

(2) The Administrator will hold the appeal in abeyance pending the trial court's disposition of the motion and the occurrence of one of the events specified in paragraphs (5)(b) or (c) of this rule.

(3) After the filing of a timely motion to correct or add to the transcript, the trial court shall have the authority to grant an extension of time for making the corrections or additions to the transcript.

(4) (a) If the trial court allows a motion to correct the transcript, after the filing of the corrected transcript, the appeal will remain in abeyance until the Administrator gives notice to the parties that the transcript has been settled as provided in paragraph (5)(b) of this rule.

(b) If the trial court allows a motion to add to the transcript, the appeal will remain in abeyance for a period of 15 days after the filing of the additional transcript. If a motion to correct the additional transcript is filed timely, the appeal will continue in abeyance pending disposition of the motion to correct and notice by the Administrator that the transcript has been settled as provided in paragraph (5)(b) of this rule.

(c) If the trial court denies the motion, the appeal will be reactivated as provided in paragraph (5)(c) of this rule.[2]

(5) (a) If no motion to correct or add to the transcript is filed, the transcript shall be deemed settled 15 days after the certificate of preparation of the transcript is served,[3] and the period for filing the appellant's opening brief shall begin the next day.

(b) If a motion to correct or add to the transcript is filed and-granted, the period for filing the appellant's opening brief shall begin the day after the Administrator gives notice that the transcript has been settled.

(c) If a motion to correct or add to the transcript is filed and denied, the period

for filing the appellant's opening brief shall begin the day after entry by the trial court administrator of the order settling the transcript.

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See generally ORS 19.370(5) to (7).

[1] Under ORS 19.395, the appellate court, not the trial court, has the authority to extend the time in which to file a motion to correct or add to the transcript.

[2] *See* ORAP 8.40 regarding appellate court review of a trial court ruling affecting appeal, including an order disposing of a motion to correct or add to the transcript.

[3] Under ORS 19.395 and ORAP 3.30(1), the appellate court, not the trial court, has the authority to grant any extension of time for the filing of transcripts or other parts of the record.

See ORS 19.370(6)(b) and ORAP 3.10(1) regarding the trial court administrator's duty to transmit to the Administrator a copy of the order denying a motion to correct or add to the transcript and settling the transcript.

Rule 3.50
RETURN OF RECORDS AND EXHIBITS

(1) When the appellate judgment issues, the Administrator shall return the trial court or agency record, file, and exhibits to the trial court or agency, except the Administrator may retain the transcript on appeal from a trial court.

(2) Jurisdiction over exhibits not forwarded to the appellate court and, after issuance of the appellate judgment, over those returned to the trial court or agency by the appellate court rests exclusively with the trial court or agency.

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See ORS 19.365(6); *see also* ORAP 3.55.

Rule 4.15
FORM, CONTENT, AND SERVICE OF PETITION FOR JUDICIAL REVIEW

(1) A petition for judicial review shall be typewritten, double-spaced, and substantially in the form illustrated in Appendix 4.15-1 or Appendix 4.15-2 and must contain:

(a) The title as it was before the agency to the extent possible. The title shall include the names of the parties to the proceeding regardless of whether the title of the agency proceeding included the names of the parties. The title also shall include the agency if the agency is a party to the judicial review. The title must indicate the designations of the parties before the appellate court (*e.g.*, petitioner, respondent, cross-petitioner, cross-respondent). If a party from the agency proceeding is not named as a party before the appellate court, the title shall indicate the party's agency designation, if any, followed by "below."[1]

(b) A designation of the parties in the judicial review proceeding before the appellate court, including their positions in the appellate court proceeding (*e.g.*, petitioner, respondent).

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

(d) A self-represented party who consents to service of the agency record by ~~optical disk[2] or~~ SFTP 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.[2][3] At any time before the agency transmits the record to the court, a self-represented party who has consented to service of the agency record by electronic means may revoke that consent by notifying the court and the agency. A self-represented party who has provided the court and the state agency with an email address under this paragraph must notify the court and the agency of a change of email address.

(e) A statement whether the petitioner is willing to stipulate that the agency record may be shortened. If the petitioner is willing to shorten the record, the petition shall designate the part of the record to be included in the record. Under ORS 183.482(4), the court may tax the cost of preparing the whole or any part of the record, including the transcript, against any party unreasonably refusing to stipulate to limit the record.

(2) Only the original need be filed. The petition shall be accompanied by a copy of the order, rule, or ruling for which judicial review is sought.

(3) The petition shall show proof of service on:

(a) the agency whose order, rule, or ruling is involved (unless the agency is the petitioner), even if the agency is not a party;

(b) the Attorney General, even if the agency is not a party.[3] In a workers' compensation case, only if the State Accident Insurance Fund is a party to the case and is representing a state agency, the petition shall show proof of service on the Attorney General;

(c) all other parties of record in the proceeding; and

(d) any other person required by law to be served.[4]

(4) The petition shall include a certificate of filing specifying the date the petition for judicial review was filed with the Administrator.

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[1] *See* ORAP 2.25(2) regarding the authority of the Administrator to correct the case title.

~~[2] *See* ORAP 1.15(3)(s) for a definition of "optical disk."~~

[2][3] *See* ORAP 4.20 regarding transmitting and serving the agency by Secure File Transfer

Protocol (SFTP).

[3][4] *See* footnote 2 to ORAP 1.35 for the service address of the Attorney General.

[4][5] Nothing in ORAP 4.15(3) shall be construed to require service of briefs on an agency or the Attorney General. For requirements governing the service of briefs, *see* ORAP 5.05(5) and ORAP 5.12.

See ORS 183.482 for additional requirements respecting the contents of a petition for judicial review and service requirements; ORS 656.298 (same for workers' compensation cases).

Rule 4.20
RECORD ON JUDICIAL REVIEW

(1) As used in this rule:

(a) "Agency" means any state agency whose decision is the subject of a petition for judicial review filed in the Supreme Court or Court of Appeals; or the Oregon State Bar or Board of Bar Examiners in a proceeding under ORAP 11.25, when the proceeding below included an evidentiary hearing.

(b) "Agency record" means the record before the agency, including the agency file, exhibits offered and received (or the subject of an offer of proof), and the transcript of oral proceedings, or the shortened part of the record if the parties have so stipulated pursuant to ORS 183.482(4), regardless of whether the agency actually conducted a hearing.

(c) "Each party" may mean multiple parties if two or more parties are represented by the same attorney or law firm.

(d) "Electronic means" means optical disk[1] or Secure File Transfer Protocol, or other similar electronic medium if approved by the Administrator.

(e) "Instructions" means the instructions, located on the Oregon Judicial Department website, for filing and serving the agency record via Secure File Transfer Protocol by electronic means.[2]

(f) "SFTP" means Secure File Transfer Protocol.

(2) Transmitting Agency Record to Appellate Court. The agency may transmit the agency record to the Administrator conventionally in paper form, by optical disk, or by Secure File Transfer Protocol (SFTP), as provided in this rule.

(3) Preparation of the Record Generally

(a) (i) If a state agency has its own process for preparing the record, including any transcript, for use by the agency or tribunal and the form of the

record substantially complies with this rule, the agency may submit the record in that form, subject to this rule.

(ii) As provided in ORS 656.298(6), the record on judicial review in a workers' compensation case includes the transcript prepared under ORS 656.295, all exhibits, and all decisions and orders entered during the hearing and review process.

(b) Agency file. The agency may prepare the agency file either with the first filed document on top (or in front) or the last filed document on top (or in front). If the agency is submitting the record in paper form, the pages of the agency file and the exhibits must be consecutively numbered at the bottom of each page.

(c) Exhibits.

(i) Except as provided in this paragraph, the agency must transmit all exhibits offered and received, including any exhibit that is the subject of an offer of proof. If the agency is transmitting the exhibits by electronic means, the agency must identify each disk or electronic file containing exhibits as provided in the Instructions.

(ii) Except as provided in clause (iii) of this paragraph, if the exhibits include any nondocumentary exhibit, the agency must conventionally transmit the exhibit.

(iii) If the exhibits include an audio or video recording on an optical disk, the agency must transmit the disk as part of the exhibits. If the exhibits include one or more audio or video tape recordings, unless a party objects, the agency may copy the recording to an optical disk and transmit the optical disk in lieu of the tape recording. A party may move the court to supplement the record on judicial review with a transcript of any audio or video recording, to be prepared at the party's expense.

(d) Transcript. If the agency is submitting the record in paper form, the transcript must be prepared as provided in ORAP 3.35(1). If the agency is submitting the record by electronic means, the agency must comply with ORAP 3.35(2)(a), (b), and (d).

(e) Indexing. The record must be indexed. The index for the record must identify each document in the agency file, each volume of transcript, and each exhibit. If the agency is transmitting the record by electronic means, each document identified in an index must be electronically linked to the document. If the agency is transmitting the record by optical disk and the record requires more than one disk, the second and any subsequent disk must have a subindex of the documents on that disk, with electronic links to each document on the disk.

(f) The agency must assemble the record in this order: The agency file, the parties' exhibits, and any transcript.

(g) If the agency is transmitting the record in paper form, the agency must securely fashion the index and record in a suitable cover or folder showing on the outside the case name and the agency name and case number. If the agency is transmitting the record by electronic means, the agency must submit the record as provided in the Instructions.

(4) Confidential and Sealed Documents

(a) If the record contains a confidential or sealed document* as defined in ORAP 3.07, the agency must place the document in an envelope (if the record is being transmitted conventionally) or in a separate electronic file as provided in the Instructions (if the record is transmitted by electronic means). If the record includes multiple confidential documents, the agency may place all confidential documents in the same envelope or electronic file. If the agency record includes multiple sealed documents, the agency must place each sealed document in a separate envelope or electronic file.

(b) An envelope containing a sealed or confidential document must indicate on the outside of the envelope the case name, the agency name and case number, and that it contains a sealed or confidential document. An electronic file containing a sealed or confidential document must be labelled as provided in the Instructions.

(c) If the agency is transmitting the record by optical disk, all confidential documents must be placed on a separate disk labelled as provided in the Instructions, and each sealed document must be transmitted by a separate disk. If the agency is transmitting the record by SFTP, any sealed document must be transmitted by either optical disk or in paper form.

(5) Transmitting the Record in Paper Form. If the agency transmits and serves the record in paper form, the record must have a suitable cover or folder bearing on the outside the title and agency number of the case and the name of the agency from which the review is taken. Whenever feasible, the agency must submit the original record. The agency's transmission and service of the record in paper form qualifies as transmission of the record within the meaning of ORS 183.482(4).

(6) Preparing and Transmitting the Record by Electronic Means.

(a) If the agency transmits the record by electronic means, the agency must prepare the record as provided in the Instructions.

(b) The following qualifies as transmission of the record to the Administrator within the meaning of ORS 183.482(4):

(i) Delivery of the record in optical disk form to the Administrator for filing as provided in the Instructions; or

(ii) Uploading the agency record to the Judicial Department's SFTP site as provided in the Instructions, together with notification to the Administrator that the upload is complete, as provided in the Instructions.

(c) The following qualifies as service of the record on a party to the judicial review, as provided in subsection (3):

(i) Delivery of the record in conventional paper form to the party;

(ii) Delivery of the record in optical disk form to the party; or

(iii) Uploading the record to the Judicial Department's SFTP site as provided in the Instructions and providing notification to the other party that the upload is complete. The record will remain on the SFTP site for 14 ~~21~~ days to allow a party being served by SFTP to retrieve the record and copy it to a suitable location on the party's computer.

(7) Service Generally

(a) On the same date the agency transmits the agency record to the Administrator, the agency must serve a copy of the record on each other party to the judicial review. The agency may serve the party conventionally in paper form, by optical disk, or by Secure File Transfer Protocol (SFTP), as provided in this subsection.

(b) Service on Party Represented by Attorney. If the agency transmits the record to the Administrator by optical disk or SFTP, the agency must serve a copy of the record on any party represented by an attorney, including an out-of-state attorney admitted *pro hac vice*, by the same means unless the attorney has made arrangements with the agency for service by other means.

(c) Service on Self-Represented Party.

(i) The agency may serve the record on a self-represented party conventionally in paper form or by optical disk.

(ii) The agency may serve the record on a self-represented party by SFTP, if the party has stated the party's willingness to be served by SFTP as provided in ORAP 4.15(1)(d) or if the agency otherwise has obtained the party's consent to be served by SFTP.

(iii) If the agency serves a self-represented party by optical disk or SFTP, the agency must notify the party that, if the party is unable to access the record, the party must notify the agency within 14 days of receipt, with contact information for the agency.[3] If a party so notifies the agency, the agency must serve the record on the party conventionally in paper form within seven days.

(d) If the record includes one or more confidential documents* as defined in ORAP 3.07, the agency must serve the parties with a copy of the confidential document. If the record includes one or more sealed documents as defined in ORAP 3.07, the agency must not serve a copy of the sealed document on the parties.

(e) The agency must accompany the record as transmitted to the court with proof of service of the record on each party, stating the manner in which each party was served.

(8) Transmitting and Serving Corrected or Additional Agency Record

(a) ~~The agency's initial transmission of the record to the Administrator and service on the parties to a judicial review triggers the 15-day period under ORAP 4.22(1) to move to correct or add to the transcript or to correct the record other than the transcript.~~

~~(b)~~ The record is deemed settled when the time to move to correct the record as ~~upon exhaustion of the opportunity to move to correct or add to the transcript or to correct the record other than the transcript and to obtain appellate court review of the agency's disposition of such a motion as~~ provided in ORAP 4.22 has expired or the process under that rule has been completed.

(b~~c~~) If the agency or the court corrects or adds to any part of the record, the agency must transmit to the Administrator and serve on the parties the corrected or additional part of the record by one of the methods prescribed in this rule.

(c~~d~~) The Administrator will notify the parties when the Administrator determines that the record is settled.

(9) Modified Record After Court Grants Leave to Present Additional Evidence

If the appellate court grants a party's motion under ORS 183.482(5) for leave to present additional evidence, following proceedings before the agency, the agency must transmit to the Administrator and serve on the parties any additional record by one of the methods prescribed in this rule.

(10) Disposition of Agency Record upon Issuance of Appellate Judgment

(a) If the agency transmitted the record to the Administrator in paper form, unless the court directs otherwise, when the Administrator issues the appellate judgment, the Administrator will return the record to the agency.

(b) If agency transmitted the record to the Administrator by electronic means, the Administrator issues the appellate judgment, the Administrator will not return the agency record to the agency. The Administrator will retain the electronic record for at least six months; thereafter, unless the court grants a party's request to retain the agency record longer, the Administrator may delete the record from computer storage.

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[1] See the definition of "optical disk" at ORAP 1.15(3)(s).

[2] The Instructions are published at: <https://www.courts.oregon.gov/courts/appellate/rules/Pages/orap.aspx>.

[3] As provided in the SFTP Instructions, the agency will email notice to any party being served with the record by SFTP when the record is ready to be downloaded. The Instructions describe how to access the SFTP website and download the record.

* "Document" as used here means a document in the agency file, an exhibit, or any part of the transcript of oral proceedings that the administrative law judge, agency, or court has ordered to be treated as confidential or sealed.

Rule 4.22
CORRECTING THE RECORD ON JUDICIAL REVIEW

Unless a statute prescribes a different procedure in particular cases, the record on direct judicial review of an agency order shall be corrected or added to as follows:

(1) Within 15 days after the agency ~~files~~ serves the record of agency proceedings, or such further time as may be allowed by the court, any party may file with the agency a motion:

(a) To correct any errors appearing in the transcript or to have additional parts of the proceedings transcribed, if the record includes a transcript.

(b) To correct the record, other than the transcript, by removing material appearing in the agency record as filed that was not made part of the record before the agency, or by adding material that was made part of the record before the agency but was omitted from the record as filed. This paragraph does not authorize supplementing the record on judicial review with evidence that never was part of the record before the agency.[1]

(2) A motion filed under subsection (1) ~~The motion~~ shall be captioned "Before the [name of agency to which the motion is directed]." The party shall file ~~serve the court with~~ a copy of the motion with the court, which shall include on the title page the notation "Court ~~Service~~ Notice Copy."

(3) The agency shall file with the court a copy of its order disposing of a ~~the~~ motion filed under subsection (1), which shall include on the title page the notation "Court Notice Copy." ~~to correct the record or to correct or add to the transcript.~~ If the agency grants the motion in whole or in part, the agency shall serve on the adverse party or parties and ~~file with~~ transmit to the court a corrected record, a corrected transcript, or an additional transcript, as appropriate. ~~When the agency files a corrected record or transcript, in the discretion of the agency, the agency may serve and file only those pages as have been corrected.~~

(4) Any party aggrieved by the agency's disposition of a motion to correct the record or to correct or add to the transcript, may request, by motion filed within 14 days after the date of ~~filing~~ service of the agency's disposition, that the court review the agency's disposition. The motion shall be captioned "In the Court of Appeals of the State of Oregon" or "In the Supreme Court of the State of Oregon," as appropriate, and shall be entitled "Motion for Review of Agency Order Under ORAP 4.22."

(5) (a) If no party files a motion under subsection (1), ~~to correct the record or correct or add to the transcript,~~ the court will deem the record settled 15 days after it is filed, and the period for filing the petitioner's opening brief shall begin the next day.

(b) If a party files a motion under subsection (1) ~~to correct the record or correct or add to the transcript~~ and the agency grants the motion in its entirety, the court will deem the agency record settled on the agency filing a copy of its order with the court.

(c) If a party files a motion under subsection (1) ~~to correct the record or correct or add to the transcript~~ and the agency denies the motion in whole or in part, the court will deem the agency record settled:

(i) On expiration of the time under subsection (4) of this rule to move for review of the agency's order or

(ii) If the party moves for review under subsection (4), on the court's disposition of the motion for review.

(d) Upon settling the record ~~On the record settling~~ as provided in paragraphs (b) and (c) ~~of this subsection~~, the court will notify the parties that the record is settled and that the period for filing the petitioner's brief has begun.

_____

[1] *See* ORS 183.482(5) regarding an application for leave to present additional evidence that was never part of the record before the agency in the proceeding.

See ORS 183.482(4) regarding correcting the record on judicial review of orders in contested cases: "* * * The court may require or permit subsequent corrections or additions to the record when deemed desirable. * * *"

Rule 4.60
LAND USE CASES IN GENERAL

(1) As used in ORAP 4.60 to 4.74:

(a) "Agency" means the Land Use of Board of Appeals (LUBA), the Land Conservation and Development Commission (LCDC), the Columbia River Gorge Commission (CRGC), or a referee appointed by a local government under ORS 197.375(2) to decide an appeal of an expedited land division matter under ORS 197.360 and ORS 197.365 or an appeal of an expedited industrial land use matter under ORS 197.722 to ORS 197.728, ~~the Economic Recovery Review Council (ERRC),~~ as appropriate.[1]

(b) "Land use case" means a final order of LUBA, an order of the LCDC concerning designation of urban reserves under ORS 195.145(1)(b) or rural reserves

under ORS 195.141, final action or order of the CRGC that is subject to expedited judicial review as provided in ORS 196.115(2)(a), ~~as appropriate,~~ or decision of a referee under ORS 197.375(2), as appropriate.~~final order of the ERRC.[1][2]~~

(2) Insofar as practicable, and except where some other procedure is provided by statute or these rules, the procedure for judicial review of a decision in a land case shall be the same as for judicial review of administrative proceedings, including that the form, content, and service of the petition shall be as prescribed in ORAP 4.15.

(3) The case caption of any petition, motion, brief, or other paper filed with the court shall include the words "EXPEDITED PROCEEDING UNDER ORS ____" and identifying the statute authorizing the expedited judicial review.[2][3]

(4) In a LUBA or referee ~~ERRC~~ case, the petitioner shall establish in the petition for judicial review, by reference to the record of the local proceeding before LUBA or the referee ~~ERRC~~ or by petitioner's affidavit accompanying the petition, that the petitioner has statutory standing to invoke the jurisdiction of the court.[3][4]

_____

[1] ORS 197.726(2), as applicable, provides that an appeal of an application for an expedited industrial land use permit "may be made in the manner set forth in ORS 197.375."

[2] Judicial review of CRGC approval of county land use ordinances pursuant to section seven of the Columbia River Gorge National Scenic Area Act, PL 99-663, is not expedited. ORS 196.115(5).

[3] *E.g.*, ORS 197.850, ORS 197.855 (judicial review of LUBA decisions); ORS 197.651 (judicial review of LCDC orders concerning designation of urban reserves under ORS 195.145(1)(b) or rural reserves under ORS 195.141); ORS 196.115(2)-(4) (judicial review of certain CRGC final actions or orders); ORS 197.375(8) (judicial review of referee decisions concerning expedited land divisions); and ORS 197.726(3) (judicial review of referee decisions concerning expedited industrial land use permits). ~~Or Laws 2011, ch 564, § 2, *complied as a note after* ORS 197.728 (judicial review of ERRC final orders).~~

[4] *See* ORS 197.850. ORS 197.375(8) and ORS 197.726(3) provide that judicial review of referee decisions under those statutes may be taken "in the manner provided for review of final orders of the Land Use Board of Appeals under ORS 197.850 and 197.855."

Rule 4.64
RECORD ON JUDICIAL REVIEW

(1) The agency must prepare, transmit, and serve the agency record as provided in ORAP 4.20.

(2) The cover or folder for a record transmitted in paper form, and each disk for a record transmitted in optical disk form, and each electronic folder transmitted by electronic means, must be labelled to show the case title and agency number and identify it as a LUBA,

LCDC, CRGC, expedited land division, or expedited industrial land use case, ~~or ERRC case,~~ as appropriate.

(3) After the Administrator issues the appellate judgment, the Administrator will dispose of the record as provided in ORAP 4.20(10).

Rule 4.66
TIME FOR FILING BRIEFS

(1) On judicial review of a LUBA decision, an LCDC decision, or ~~an ERRC~~ a referee decision:

(a) Notwithstanding ORAP 5.80, the petitioner's opening brief and excerpt of record shall be served and filed not later than 21 days after the filing of the petition for judicial review. Failure to file the opening brief within the time allowed by this rule will result in automatic dismissal of the petition.

(b) The respondent's answering brief shall be served and filed within 21 days after the filing of petitioner's opening brief. If the respondent fails to file a brief within the time allowed by this rule, the cause will be submitted on petitioner's opening brief and oral argument, and the respondent will not be allowed to argue the case.

(c) No reply brief shall be permitted.

(2) On judicial review of a CRGC decision, briefing shall be completed according to the deadlines set out in ORAP 5.80.

Rule 4.68
CROSS-PETITIONS

(1) On judicial review of a LUBA decision, an LCDC decision, or ~~an ERRC~~ a referee decision:

(a) A cross-petition for judicial review, if any, shall be served and filed within seven days after the filing of the petition for judicial review.

(b) A cross-petitioner's opening brief and excerpt of record shall be served and filed within 14 days after the filing of petitioner's opening brief and may, if appropriate, be combined with the respondent's answering brief. If combined with the respondent's answering brief, a cross-petitioner's opening brief shall be served and filed within 21 days after the filing of the petitioner's opening brief.

(c) A cross-respondent's answering brief shall be due seven days after the filing of the cross-petitioner's opening brief. Notwithstanding ORAP 1.35(1)(d) and (2)(b), a cross-respondent shall file and serve the cross-respondent's answering brief in

such a manner as to cause actual receipt of the brief by the Administrator and by all other parties to the judicial review no later than one business day after the brief is due. If the cross-respondent fails to file an answering brief on cross-petition within the time allowed by this rule, the cross-petition will be submitted on cross-petitioner's brief and oral argument, and cross-respondent will not be allowed to argue issues raised by the cross-petition.

(d) No reply brief on cross-petition shall be permitted.

(2) On judicial review of a CRGC decision, the procedure for cross-petitions shall be the same as for judicial review of administrative proceedings, and briefing on cross-petitions shall be completed according to the deadlines set out in ORAP 5.80.

Rule 4.70
NO CONTINUANCES

(1) On judicial review of a LUBA decision, an LCDC decision, or ~~an ERRC~~ a referee decision, in the Court of Appeals, no continuance or extension shall be granted as to the time specified by statute for transmission of the record, the time specified by these rules for filing the cross-petition and the briefs, or the time set for oral argument, except as prescribed in ORS 197.850(7) and ORS 197.860 in a LUBA case or ~~an ERRC~~ a referee case, or in ORS 197.651(8) in an LCDC case.

(2) On judicial review of a CRGC decision, in the Court of Appeals, no continuance or extension shall be granted as to the time specified by statute for the transmission of the record.

Rule 4.72
MOTION NOT TOLLING TIME

(1) On judicial review of a LUBA decision, an LCDC decision, or ~~an ERRC~~ a referee decision, a motion made before oral argument will not toll the time for transmission of the record, filing of briefs, or hearing argument.

(2) On judicial review of a CRGC decision, a motion made before oral argument will not toll the time for transmission of the record.

Rule 5.05
SPECIFICATIONS FOR BRIEFS

(1) (a) Except as provided in paragraph (1)(c) of this subsection, an opening, answering, combined, or reply brief must comply with the word-count limitation in paragraph (1)(b) of this subsection.[1] Headings, footnotes, and quoted material count toward the word-count limitation. The front cover, index of contents and appendices, index of authorities referred to, excerpt of record, appendices, certificate of service, any

other certificates, and the signature block do not count toward the word-count limitation.

(b) (i) In the Supreme Court, except for cases subject to ORAP 12.10 (automatic review of a death sentence):

(A) An opening brief may not exceed 14,000 words.

(B) An answering brief may not exceed 14,000 words.

(C) A combined respondent's answering brief and cross-petitioner's opening brief may not exceed 22,000 words, with the answering brief part of the combined brief limited to 14,000 words.

(D) A combined cross-respondent's answering brief and petitioner's reply brief may not exceed 12,000 words, with the reply brief part of the combined brief limited to 4,000 words.

(E) A reply brief may not exceed 4,000 words.

(ii) In the Court of Appeals:

(A) An opening brief may not exceed 10,000 words.

(B) An answering brief may not exceed 10,000 words.

(C) A combined respondent's answering brief and cross-appellant's opening brief may not exceed 16,700 words, with the answering brief part of the combined brief limited to 10,000 words.

(D) A combined cross-respondent's answering brief and appellant's reply brief may not exceed 10,000 words, with the reply brief part of the combined brief limited to 3,300 words.

(E) A reply brief may not exceed 3,300 words.

(c) If a party does not have access to a word-processing system that provides a word count, in the Supreme Court, an opening, answering, or combined brief is acceptable if it does not exceed 50 pages, and a reply brief is acceptable if it does not exceed 15 pages; in the Court of Appeals, an opening, answering, or combined brief is acceptable if it does not exceed 35 pages, and a reply brief or reply part of a combined reply and cross-answering brief is acceptable if it does not exceed 10 pages.

(d) Except as to a supplemental brief filed by a self-represented party, an attorney or self-represented party must include at the end of each brief a certificate in the form illustrated in Appendix 5.05-2 that:

(i) The brief complies with the word-count limitation in paragraph (1)(b) of this subsection by indicating the number of words in the brief. The

person preparing the certificate may rely on the word count of the word-processing system used to prepare the brief. If the attorney, or a self-represented party, does not have access to a word-processing system that provides a word count, the certificate must indicate that the attorney, or self-represented party, does not have access to such a system and that the brief complies with paragraph (1)(c) of this subsection.

(ii) If proportionally spaced type is used, the size is not smaller than 14 point for both the text of the brief and footnotes.

(e) A party's appendix may not exceed 25 pages.

(f) Unless the court orders otherwise, no supplemental brief may exceed five pages.

(2) (a) Except for cases subject to ORAP 12.10 (automatic review of a death sentence), ~~O~~on motion of a party stating a specific reason for exceeding the prescribed limit, the court may permit the filing of a brief or an appendix exceeding the limits prescribed in subsection (1) of this rule or prescribed by order of the court. A party filing a motion under this subsection must make every reasonable effort to file the motion not less than seven days before the brief is due. The court may deny an untimely motion under this paragraph on the ground that the party failed to make a reasonable effort to file the motion timely.

(b) If the court grants permission for a longer appendix, if filed in paper form, the appendix must be printed on both sides of each page and may be bound separately from the brief.[3]

(3) As used in this subsection, "brief" includes a petition for review or reconsideration, or a response to a petition for review or reconsideration. All briefs must conform to these requirements:

(a) Briefs must be prepared such that, if printed:

(i) All pages would be a uniform size of 8-1/2 x 11 inches.

(ii) Printed or used area on a page would not exceed 6-1/4 x 9-12 inches, exclusive of page numbers, with inside margins of 1-1/4 inches, outside margins of 1 inch, and top and bottom margins of 3/4 inches.

(b) Legibility and Readability Requirements

(i) Briefs must be legible and capable of being read without difficulty. The print must be black, except for hyperlinks.

(ii) Briefs must be prepared using proportionally spaced type. The style must be Arial, Times New Roman, or Century Schoolbook. The size may not be smaller than 14 point for both the text of the brief and footnotes. Reducing

or condensing the typeface in a manner that would increase the number of words in a brief is not permitted.

(iii) Briefs may not be prepared entirely or substantially in uppercase.

(iv) Briefs must be double-spaced, with a double-space above and below each paragraph of quotation.

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

(d) The front cover must set forth the full title of the case, the appropriate party designations as the parties appeared below and as they appear on appeal, the case number assigned below, the case number assigned in the appellate court, designation of the party on whose behalf the brief is filed, the court from which the appeal is taken, the name of the judge thereof, and the litigant contact information required by ORAP 1.30. The lower right corner of the brief must state the month and year in which the brief was filed.[4]

(e) The last page of the brief must contain the name and signature of the author of the brief, the name of the law firm or firms, if any, representing the party, and the name of the party or parties on whose behalf the brief is filed.

(f) If filed in paper form:[5]

(i) The paper must be white bond, regular finish without glaze, and at least 20-pound weight.

(ii) If both sides of the paper are used for text, the paper must be sufficiently opaque to prevent the material on one side from showing through on the other.

(iii) The brief must be bound either by binderclip or by staples. Binderclips are preferred.

(4) The court on its own motion may strike any brief that does not comply with this rule.

(5) (a) A party filing a brief in the appellate court must file one brief with the Administrator* and serve one copy of the brief on every other party to the appeal, judicial review, or other proceeding.

(b) The brief filed with the Administrator must contain proof of service on all parties served with a copy of the brief. The proof of service must be the last page of the brief or printed on or affixed to the inside of the back cover of the brief.

_____

[1] Briefs to which this restriction applies include, but are not limited to, a combined respondent's answering/cross-appellant's opening brief, a combined appellant's reply/cross-respondent's answering brief, and a brief that includes an answer to a cross-assignment of error.

[2] *See* ORAP 5.75 regarding setting out reply brief and cross-answering brief as separate parts of a combined reply and cross-answering brief.

[3] *See* ORAP 5.50 regarding the excerpt of record generally.

[4] *See* ORAP 5.95 regarding the title page of a brief containing confidential material.

[5] *See* ORS 7.250 ~~ORS 7.25~~ and ORAP 1.45(b) regarding use of recycled paper and printing on both sides of a page.

* *See* ORAP 1.35(1)(a)(ii)(B) for the filing address of the Administrator.

See Appendix 5.05-1.

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.

(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]

(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]

_____

[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). ~~*State v. Tilden*, 252 Or App 581, 587-94, 288 P3d 567 (2012) (discussing cases in which Court of Appeals declined to review for plain error absent a request from the appellant).~~

Rule 5.70
REPLY BRIEF

(1) (a) Except as provided in subsection (3) of this rule, a party may file a reply brief to a respondent's answering brief or an answering brief of a cross-respondent.

(b) A reply brief shall be confined to matters raised in the respondent's answering brief or the answering brief of a cross-respondent; reply briefs that merely restate arguments made in the opening brief are discouraged. A party is not expected to file a reply brief if the opening brief adequately presents the party's arguments.

(c) The court encourages a party who decides not to file a reply brief, as soon as practicable thereafter, to notify the court in writing to that effect.

(2) The form of a reply brief shall be similar to a respondent's answering brief. A reply brief shall have an index and shall contain a summary of argument.

(3) (a) Except on request of the appellate court or on motion of a party that demonstrates the need for a reply brief, reply briefs shall not be submitted in the following cases:

(i) traffic, boating, wildlife, and other violations;

(ii) ~~criminal, probation revocation,~~ habeas corpus~~, and post-conviction relief~~;

~~(iii) juvenile court;~~

(iii~~iv~~) civil commitment;

(iv) forcible entry and detainer; and

(v~~i~~) judicial review of orders of the Land Use Board of Appeals and Land Conservation and Development Commission in land use cases, as provided in ORAP 4.66(1)(c).~~; and~~

~~(vii) adoption cases and certain juvenile delinquency proceedings subject to ORAP 10.15.~~

(b) A motion for leave to file a reply brief shall be submitted within 14 days after the filing of the brief to which permission to reply is sought. If a reply brief is submitted with the motion, then:

(i) if the court grants the motion, the date of filing for the reply brief relates backs to the date of the filing for the motion;

(ii) if the court denies the motion, the court will strike the reply brief.

BRIEF TIME CHART 1

CASE TYPE	Opening Brief	Answering and Cross-Opening Brief	Reply Brief	Answering Brief to Cross-Assignment of Error	Cross-Respondent's Answering Brief	Cross-Appellant's Reply Brief	DATE FROM WHICH SCHEDULE IS CALCULATED The opening brief due date is calculated by counting from the date that any of the following has occurred. See chart for appropriate number of days. The answering brief due date is calculated by counting from the date the opponent's brief was filed. *See* ORAP 1.35(1)(d) regarding the date of filing.
~~Criminal[1]~~ ~~Probation Revocation~~ Violations Habeas Corpus ~~Post-Conviction~~ Civil Commitment Forcible Entry and Detainer	49	49	0	21			Date transcript has been deemed settled. ORS 19.370(7). [or] Date circuit court order settling transcript has been entered if a motion to correct has been filed. ORS 19.370(7). [or] Date notice of agreed narrative statement filed in circuit court. ORS 19.380. [or] Date notice of appeal filed if no transcript has been designated.
Civil Appeal from Circuit Court not listed above Criminal[1] Probation Revocation Post-Conviction Juvenile Delinquency Tax Court	49	49	21*	21*	49*	21	
	~~49~~	~~49~~	~~21~~	~~21~~	~~21~~	~~21~~	
Adoption Juvenile Dependency[2]	28	28	~~0~~7				
Land Use Board of Appeals (LUBA) Land Conservation and Development Commission (LCDC)[3]	21	21	0				Date petition for judicial review filed.

[1] Regarding death sentence cases, *see* ORAP 12.10(6); regarding certain pretrial appeals when the defendant is in pretrial custody on felony charges, *see* ORAP 10.25 and ORAP 12.07.
[2] *See* ORAP 10.15.
[3] Those LCDC orders specified in ORAP 4.60(1)(b).

* Can be one brief.

Rule 5.92
SUPPLEMENTAL *PRO SE* BRIEFS

(1) When a client is represented by court-appointed counsel and the client is dissatisfied with the brief that counsel has filed, within 28 days after the filing of the brief, either the client or counsel may move the court for leave to file a supplemental *pro se* brief.[1] If the client files the motion, in addition to serving all other parties to the case, the client shall serve counsel with a copy of the motion. If counsel files the motion, in addition to serving all other parties to the case, counsel shall serve the client with a copy of the motion. Whoever files the motion may tender the proposed supplemental *pro se* brief along with the motion.

(2) The client shall attempt to prepare a supplemental *pro se* brief as nearly as practicable in proper appellate brief form. The brief shall identify questions or issues to be decided on appeal as assignments of error identifying precisely the legal, procedural, factual, or other ruling that is being challenged.[2] The last page of the brief shall contain the name and signature of the client. Unless the court orders otherwise, the statement of the case, including the statement of facts, and the argument together shall be limited to five pages.

(3) If the supplemental *pro se* brief includes an excerpt of record, the excerpt must contain only the information included in ORAP 5.50(2),[3] and only if that material is not included in the appellant's opening brief. If the supplemental *pro se* brief includes an appendix, it must comply with the appendix rules in ORAP 5.52 and shall not contain any confidential material.

(4) A supplemental *pro se* brief is the client's product; therefore, if the client requests assistance in preparing the brief, counsel's obligation shall be limited to correcting obvious typographical errors, preparing copies of the brief, serving the appropriate parties, and filing the original brief with the court. If the client prepares and files the brief without the assistance of counsel, in addition to serving all other parties to the appeal, the client shall serve a copy of the brief on counsel.

(5) The provision of ORAP 16.15(1) requiring that all electronic filings be text-searchable does not apply to a brief filed under this rule.

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[1] "*Pro se*" means "for oneself" or "on one's own behalf." A supplemental *pro se* brief is the product of the party himself or herself, and not of the attorney representing the party.

[2] *See* ORAP 5.45, which describes requirements for assignments of error and argument.

[3] *See* ORAP 5.50(2) (indicating that an excerpt of record must contain "[t]he judgment or order on appeal or judicial review" and "[a]ny written or oral rulings by the lower tribunal or agency addressing the issues presented by the assignments of error").

Rule 5.95
BRIEFS CONTAINING CONFIDENTIAL MATERIAL

(1) Except as provided in subsection (6) of this rule, if a brief contains material that is, by statute or court order, confidential or exempt from disclosure,[1] the party submitting the brief shall file two original briefs:

(a) One brief shall contain the material that is confidential or exempt from disclosure. The title page of the brief shall contain in or under the case caption the words "CONFIDENTIAL BRIEF UNDER _____" followed by the statutory citation or a description of the court order under which confidentiality is claimed.* The original of the brief shall be placed in a sealed envelope marked "CONFIDENTIAL BRIEF."

(b) One brief shall have the material that is confidential or exempt from disclosure removed or marked out. The title page of the brief shall contain in or under the case caption the words "REDACTED BRIEF UNDER _____" followed by the statutory citation or a description of the court order under which confidentiality is claimed.*

(2) A party filing a brief under this rule shall serve two copies of the confidential brief and two copies of the redacted brief on each other party to the case on appeal or review.

(3) The Administrator shall keep both original briefs in the appellate file for the case. The Administrator shall make the redacted version of the brief available for public inspection and copying.

(4) (a) On motion of a person, the court shall make available for public inspection and copying a confidential brief based on a showing that the brief does not contain matter that is confidential or exempt from disclosure.

(b) On motion of a person and under such conditions as the court may deem appropriate, the court may authorize inspection or copying of a confidential brief based on a showing that the person is entitled as a matter of law to inspect or copy the material that is confidential or exempt from disclosure.

(5) When the appellate judgment issues terminating a case, the Administrator shall distribute to brief storage facilities only the redacted copies of a brief filed under paragraph (1)(b) of this rule.

(6) Briefs in the following categories of cases are entirely confidential, and so are exempt from the requirements of subsections (1) to (5) of this rule: adoption, juvenile dependency (including termination of parental rights), juvenile delinquency, civil commitment of allegedly mentally ill persons and persons with an intellectual or developmental disability (as those terms are defined in ORS 427.005), and appeals from orders of the Psychiatric Security Review Board and State Hospital Review Panel. Parties filing in the Court of Appeals briefs in those categories of cases must comply with ORAP 5.05(5) regarding the original and number of copies to be served on other parties to the case.

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

* *See* Appendix 5.95.

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.

Rule 7.10
PREPARATION, FILING,
AND SERVICE OF MOTIONS

(1) (a) For a motion other than a motion for extension of time, a title designating the party filing the motion and one of the motion titles listed in the "Motion Titles" section of Appendix 7.10-1.[1] For example, the motion of a respondent on appeal to dismiss the appeal for lack of jurisdiction should be titled "Respondent's Motion–Dismiss - Non-Appellant/Non-Petitioner" and the motion of the state for summary affirmance should be titled "Respondent's Motion–Summary Affirmance." If more than one motion is contained in a single document, the title of each motion shall be listed. If none of the motion titles listed in Appendix 7.10-1 fairly describes the motion, select the title option of "Motion–Other" and add a title that accurately describes the motion. "Motion–Other" should be used only in circumstances in which the party has carefully reviewed the motion titles listed in Appendix 7.10-1 and does not find a title that describes the motion; or

(b) (i) For a motion for extension of time (MOET), a title designating the party filing the motion for extension of time and one of the MOET titles listed in the "Motions for Extension of Time (MOET)" section of Appendix 7.10-1. For example, the motion of an appellant for an extension of time to file the opening brief should be titled "Appellant's MOET–File Opening Brief." If more than one motion for extension of time is contained in a single document, or if a motion for extension of time is contained in a single document with another motion, the title of each MOET and/or motion shall be listed. If none of the MOET titles listed in Appendix 7.10-1 fairly describes the motion for extension of time, select the title option of "MOET–Other" and add a title that accurately describes the motion. "MOET–Other" should be used only in circumstances in which the party has carefully reviewed the MOET titles listed in Appendix 7.10-1 and does not find a title that describes the motion for extension of time; or

(ii) For a response to a motion or motion for extension of time (MOET), an indication that the filing is a response using the title of the motion or MOET to which the filing responds. For example, the response to a respondent's motion for summary affirmance should be titled "Response to Respondent's Motion–Summary Affirmance" and the response to an appellant's motion for extension of time to file the opening brief should be titled "Response to Appellant's MOET–File Opening Brief."

(2) A motion or response, excluding appendices or exhibits, longer than 20 pages shall contain an index of contents, an index of appendices or exhibits, and an index of authorities, each with page references.[2]

(3) Any party filing a motion to dismiss before the transcript has been filed shall

serve a copy of the motion on the transcript coordinator and, if known to the party filing the motion to dismiss, all court reporters and transcribers who are responsible for preparing all or any part of the transcript on appeal.

(4) If a party files a motion for leave to file another document and submits the other document with the motion, then:

(a) if the court grants the motion, the date of filing for the other document relates back to the date of filing for the motion; or

(b) if the court denies the motion, the court will strike the other document.

(5) A motion or response that is confidential, filed under seal, or otherwise exempt from disclosure[3] must include:

(a) in the caption, prominently displayed, the words "Confidential" or "Sealed," as applicable; and

(b) in the motion or response, a statement citing the authority by which the motion is deemed confidential, sealed, or otherwise exempt from disclosure.

(6) A motion or response that includes an attachment consisting of material that is confidential, sealed, or otherwise exempt from disclosure[4] must comply with the requirements of ORAP 8.52.

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[1] A party's use of the motion titles listed in Appendix 7.10-1 assists the appellate courts in characterizing a motion in their case management system and in displaying a case register that more clearly indicates the filing and resolution of the motion.

[2] *See* ORAP 5.35(3).

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

[4] *See* footnote 3 to subsection (5) of this rule.

See Appendix 7.10-2 for illustrations of motion title designations and Appendix 7.10-3 for illustrations of motions for extension of time title designations.

Rule 7.35
MOTIONS SEEKING EMERGENCY RELIEF

(1) If a party files a motion for substantive relief and requires relief in less than 21 days, the party shall include in the caption of the motion a statement that the motion is an "EMERGENCY MOTION UNDER ORAP 7.35." The motion should explain in the first paragraph the reason for the emergency and identify any deadline for action by the court.

(2) Before filing the motion, the movant shall make a good faith effort to notify the opposing counsel or opposing party, if the party is not represented by counsel. If the motion is filed within 21 days of the filing of the notice of appeal, the movant also shall make a good faith effort to notify counsel for each party and each self-represented party who is eligible to appear as of right as a party to the appeal under ORAP 2.25(3). The motion shall state whether the other party has been notified and served, and the party's position on the motion. If the moving party has not been able to learn a party's position on the motion, then the motion must so state.

(3) A motion seeking emergency relief, other than a motion for an extension of time, and any response to a motion seeking emergency relief may be served and filed by telephonic facsimile communication device,[1] provided that the material being transmitted does not exceed 10 pages and subject to the following conditions:

(a) Filing shall not be deemed complete until the entirety of the motion or response being transmitted has been received by the Administrator, but, as so filed, the facsimile transmission shall have the same force and effect as filing of the original.

(b) The party or attorney being served maintains a telephonic facsimile communication device at the party's address or at the attorney's office and the device is operating at the time service is made. The proof of service shall contain the facsimile number of any party or attorney served by facsimile transmission.[2]

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[1] The facsimile transmission number for the Administrator is (503) 986-5560.

[2] S*ee* ORCP 9 F.

Rule 7.55
COURT OF APPEALS
APPELLATE COMMISSIONER

(1) Except as otherwise provided in subsection (2) of this rule, the appellate commissioner for the Court of Appeals is delegated concurrent authority to decide motions and own motion matters that otherwise may be decided by the Chief Judge under ORS 2.570(6).[1] The appellate commissioner is delegated concurrent authority to decide any other matter that the Court of Appeals or Chief Judge lawfully may delegate for decision.

(2) The appellate commissioner does not have authority to decide a motion that would result in the disposition of a case on its merits, except as to:

(a) A joint or stipulated motion for a disposition on the merits, where the relief granted is consistent with the relief sought in the motion.

(b) Except as provided in paragraph(c) of this subsection, a motion to reverse and remand for new trial under ORS 19.420(3) due to loss or destruction of the trial court record.

(c) A motion for summary affirmance to the same extent that the Chief Judge could decide the motion under ORS 30.647(3), ORS 34.712, ORS 138.225, ORS 138.660, ORS 144.335(6), or any other statute authorizing summary affirmance.

(3) The appellate commissioner shall have the authority to refer any matter to the Chief Judge or the Motions Department, as appropriate.

(4) (a) A party may seek reconsideration of a decision of the appellate commissioner as provided by ORAP 6.25, with the exceptions that

(i) the provision of ORAP 6.25(1)(e) disfavoring claims addressing legal issues already argued by the parties or addressed by the court shall not apply to petitions or motions for reconsideration of a decision of the appellate commissioner, and

(ii) only the original of the petition must be filed.

(b) If a party files a petition or motion for reconsideration of a ruling by the appellate commissioner, the appellate commissioner may consider the matter in the first instance. The appellate commissioner shall have the authority to grant a request for reconsideration and modify or reverse the result. However, if the appellate commissioner would deny the request or grant the request and affirm the result, the commissioner shall forward the request to the Chief Judge or the Motions Department, as appropriate, for decision.

(c) Except as provided in paragraph (d) of this subsection, a decision of the appellate commissioner is not subject to a petition for review in the Supreme Court, but the decision of the Chief Judge or the Motions Department on reconsideration of a ruling of the appellate commissioner is subject to a petition for review. ORAP 6.25(3) is not applicable to a ruling of the appellate commissioner.

(d) When the appellate commissioner makes a determination of appealability under ORS 19.235(3) and designates it as a "summary determination" as provided in ORAP 2.35(3)(a), the appellate commissioner's order is subject to a petition for review in the Supreme Court.

(5) As used in this rule, "own motion matter" includes but is not limited to an order to show cause why a case should not be dismissed for lack of jurisdiction or for lack of prosecution, an order of dismissal for lack of jurisdiction or lack of prosecution where the court has raised the ground for dismissal on its own motion, and an order for substitution of a public officer who is a party to the case where a new person has duly assumed the public office.

(6) As used in these rules, "Motions Department" means the Court of Appeals Motions Department.

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[1] The Chief Judge of the Court of Appeals established the Appellate Commissioner Program by Chief Judge Order No. 08-04, dated March 5, 2008. That and related orders may be viewed on the Oregon Judicial Department's website at: <https://www.courts.oregon.gov/publications/other/Pages/misc.aspx>, "Archives," "Orders Establishing the Appellate Commission Program."

Rule 8.15
AMICUS CURIAE

(1) Except as provided in subsection (8), a ~~A~~ person[1] may appear as *amicus curiae* in any case pending before an ~~the~~ appellate court only by permission of the ~~appellate~~ court on written motion ~~application~~ setting forth the interest of the person in the case. ~~The application~~ Any motion to appear as amicus curiae shall not contain argument on the resolution of the case and otherwise must:

(a) ~~s~~State whether the movant ~~applicant~~ intends to present a private interest of its own or ~~to present~~ a position as to the correct rule of law that does not affect a private interest of its own;

(b) ~~i~~Identify the party with whom the movant would be ~~amicus is~~ aligned or state that the movant ~~amicus~~ is unaligned;

(c) ~~i~~Identify the date ~~deadline~~ in the case that is relevant to the timeliness of the motion ~~amicus application~~ (such as the date that the aligned party's brief is due); and

(d) ~~e~~Explain why the motion ~~application~~ is timely relative to that ~~deadline~~date.

~~(e) The application shall not contain argument on the resolution of the case.~~

(2) The motion ~~application~~ shall be submitted by an active member of the Oregon State Bar. No ~~A~~ filing fee is ~~not~~ required. The form of the motion ~~application~~ shall comply with ORAP 7.10(1) and (2), and the movant ~~applicant~~ shall ~~file the original and one copy of the application. A copy of the application shall be~~ serve~~d~~ it on all parties to the proceeding. Subsections (1)(d), (3), and (4) of ORAP 7.05 do not apply to a motion filed under this rule.

(3) The motion shall be accompanied by the amicus brief sought to be filed. ~~In the Court of Appeals, the application to appear *amicus curiae* may, but need not, be accompanied by the brief the applicant would file if permitted to appear. In the Supreme Court, the application shall be accompanied by the brief sought to be filed. The form of an *amicus* brief shall be subject to the same rules as those governing briefs of parties.[2] If, consistently with this rule, a brief is submitted with the application, then:~~

(a) ~~i~~If the court grants the motion~~application~~, the date of filing for the brief relates back to the date of filing for the motion~~application~~; ~~or~~

(b) ~~i~~If the court denies the motion~~application~~, the brief will be deemed stricken; ~~court will strike the brief.~~

(c) The form of the brief is subject to the same rules as those governing briefs of the parties, to the extent practicable.[2]

(4) In the Court of Appeals,

(a) ~~u~~Unless the court grants leave otherwise for good cause shown, the motion ~~an *amicus* brief~~ shall be filed within ~~due~~ seven days after the due date for ~~the brief is due of~~ the party with whom the movant ~~*amicus curiae*~~ is aligned or, if unaligned, ~~*amicus curiae* is not aligned with any party,~~ seven days after the due date for the opening brief ~~is due~~.

(b) If a party obtains an extension of time for any applicable brief deadline, the time for filing a motion to appear as amicus curiae is automatically extended accordingly.

(5) In ~~With respect to cases in~~ the Supreme Court, except as otherwise provided in ORAP 11.35 and ORAP 12.30 ~~on petition for review from the Court of Appeals~~:

(a) A movant ~~person wishing to appear *amicus curiae*~~ may seek to appear in support of or in opposition to: ~~a petition for review, on the merits of the case on review, or both.~~

(i) A petition for review of a Court of Appeals decision, the merits of that case, or both;

(ii) A petition for a writ, the merits of that case, or both; or

(iii) The merits of any other case before the court on direct appeal, direct judicial review, or direct review, or in an original proceeding.

(b) The following apply to a motion to appear as amicus curiae in support of or opposition to a petition for review or a petition for a writ: ~~Unless the court grants leave otherwise for good cause shown, an application to appear *amicus curiae* in support of or in opposition to a petition for review shall be filed within 14 days after the filing of a petition for review.~~

(i) The motion shall be filed within 14 days after the filing of the petition, unless the court grants leave otherwise for good cause shown.

(ii) The movant may, but need not, file with the motion a combined amicus brief in support of, or in opposition to, the petition and also on the merits of the case. The due date set out in subparagraph (i) applies to a combined brief filed with the motion.

(iii) If the movant does not submit a combined amicus brief with the motion, and the court grants the motion, the movant may file a brief on the merits without further leave of the court, by the applicable due date set out in paragraph (c).

(c) A motion to appear ~~Unless the court grants leave otherwise for good cause shown, an application to appear *amicus curiae*~~ on only the merits of any ~~a~~ case ~~on review~~ shall be filed by the following dates, unless the court grants leave otherwise for good cause shown:

(i) If the movant is aligned with a party, by the due date for that party's brief (excluding reply briefs). ~~On the date the brief is due of the party on review with whom *amicus curiae* is aligned,~~

(ii) If the movant is not aligned with any party, by the due date for the petitioner on review's brief on the merits or the opening brief. ~~On the date the petitioner's brief on the merits on review is due, if *amicus curiae* is not aligned with any party on review,[3] or~~

(iii) If the case is before the court on a petition for review from the Court of Appeals and the petitioner on review has stated an intent to rely on the petition and the petitioner's Court of Appeals brief, regardless of the movant's alignment, within 28 days after review is allowed. ~~Within 28 days after review is allowed, if petitioner on review has filed a notice that petitioner does not intend to file a brief on the merits or has filed no notice, regardless of the alignment of *amicus curiae*.~~

(d) ~~If a person filing an application to appear *amicus curiae* wishes to file one brief in support of or in opposition to a petition for review and on the merits of the case, the application and brief shall be filed within the same time that an application to appear in support of or in opposition to a petition for review would be filed. If a person has been granted permission to appear *amicus curiae* in support of or in opposition to a petition for~~

~~review and the Supreme Court allows review, the person may file an *amicus curiae* brief on the merits without further leave of the court.~~

~~(e)~~ If a party obtains an extension of time to file a ~~petition for review, a~~ response to a petition for review or for a writ, or for any of the ~~a~~ brief deadlines described in paragraph (c)(i) or (ii)~~on the merits and if an *amicus curiae* brief was due on the same date as the petition, response or brief on the merits~~, the time for filing a motion to appear as *amicus curiae* or the *amicus* brief is automatically extended accordingly~~the *amicus curiae* brief is automatically extended to the same date~~.

(6) ~~Except as provided in , with respect to cases in the Supreme Court on direct review or direct appeal, or other proceedings not subject to subsection (5), *amicus curiae* briefs shall be due as provided in subsection (4) of this rule.~~

~~(7)~~ *Amicus curiae* may file a memorandum of additional authorities under the same circumstances in which a party may do so ~~that a party could file a memorandum of additional authorities~~ under ORAP 5.85.

(7~~8~~) Unless the court grants leave otherwise, *amicus curiae* may not orally argue the case.[3] ~~*Amicus curiae* shall not be allowed to orally argue the case, unless the court specifically authorizes or directs oral argument.~~[4]

(8~~9~~) The State of Oregon may appear as *amicus curiae* in any case in an appellate court ~~the Supreme Court and Court of Appeals~~ without permission of the court. The state shall comply with all the requirements for appearing *amicus curiae* set out in this rule, including the time within which to appear, except that, if ~~under subsections (4), (5), and (6) of this rule. If~~ the state is not aligned with any party, the state's amicus ~~*amicus curiae*~~ brief shall be due on the same date as the respondent's brief on the merits or the answering brief.

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[1] As used in this rule, "person" includes an organization.

[2] *See* ORAP Chapters 5 and 9, ~~ORAP 5.05 to 5.30, ORAP 5.52, ORAP 5.77, ORAP 5.95, ORAP 9.05, ORAP 9.10, and ORAP 9.17~~ concerning requirements for briefs.

[3] ~~*See* ORAP 9.17 concerning the due dates of briefs on review.~~

[4] ~~*See* ORAP 6.10 concerning oral argument.~~

Rule 8.28
CORRECTED, SUPPLEMENTAL, OR NEW JUDGMENTS IN CRIMINAL CASES AFTER NOTICE OF APPEAL FILED

(1) After a notice of appeal is filed in a criminal case, if either the state or the

defendant files a motion in the trial court for entry of a corrected or supplemental judgment, the party filing the motion shall transmit a copy of the motion to the appellate court.[1]

(2) (a) If the trial court enters a corrected or supplemental judgment on motion of a party or on its own motion, a party wishing to appeal the corrected or supplemental judgment shall file an amended notice of appeal within the time and in the manner prescribed in ORS chapter 138 and shall use the appellate case number assigned to the appeal from the original judgment. The amended notice of appeal shall state when the party received notice of entry of the corrected or supplemental judgment.

(b) If the trial court enters a corrected or supplemental judgment and the appellant no longer wishes to pursue the original appeal, the appellant shall file a motion to dismiss the appeal.

(c) If the trial court denies a motion for entry of a corrected or supplemental judgment subject to subsection (1) of this rule, the party who filed the motion shall notify the Administrator in writing and within seven days after the date of entry of the trial court's order and shall attach a copy of the order denying the motion.

(3) When a party has filed a motion subject to subsection (1) of this rule, pending a final ruling on the motion by the trial court, the appellate court, on motion of a party or on its own motion, may order that the appeal be held in abeyance. If an order is entered holding the appeal in abeyance, when the court receives notice under subsection (2) of this rule that the trial court has entered a corrected or supplemental judgment or a final order disposing of the motion, the appellate court shall reactivate the appeal or issue such other order as may be appropriate.

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[1] *See, e.g.*, a motion in the trial court under ORS 137.172 ~~ORS 138.083(1)~~ for entry of a corrected judgment to correct arithmetic or clerical errors or to delete or modify any erroneous term in the judgment; a motion in the trial court under ORS 137.105 ~~ORS 138.083(2)~~ for entry of a supplemental judgment specifying the amount of restitution to be paid by the defendant; and a motion for entry of a corrected judgment under ORS 137.754.

Rule 8.52
CONFIDENTIAL AND SEALED ATTACHMENTS

A document that includes an attachment containing material that is, by statute or court order, confidential, sealed, or otherwise exempt from disclosure[1] must include:

(1) in the caption, prominently displayed, the words "Includes Confidential Attachment" or "Includes Sealed Attachment," as applicable; and

(2) in the filing, a statement citing the authority by which the attachment is deemed confidential or sealed.

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

Rule 9.05
PETITION FOR SUPREME COURT REVIEW OF COURT OF APPEALS DECISION

(1) Reviewable Decisions

As used in this rule, "decision" means a decision of the Court of Appeals in the form of an opinion, per curiam opinion, or affirmance without opinion, or an order ruling on a motion, own motion matter, petition for attorney fees, or statement of costs and disbursements, including an order ~~of the appellate commissioner together with the decision~~ of the Chief Judge or Motions Department on reconsideration of a ruling of the appellate commissioner under ORAP 7.55(4)(c) or an order of the appellate commissioner if it is designated a "summary determination," as specified ~~under~~in ORAP 7.55(4)(d). Except as provided in ORAP 7.55(4)(d), a decision of the appellate commissioner may be challenged only by a petition or motion for reconsideration in the Court of Appeals as provided by ORAP 6.25.

(2) Time for Filing and for Submitting Petition for Review

(a) Except as provided in ORS 19.235(3) and ORAP 2.35(4), any party seeking to obtain review of a decision of the Court of Appeals shall file a petition for review in the Supreme Court within 35 days after the date of the decision of the Court of Appeals.[1] ~~The Supreme Court may grant an extension of time to file a petition for review.~~

(b) A party seeking additional time to file a petition for review shall file a motion for extension of time in the Supreme Court, which that court may grant.

(c~~b~~) (i) If a timely petition for reconsideration of a decision of the Court of Appeals is filed under ORAP 6.25(5) by any party, the time for filing a petition for review concerning that decision for all parties shall not begin to run until the Court of Appeals issues its written disposition of the petition for reconsideration. If a party obtains an extension of time to file a petition for reconsideration and does not file a petition for reconsideration within the time allowed, the time for filing a petition for review shall begin to run on expiration of the extension of time.

(ii) If a petition for review is filed during the time in which a petition for reconsideration in the Court of Appeals may be filed, the petition for review will not be submitted to the Supreme Court until the time for filing a petition for reconsideration expires.

(iii) If a petition for review is filed after the filing of a timely petition for reconsideration, the petition for review will not be submitted to the Supreme Court until the Court of Appeals issues its written disposition of the petition for reconsideration.[2]

(d~~c~~) (i) If a party files a petition for review after the appellate judgment has issued, the party must file with the petition a motion to recall the appellate judgment. The petition and the motion must be filed within a reasonable time after the appellate judgment has issued. The motion to recall the appellate judgment must explain why the petition for review was not timely filed. The party need not file a separate motion for relief from default.

(ii) A party filing a motion to recall the appellate judgment in a criminal case, in addition to serving all other parties to the appeal, shall serve a copy of the motion on the district attorney.

(3) Form and Service of Petition for Review

(a) The petition shall be in the form of a brief prepared in conformity with ORAP 5.05 and ORAP 5.35. For purposes of ORAP 5.05, the petition must not exceed 5,000 words or (if the certification under ORAP 5.05(2)(d) certifies that the preparer does not have access to a word-processing system that provides a word count) 15 pages. The cover of the petition shall:

(i) Identify which party is the petitioner on review, including the name of the specific party or parties on whose behalf the petition is filed, if there are multiple parties on the same side in the case.

(ii) Identify which party is the respondent on review.

(iii) Identify the date of the decision of the Court of Appeals.

(iv) Identify the means of disposition of the case by the Court of Appeals:

(A) If by opinion, the author of the challenged opinion and the other members of the court who concurred in or dissented from the court's decision;

(B) If by per curiam opinion, affirmance without opinion, or by

order, the members of the court who decided the case.[32]

(v) Contain a notice whether, if review is allowed, the petitioner on review intends to file a brief on the merits or to rely on the petition for review and brief or briefs filed in the Court of Appeals.[43]

(vi) For a case expedited under ORAP 10.15, prominently display the words "JUVENILE DEPENDENCY CASE EXPEDITED UNDER ORAP 10.15," "TERMINATION OF PARENTAL RIGHTS CASE EXPEDITED UNDER ORAP 10.15," or "ADOPTION CASE EXPEDITED UNDER ORAP 10.15," as appropriate.

(vii) Comply with the requirements in ORAP 5.95 governing briefs containing confidential material.

(b) Any party filing a petition for review shall serve two copies of the petition on every other party to the appeal or judicial review, and file with the Administrator an original petition with proof of service.

(4) Contents of Petition for Review

The petition shall contain in order:

(a) A short statement of the historical and procedural facts relevant to the review, but facts correctly stated in the decision of the Court of Appeals should not be restated.

(b) Concise statements of the legal question or questions presented on review and of the rule of law that the petitioner on review proposes be established, if review is allowed.

(c) A statement of specific reasons why the legal question or questions presented on review have importance beyond the particular case and require decision by the Supreme Court.[54]

(d) If desired, and space permitting, a brief argument concerning the legal question or questions presented on review.

(e) A copy of the decision of the Court of Appeals, including the court's opinion and any concurring and dissenting opinions.

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[1] *See generally* ORS 2.520. *See* ORAP 7.25(2) regarding information that must be included in a motion for extension of time to file a petition for review.

~~[3] Paragraph (2)(b) of this rule does not apply to a motion for reconsideration filed under ORAP~~

~~6.25(5).~~

~~2~~3 *See* Appendix 9.05.

~~3~~4 *See* ORAP 9.17 regarding briefs on the merits.

~~4~~5 *See* ORAP 9.07 regarding the criteria considered by the Supreme Court when deciding whether to grant discretionary review. An assertion of the grounds on which the decision of the Court of Appeals is claimed to be wrong, without more, does not constitute compliance with this paragraph.

See ORAP 5.90(5) regarding filing a petition for review where a "*Balfour*" brief was filed on behalf of the appellant in the Court of Appeals.

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, 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," "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) ~~No reply brief may be filed.~~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 14 days for the filing of any opening or answering brief, nor shall the court grant more than one extension of time. 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 ~~56~~ 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).

Rule 10.25
EXPEDITED APPEAL OF CERTAIN PRETRIAL ORDERS IN CRIMINAL CASES

(1) This rule applies to a pretrial appeal under ORS 138.045(1)(a), (b), or (d) ~~ORS 138.060(1)(a) or (c)~~ when the defendant is charged with a felony and is in custody, and the trial court has dismissed or set aside the accusatory instrument or suppressed evidence.[1]

(2) In all cases subject to this rule:

(a) The case caption of any brief, motion, petition, or other paper filed with the court shall include the words "EXPEDITED APPEAL UNDER ORS _____" and identifying the statute authorizing the expedited appeal.

(b) Appellant's opening brief shall be due 35 days after the transcript settles. Failure to file the opening brief within the prescribed time will result in automatic dismissal of the appeal.

(c) Respondent's answering brief shall be due 35 days after appellant's opening brief is served and filed. If respondent fails to file an answering brief within the

prescribed time, the appeal will be submitted on appellant's opening brief and oral argument, and respondent will not be allowed to argue the case.

(d) Absent extraordinary circumstances, the court will not grant an extension of time or reschedule oral argument.

(e) A motion made before oral argument will not toll the time for transmitting the record, filing briefs, or hearing oral argument.

[1] *See* ORS 138.261.

Rule 10.35
JOINT MOTIONS FOR
RESOLUTION OF APPEALS BY UNPUBLISHED ORDER

(1) On joint motion of the parties to any appeal, a department of the Court of Appeals may decide the merits of an appeal by unpublished order if the department determines:

(a) The appeal does not present a substantial question of law;

(b) All parties to the appeal agree both on the correct resolution of all questions raised on appeal and on the appropriate disposition of the appeal; and

(c) A published opinion would not significantly benefit the bench, the bar, or the public.

(2) Parties seeking relief based on the assertion that the appeal does not present a substantial question of law must include a sufficient statement of facts of the case to show that all of the questions raised on appeal are grounded in those facts.

(3) Parties are discouraged from moving for relief under this subsection when resolution of the merits of the appeal would require the appellate court to try the cause anew upon the record or to make one or more factual findings anew upon the record. The Court of Appeals will exercise its discretion to grant relief under this subsection in such cases only in exceptional circumstances.[1]

[1] *See also* ORS 138.227, ORS 138.665, and ORS 419A.209, pertaining, respectively, to criminal, post-conviction relief, and juvenile court cases, and authorizing the filing of a joint motion to vacate the trial court decision being appealed and to remand for reconsideration. Under ORS 2.570(6), such motions may be decided by order.

Rule 11.05
MANDAMUS:
INITIATING A MANDAMUS PROCEEDING

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

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

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

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

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

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

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

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

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

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

(iv) A statement why appeal or any other applicable potential remedy is

not a plain, speedy and adequate remedy in the ordinary course of law, precluding issuance of the writ.[5]

(d) Proof of service as follows:

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

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

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

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

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

(3) The relator shall accompany the petition:

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

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

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

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

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

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

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

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

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

_____

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

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

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

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

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

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

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

[8] *See, e.g.*, ORS 36.222(5) regarding confidential mediation communications and agreements; ORS 135.139, ORS 433.045(3), and ORS 433.055 regarding records revealing HIV test information; ORS 137.077 regarding presentence investigation reports; ORS 179.495 and ORS

179.505 regarding medical records maintained by state institutions; ORS 412.094 regarding nonsupport investigation records; ORS 419B.035 regarding abuse investigation records; ORS 426.160 and ORS 426.370 regarding records in civil commitment cases; and ORS 430.399(6) ~~ORS 430.399(5)~~ regarding alcohol and drug abuse records. *See generally* ORAP 16.15(5)(b) for procedure for eFiling attachments that are confidential or otherwise exempt from disclosure.

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

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

Rule 11.20
HABEAS CORPUS AND
QUO WARRANTO PROCEEDINGS

(1) With respect to a habeas corpus or quo warranto proceeding under Article VII (Amended), section 2, of the Oregon Constitution, the procedure for filing a petition (including a statement in the petition why application was not made to the circuit court), the defendant's appearance in opposition thereto, the court's consideration of the petition, and briefing and oral argument shall be the same insofar as practicable as for a writ of mandamus.

(2) A petition for a writ of habeas corpus shall be entitled "_____, Plaintiff, v. _____, Defendant." A petition for a writ of quo warranto shall be entitled "_____, Petitioner, v. _____, Respondent."

(3) If the petition for a writ of habeas corpus includes an attachment containing material that is, by statute or court order, confidential, sealed, or otherwise exempt from disclosure,[1] the petition must comply with the requirements of ORAP 8.52.

_____

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

See ORS 34.310 through 34.730 and Article VII (Amended), section 2, of the Oregon Constitution; *see also* ORS 30.510 through ORS 30.640 relating to actions for usurpation of an office or of a franchise.

Rule 12.25 ~~11.25~~
BAR ADMISSION, REINSTATEMENT, AND DISCIPLINARY PROCEEDINGS

(1) As used in this rule: ~~, the following are parties:~~

(a) The following are parties:

(i) The Oregon State Bar in a disciplinary, interlocutory suspension, contested reinstatement, or contested admission ~~admission or contested reinstatement~~ proceeding.

(ii ~~b~~) The respondent ~~accused~~ in a disciplinary or interlocutory suspension proceeding.

(iii ~~c~~) The applicant in a contested reinstatement or contested admission proceeding.

(b) "BR" refers to the Oregon State Bar Rules of Procedure.

(c) "RFA" refers to the Supreme Court of the State of Oregon - Rules for Admission of Attorneys.

~~(d) The applicant in a contested reinstatement proceeding.~~

(2) Interlocutory Suspension Proceedings, Review of Adjudicator Order

(a) A request concerning review of an order entered by the Bar's Disciplinary Board Adjudicator in an interlocutory suspension proceeding under BR 3.1 shall be filed with the Administrator, with proof of service on all parties and the Disciplinary Board, within 14 days after entry of the order.

(b) The response is due within 14 days after the request is filed.

(c) If the request seeks de novo review of the record of proceedings before the Adjudicator, upon receipt of service of the request, the Bar's Disciplinary Counsel shall file the record with the Administrator. The preparation, transmission, and service of the record is subject to ORAP 4.20, except that subsections (8) and (9) do not apply. Upon receipt of the record, the Administrator must send written notice to the parties.

(3 ~~2~~) Disciplinary and Contested Reinstatement Proceedings, Review of Trial Panel Opinion

(a) A request ~~petition~~ concerning review of a disciplinary proceeding ~~, a bar~~

~~applicant's contested admission~~ or a trial panel opinion in a disciplinary proceeding under BR 10.1~~former member's contested reinstatement~~ shall be filed with the Administrator, ~~together with an opening brief,~~ with proof of service on all parties, within 30 ~~28~~ days after written notice by ~~to~~ the Bar's Disciplinary Board Clerk ~~Counsel and the parties~~ of ~~the court's~~ receipt of the opinion.~~record of the proceedings before the trial panel under Oregon State Bar Rule of Procedure (BR) 10.5(a) or the Board of Bar Examiners under Rule for Admission 9.60(1). An answering brief shall be due 28 days after filing of the opening brief. A reply brief, if any, shall be due 14 days after filing of the answering brief.~~

(b) A trial panel opinion in a contested reinstatement proceeding under BR 10.3, following court referral under BR 8.9, shall be filed with the Administrator, with proof of service on all parties, upon conclusion of the hearing.

(c) Upon receipt of a request filed under subparagraph (a) or a trial panel opinion filed under subparagraph (b), the Bar's Disciplinary Counsel shall file the record of the proceedings before the trial panel with the Administrator, pursuant to BR 10.4. The preparation, transmission, and service of the record is subject to ORAP 4.20, except that subsections (8) and (9) do not apply. Upon receipt of the record, the Administrator must send written notice to the parties. ~~A brief in any of the proceedings named in this rule shall conform to ORAP 5.05, ORAP 5.10, ORAP 5.35, and ORAP 9.17(5), except that no excerpt of record is required, and shall show proof of service on all parties to that proceeding. The Bar shall be served by service on the Bar's Disciplinary Counsel.~~

~~(3) If, notwithstanding BR 10.5(b), an accused who is required to file a petition and brief fails to do so within the time allowed under BR 10.5(a), the Bar shall:~~

~~(a) File a petition and brief within the time allowed for filing an answering brief. The brief shall comply with the rules governing petitions and opening briefs. At the time the petition and brief are filed, the Bar shall indicate whether it wishes to waive oral argument and submit the case on the record, or~~

~~(b) Submit a letter stating that it wishes the matter submitted to the court on the record without briefing or oral argument. Notwithstanding waiver of briefing and oral argument under this paragraph, at the direction of the Supreme Court, the Bar shall file a petition and brief within the time directed by the court.~~

(4) Contested Admission Proceedings, Board of Bar Examiners Decision

(a) A petition concerning review of a Board of Bar Examiners decision in a contested admission, character and fitness review proceeding under RFA 9.60(1) shall be filed with the Administrator, with proof of service on all parties, within 30 days after the date that the applicant received notice of the Board's decision, pursuant to RFA 9.55(7).

(b) Within 14 days following receipt of service of a petition, the Board must file the record of proceedings before the Board, pursuant to RFA 9.60(2). The

preparation, transmission, and service of the record is subject to ORAP 4.20, except that subsections (8) and (9) do not apply. Upon receipt of the record, the Administrator must send written notice to the parties.

(5) Briefing and Argument

(a) A brief in any proceeding described in subparagraphs (3) or (4) must conform to ORAP 5.05, ORAP 5.10, ORAP 5.35, and ORAP 9.17(5), except that no excerpt of record is required. The brief must show proof of service on all parties to the proceeding. The Bar shall be served by service on the Bar's Disciplinary Counsel.

(b) In any proceeding described in subparagraphs (3) or (4):

(i) An opening brief shall be due no later than 28 days after the Administrator's notice to the parties of receipt of the record.

(ii) An answering brief shall be due 28 days after filing of the opening brief.

(iii) A reply brief, if any, shall be due 14 days after filing of the answering brief.

(c) In any proceeding described in subparagraph (3), if a respondent files a petition but then fails to file a brief within the time allowed, the Bar must either:

(i) File a brief within the time allowed for filing an answering brief. The brief shall comply with the rules governing petitions and opening briefs. At the time the brief is filed, the Bar must indicate whether it wishes to waive oral argument and submit the case on the record. Or:

(ii) Submit a letter stating that it wishes the matter submitted to the court on the record without briefing or oral argument. Notwithstanding waiver of briefing and oral argument under this paragraph, at the direction of the Supreme Court, the Bar shall file a petition and brief within the time directed by the court.

(d)~~(4)~~ If a proceeding described in subparagraphs (3) or (4) ~~the case~~ is argued orally, the party who files the opening brief shall argue first.

_____

See ORS 9.536, and Oregon State Bar Rules of Procedure, which are found on the Oregon State Bar's website, <https://www.osbar.org>, and in Thomson/West's *Oregon Rules of Court*.

Rule 12.27 ~~11.27~~
JUDICIAL DISABILITY AND DISCIPLINARY PROCEEDINGS

(1) Involuntary Retirement for Disability under ORS 1.310.

(a) On receipt of notice from the Secretary of State of a judge's appeal of a determination of disability by the Commission, the Commission shall, within 14 days, transmit the record to the Supreme Court. The Administrator shall inform the judge of the date of receipt of the record from the Commission.

(b) The judge shall have 28 days after the date of the notice from the court of receipt of the record to file a petition for review of the Commission's determination of disability, together with an opening brief in support of the petition. The Commission shall have 28 days after the date of filing of the opening brief to file an answering brief. The judge may file a reply brief, which shall be due 14 days after the date of filing of the Commission's answering brief.

(c) If the case is argued orally, the judge shall argue first, followed by the Commission.

(d) If the court remands the matter to the Commission for additional findings of fact, the review will be held in abeyance pending receipt from the Commission of notice of its action on remand.

(e) The decision of the Supreme Court to affirm, reverse or annul the Commission's determination is subject to a petition for reconsideration under ORAP 9.25. If no petition for reconsideration is filed or if a petition for reconsideration is filed, on disposition of the petition, the Administrator shall issue the appellate judgment and shall provide a copy of the appellate judgment to the Secretary of State.

(2) Disciplinary Proceedings under ORS 1.420.

(a) Appointment of Masters

Under ORS 1.420(1)(b), if the Commission requests appointment of three masters to hold a hearing, the request shall be made in the form of a petition and the Commission shall serve a copy of the petition on the judge. The Commission may nominate three or more candidates for appointment as masters. The judge shall have 14 days after being served with the Commission's request to file a response, which response may include nominations for three or more candidates for appointment as masters.

(b) Review of Commission's Recommendations[1]

(i) Under ORS 1.420(4), if the Commission recommends to the court the censure, suspension, or removal from office of a judge, the Commission shall accompany its recommendation with the record of proceedings before the commission. The Administrator shall inform the judge of the date of receipt of the record from the Commission.

(ii) A request for receipt of additional evidence shall be filed as a motion in the manner provided in ORAP 7.05 and ORAP 7.10.

(iii) The judge shall have 28 days after the date of the notice from the court of receipt of the record to file an opening brief concerning the Commission's recommendation. The Commission shall have 28 days after the date of filing of the opening brief to file an answering brief. The judge may file a reply brief, which shall be due 14 days after the date of filing of the Commission's answering brief. If the judge fails to file an opening brief, the Commission may file an opening brief, and thereafter the judge may file an answering brief.

(iv) If the case is argued orally, the judge shall argue first, followed by the Commission, unless the judge did not file any brief, in which case the Commission alone may orally argue the matter.

(v) If the court remands the matter to the Commission for additional findings of fact, the review will be held in abeyance pending receipt from the Commission of notice of its action on remand.

(vi) The decision of the Supreme Court to affirm, reverse, or annul the Commission's determination is subject to a petition for reconsideration under ORAP 9.25. If no petition for reconsideration is filed or if a petition for reconsideration is filed, on disposition of the petition, the Administrator shall issue the appellate judgment. If the decision is for removal of the judge from office, the Administrator shall provide a copy of the appellate judgment to the Secretary of State.

(vii) The decision of the Commission after hearing or upon review of the record and report of the masters under ORS 1.420 shall be a public record, together with the recommendations, if any, of the Commission to the Supreme Court.*

(c) Temporary Suspension Under ORS 1.420(5)

(i) If the Supreme Court on its own motion proposes to suspend a judge during the pendency of disciplinary proceedings under ORS 1.420, the Administrator shall provide written notice thereof to the judge.

(ii) If the Commission files a recommendation that a judge be suspended during the pendency of a disability determination proceeding, the Commission shall serve a copy of the recommendation on the judge.

(iii) The judge shall have 14 days after the date of the court's notice of proposed suspension or after the date of the Commission's recommendation that the judge be suspended during the pendency of a disability determination to file a

memorandum regarding the proposed or recommended suspension.

(iv) When the court on its own motion proposes to suspend a judge during the pendency of disciplinary proceedings, the Commission shall have 14 days after the date of filing of the judge's memorandum to file a memorandum regarding the proposed suspension.

(v) The matter of a proposed or recommended temporary suspension will not be subject to oral argument unless oral argument is requested by the judge or the Commission.

(d) Consent to Discipline Under ORS 1.420(1)(c)

(i) On receipt of a judge's consent to censure, suspension, or removal, the court may request briefing and oral argument before the consent is submitted to the court for decision.

(ii) If the court accepts the stipulation of facts part of a consent, but rejects the disciplinary action agreed to by the judge and Commission and remands the matter to the Commission for further proceedings, the review will be held in abeyance pending receipt of notice of the Commission's decision on remand.

(iii) A judge's consent to censure, suspension, or removal shall not be a public record until the consent or stipulation is submitted to the Supreme Court for a decision. On submission to the court, the consent shall be a public record.*

(3) Temporary Disability Proceedings Initiated by Chief Justice Under ORS 1.425.

(a) Review of Commission's Recommendation

(i) Under ORS 1.425(1)(a), if the Commission elects to proceed as provided in ORS 1.420, the procedure in the Supreme Court shall be the same as provided in subsection (2) of this rule.

(ii) Under ORS 1.425(4)(b), if the Commission finds that the judge has a temporary disability and recommends to the court that the judge be suspended, the Commission shall accompany its recommendation with the record of proceedings before the Commission. The Administrator shall inform the judge of the date of receipt of the record from the Commission.

(iii) A request for receipt of additional evidence shall be filed as a motion in the manner provided in ORAP 7.05 and ORAP 7.10.

(iv) The judge shall have 28 days after the date of the notice from the court of receipt of the record to file an opening brief concerning the Commission's

recommendation. The Commission shall have 28 days after the date of filing of the opening brief to file an answering brief. The judge may file a reply brief, which shall be due 14 days after the date of filing of the Commission's answering brief. If the judge fails to file an opening brief, the Commission may file an opening brief and thereafter the judge may file an answering brief.

(v) If the case is argued orally, the judge shall argue first, followed by the Commission, unless the judge did not file any brief, in which case the Commission alone may orally argue the matter.

(vi) The decision of the Supreme Court is subject to a petition for reconsideration under ORAP 9.25. If no petition for reconsideration is filed or if a petition for reconsideration is filed, on disposition of the petition, the Administrator shall issue the appellate judgment and shall provide a copy of the appellate judgment to the Secretary of State.

(vii) The decision of the commission after hearing or upon review of the record and report of masters under ORS 1.425 shall not be a public record, except for a decision and recommendation for suspension under ORS 1.425(4)(b).*

(b) Temporary Suspension Under ORS 1.425(5)

(i) If the Supreme Court on its own motion proposes to suspend a judge during the pendency of disability, the Administrator shall provide written notice thereof to the judge.

(ii) If the Commission files a recommendation that a judge be suspended during the pendency of a disability determination proceeding, the commission shall serve a copy of the recommendation on the judge.

(iii) The judge shall have 14 days after the date of the court's notice of proposed suspension, or the commission's recommendation that the judge be suspended, during the pendency of a disability determination to file a memorandum regarding the proposed or recommended suspension.

(iv) When the court on its own motion proposes to suspend a judge during the pendency of disability proceedings, the Commission shall have 14 days after the date of filing of the judge's memorandum to file a memorandum regarding the proposed suspension.

(v) The matter of a proposed or recommended temporary suspension will not be subject to oral argument unless oral argument is requested by the judge or the Commission.

(c) Consent to Treatment Under ORS 1.425(4)(a)

(i) On receipt of a judge's consent to counseling, treatment or other assistance or to comply with other conditions in respect to the future conduct of the judge, the court may request briefing and oral argument before the consent is submitted to the court for decision.

(ii) A judge's consent to counseling, treatment, or assistance or compliance with other conditions shall not be a public record until the consent is accepted by the Supreme Court.

4) As used in this rule, "Commission" means the Commission on Judicial Fitness and Disability.

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[1] *See generally* ORS 1.430.

* *See* ORS 1.440(1).

Rule 12.30 ~~11.30~~
BALLOT TITLE REVIEW

The practice and procedure governing a petition to the Supreme Court to review a ballot title shall be:

(1) Any elector dissatisfied with a ballot title provided by the Attorney General under ORS 250.067 or ORS 250.075(2), or by the Legislative Assembly under ORS 250.075(1), may file with the Administrator a petition to review the ballot title.

(2) The petition must be filed within 10 business days after the day upon which the Attorney General certifies the ballot title to the Secretary of State, or the Legislative Assembly files the ballot title with the Secretary of State. If a petition is mailed to the Administrator in compliance with ORAP 1.35(1), then the petition is deemed filed when mailed; otherwise, a petition is deemed filed when actually received by the Administrator.

(3) The form of the petition shall comply with ORAP 7.10 governing motions. The petition shall have a title page containing:

(a) A case title in which the party petitioning for review is designated as the petitioner and the Attorney General is designated as the respondent.

(b) The title "Petition to Review Ballot Title Certified by the Attorney General" or "Petition to Review Ballot Title Certified by the Legislative Assembly," as the case may be.

(c) The date the ballot title was certified.

(d) The chief petitioner referred to in ORS 250.045.

(e) The litigant contact information required by ORAP 1.30. ~~ORS 1.30.~~

(4) The body of the petition shall be no longer than 10 pages and:

(a) Shall state the petitioner's interest in the matter, whether the petitioner is an elector, and whether the petitioner timely submitted written comments on the draft ballot title.

(b) Shall include the reason the ballot title does not substantially comply with the requirements of ORS 250.035, and a request that the Supreme Court certify to the Secretary of State a ballot title that complies with the requirements of ORS 250.035 in lieu of the ballot title challenged by petitioner or refer the ballot title to the Attorney General for modification.

(c) May include under the heading "Arguments and Authorities" legal arguments and citation of legal authorities.

(5) (a) The petition shall have attached to it a copy of the ballot title as certified to or filed with the Secretary of State and containing the full text of the ballot title and a photocopy of the text of the measure as submitted to the Secretary of State.

(b) The petition shall show proof of service on the Attorney General,[1] as well as any chief petitioner who did not file the petition to review the ballot title and proof of written notification to the Secretary of State that the petition has been filed.

(c) The original petition shall be filed. The petition shall be accompanied by the filing fee required for an original proceeding in the Supreme Court.

(6) The Attorney General has seven business days after the filing of the petition, unless a shorter time is ordered by the court, to:

(a) File the draft ballot title, the certified ballot title, the Attorney General's letter of transmittal to the Secretary of State and, if not overly lengthy, written comments received by the Secretary of State concerning the draft ballot title. In addition, the Attorney General may provide the court with the text of the certified ballot title, and any subsequent modified ballot title, by electronic mail.

(b) File an answering memorandum. If the Attorney General claims that text as contained in the petition is in error, the Attorney General must file an answering memorandum pointing out the discrepancy; otherwise, the Attorney General may submit a letter waiving the filing of an answering memorandum. Any answering memorandum must be in the form prescribed by ORAP 7.10 for answers to motions and may not be longer than 10 pages, except that when the court has consolidated review of more than one petition to review a ballot title in one proceeding, the length of the answering

memorandum may be increased by five pages per each additional petition. The Attorney General must file the original answering memorandum, with proof of service on counsel for the petitioner. The answering memorandum may set forth concisely the reasons why the Attorney General believes the ballot title filed with the Secretary of State substantially complies with the requirements of ORS 250.035 or, alternatively, may suggest alterations that in the Attorney General's judgment would make the ballot title substantially comply. The answering memorandum may also contain under separate heading legal arguments and citation to legal authorities.

(7) Any person who is interested in a ballot title that is the subject of a petition, including the chief petitioner of a measure, may file a motion in the form prescribed by ORAP 7.10, asking leave of the Supreme Court to submit a memorandum as an *amicus curiae*. The motion must be accompanied by the proposed memorandum that the *amicus curiae* intends to submit. The proposed memorandum must be in the form prescribed by ORAP 7.10 for answers to motions and may not be longer than 10 pages. The motion and proposed memorandum must be filed and served on or before the date that the answering memorandum is due, unless a shorter time is ordered by the court. If a party seeks to appear as an *amicus curiae* after the Attorney General has filed a modified ballot title after referral from the Supreme Court, then the motion and memorandum must be filed with and actually received by the Administrator and must be served on and actually received by all parties within five business days after the date that a party has filed an objection, unless a shorter time is ordered by the court.

(8) The petitioner has five business days after the filing of the answering memorandum, unless a shorter time is ordered by the court, to file a reply memorandum. Any reply memorandum must be in the form prescribed by ORAP 7.10 for answers to motions and must not be longer than five pages. The petitioner must file the original reply memorandum, with proof of service on the Attorney General.

(9) After the filing of all memoranda permitted, the Supreme Court will consider the matter without the filing of briefs or presentation of oral argument unless otherwise ordered by the court, either on its own motion or on request of a party. If the court orders oral argument, the petitioner shall argue first. Unless otherwise ordered by the court, an *amicus curiae* may not participate in oral argument.

(10) (a) For ballot title review proceedings in which the Supreme Court has referred the Attorney General's certified ballot title to the Attorney General for modification, the Attorney General must prepare a modified ballot title. The modified ballot title must be filed with and actually received by the Administrator, and it must be served on and actually received by all parties, within five business days after the date of the referral.

(b) The petitioner, or an intervenor under paragraph (10)(c), may file an objection to the modified ballot title within five business days after the date of filing of the modified ballot title. An objection or proposed objection under paragraph (10)(c) must be in the form prescribed by ORAP 7.10, and it may not exceed 10 pages. The objection or proposed objection must be filed with and actually received by the

Administrator within the time required. The objection or proposed objection must be served on and actually received by all parties within five business days after the date of filing of the modified ballot title. The objection or proposed objection may be filed and served by telephonic facsimile communication as provided by ORAP 7.35(3).[2] A party may file a response to the objection or proposed objection within five business days after the date of filing of the objection, unless the court otherwise directs.

(c) A person who submitted written comments to the Secretary of State under ORS 250.067 regarding the original ballot title, or the chief petitioner, may seek to intervene as a party to object to a modified ballot title when the Supreme Court has referred the Attorney General's certified ballot title to the Attorney General for modification. The person must file a motion to intervene, together with a proposed objection to the modified ballot title, within five business days after the date the modified ballot title has been filed. The motion and proposed objection must comply with the filing and service requirements prescribed by paragraph (10)(b). The proposed objection may assert only that the modifications by the Attorney General themselves have caused the modified ballot title to not comply substantially with the requirements of ORS 250.035.

(11) (a) If the Supreme Court issues a dispositional decision in which the court dismisses the petition, certifies the Attorney General's certified ballot title or certifies the Attorney General's modified ballot title, with or without additional modification, the Administrator will issue the appellate judgment on the next judicial day after the filing date of the decision.

(b) If the court refers the Attorney General's certified ballot title to the Attorney General for modification or refers the Attorney General's modified ballot title to the Attorney General for further modification and no party files a timely objection to a modified ballot title, then the Supreme Court will certify the modified ballot title, and the Administrator will issue the appellate judgment, on the next judicial day after the time for filing an objection expires.

(c) The court's decision shall become effective in accordance with ORAP 14.05(2)(c).

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

[2] The facsimile transmission number for the Administrator is (503) 986-5560. The facsimile transmission number for the Attorney General (Appellate Division) is (503) 378-6306.

Rule 12.32 ~~11.32~~
VOTERS' PAMPHLET EXPLANATORY STATEMENT REVIEW

(1) Any elector dissatisfied with a voters' pamphlet explanatory statement for which suggestions were offered at the Secretary of State's hearing under ORS 251.215 may file with the Administrator a petition to review the explanatory statement. The petition must be filed within five calendar days after the deadline for filing a revised statement with the Secretary of State.

(2) The provisions of ORAP 11.30(2), (3), (4), (5), (7), (8), and (9) shall apply, except that:

(a) The citizens committee appointed to prepare the explanatory statement shall be designated "Respondents," the Attorney General shall not be designated as a respondent, and the title of the proceeding shall be "Petition to Review Explanatory Statement"; and

(b) The petition shall show proof of service on each member of the "committee of five citizens" referred to in ORS 251.205(2) and the Attorney General.*

(3) The petition shall inform the court of the petitioner's interest in the matter, the full text of the explanatory statement as filed with the Secretary of State or as revised under ORS 251.215(3), the alleged insufficiency or unclearness of the explanatory statement challenged, and a proposed explanatory statement that in the judgment of the petitioner would be sufficient and clear and that the petitioner desires the Supreme Court to certify to the Secretary of State in lieu of the explanatory statement challenged by the petitioner.

(4) The answering memorandum shall set forth concisely the reasons why the explanatory statement challenged is sufficient and clear or, alternatively, may suggest alterations that would make the explanatory statement sufficient and clear. The answering memorandum is due within seven calendar days after the petition is filed.

(5) The Administrator will issue the appellate judgment on the next judicial day after the filing date of the Supreme Court's dispositional decision.

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

See ORS 251.235.

Rule 12.34 ~~11.34~~
ESTIMATE OF FINANCIAL IMPACT REVIEW

(1) Any person entitled to petition under ORS 250.131 for review of an estimate of financial impact may file with the Administrator a petition to review the estimate. The petition must be filed not later than 85 calendar days before the election at which the measure is to be voted on. The petition shall not concern the amount of the estimate or whether an estimate should be prepared.

(2) The provisions of ORAP 11.30(2), (3), (4), (5), (7), (8), and (9) shall apply, except that:

(a) The officials named in ORS 250.125(9) ~~ORS 250.125(8)~~ shall be designated "Respondents," the Attorney General shall not be designated as a respondent, and the title of the proceeding shall be "Petition to Review Estimate of Financial Impact"; and

(b) The petition shall show proof of service on each official named in ORS 250.125(9) ~~ORS 250.125(8)~~ and the Attorney General.

(3) The petition shall inform the court of the petitioner's interest in the matter, the full text of the estimate of financial impact as filed by the Secretary of State, and the reasons the estimate was prepared, filed or certified in violation of the procedures specified in ORS 250.125 or ORS 250.127.

(4) The answering memorandum shall set forth concisely the reasons why the estimate challenged was prepared, filed or certified in compliance with the procedures specified in ORS 250.125 or ORS 250.127. An answering memorandum shall include the complete estimate as filed with the Secretary of State or as revised under ORS 250.127, if the respondent claims that the estimate as contained in the petition is in error.

(5) The Administrator will issue the appellate judgment on the next judicial day after the filing date of the Supreme Court's dispositional decision.

Rule 11.35
REAPPORTIONMENT REVIEW

The practice and procedure for review of reapportionment under Article IV, section 6, of the Oregon Constitution shall be as follows:

(1) Any qualified elector of the state seeking review of reapportionment shall file a petition on or before August 1 of the year in which the Legislative Assembly enacts the reapportionment.[1]

(2) The petition shall be prepared in compliance with ORAP 7.10, governing motions, and shall contain:

(a) A title page containing a caption identifying the person or persons seeking review of reapportionment as the petitioner or petitioners, and the Legislative Assembly as the respondent and the litigant contact information required by ORAP 1.30.

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

(c) A prayer for specific relief.

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

(3) The petition shall be accompanied by one copy of such part of the reapportionment as is necessary for a determination of the question presented and the relief sought.

(4) The petitioner shall file with the Administrator the original petition with proof of service of a copy of the petition on the Secretary of the Senate, the Chief Clerk of the House, the Secretary of State, and the Attorney General.[2] The petition shall be accompanied by the filing fee prescribed in ORS 21.010(5).

(5) A petitioner shall serve and file an opening brief in support of the petition on the same date that petitioner serves and files the petition.

(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 the original answering brief and, if not exempt from payment of filing fees, pay the respondent's first appearance fee prescribed in ORS 21.010(5). ~~ORS 21.040.~~ Any party who files an answering brief shall be known in the review proceeding as a "respondent."

(b) A respondent shall serve the answering brief on the petitioner, and proof of service shall be endorsed on or attached to the answering brief. If the answering brief responds to a petition by more than one petitioner, service of the brief need only be made on the petitioner whose name is first identified in the caption as a petitioner or on the attorney for the petitioners.

(7) Reply briefs are discouraged, but, if a petitioner chooses to file a reply brief, the petitioner shall file the reply brief within five business days after the date that a respondent's answering brief is due.

(8) *Amicus curiae* briefs 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, on the date that a respondent's answering brief is due.

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

(10) Except for a petition for review of a reapportionment filed in the manner provided by ORS 19.260(1), a party may not rely on the date of mailing as the date of filing or service. A brief or other thing required or permitted to be filed under this rule must be physically filed by the prescribed day and must be physically served no later than one calendar day after the brief is filed.

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

However, ORAP 6.10 governs who will be allowed to argue.

(12) The Administrator shall not accept for filing, and the court will not consider, a petition for reconsideration tendered for filing after a reapportionment has become operative under Article IV, section 6, of the Oregon Constitution.

(13) 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 except that:

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

(b) The petition and brief shall be filed and served on or before 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] *See* ORAP 1.35(1)(a) for the filing address of the Administrator. *See* footnote 2 to ORAP 1.35 for the service address of the Attorney General.

Rule 12.05
DIRECT APPEAL, ~~OR~~ DIRECT JUDICIAL REVIEW, AND DIRECT REVIEW IN THE SUPREME COURT

(1) This rule governs the following proceedings in the Supreme Court:

(a) Any direct appeal from a court of law[1];

(b) Any direct judicial review of an agency order[2]; and

(c) Any other proceeding for which a statute provides for direct review in the Supreme Court.[3]

(2) When ~~Where~~ a statute authorizes a direct appeal, ~~from a court of law to the Supreme Court,[1]~~ except as otherwise provided by statute or another provision of these rules, ~~by rule of appellate procedure,~~ the appeal shall be taken in the manner prescribed in ORAP Chapters 2 and 3 ~~the rules of appellate procedure~~ relating to appeals generally.

(3~~2~~) When ~~Where~~ a statute authorizes direct judicial review, ~~of an agency order or a legislative enactment by the Supreme Court,[2]~~ except as otherwise provided by statute or another provision of these rules, the judicial review shall be initiated and conducted in the manner

prescribed in ORAP Chapter 4 ~~the rules of appellate procedure~~ relating to judicial review of agency orders generally.

(~~4~~3) The case-initiating document for any proceeding described in subsection (1) ~~notice of appeal or petition for judicial review~~ shall state the statutory or other authority under which the proceeding ~~a direct appeal or judicial review~~ is filed directly in ~~taken to~~ the Supreme Court. Filing fees shall be assessed as provided in ORS 21.010.

~~(4) When required to do so by statute, the court will expedite its disposition of the appeal or judicial review.[3]~~

(5) On motion of a party or on the court's own initiative, the court may establish a special briefing schedule. ~~for the appeal or judicial review.~~

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[1] *See, e.g.*, ORS 305.445 (tax court judgments and orders), ORS 662.120 (injunctions in labor dispute cases), and ORS 138.045(2) ~~ORS 138.060(2)~~ (certain pretrial orders in murder and aggravated murder cases).

[2] *See, e.g.*, ORS 469.403(3) (energy ~~nuclear~~ facility site ~~siting~~ certificates).

~~[3] *See, e.g.*, ORS 138.060(3) and ORS 138.261(5) (requiring expedited disposition of appeals of certain pretrial orders in criminal cases).~~

Rule 12.07
EXPEDITED APPEAL OF CERTAIN
PRETRIAL ORDERS IN CRIMINAL CASES

(1) On appeal under ORS 138.045(2) ~~ORS 138.060(2)~~ from a pretrial order dismissing or setting aside the accusatory instrument or suppressing evidence, when a defendant is charged with murder or aggravated murder and is in custody:

(a) The case caption of any brief, motion, petition, or other paper filed with the court shall include the words "EXPEDITED APPEAL UNDER ORS 138.045(2)." ~~ORS 138.060(2).~~"

(b) Appellant's opening brief shall be due 28 days after the transcript settles. Failure to file the opening brief within the prescribed time will result in automatic dismissal of the appeal.

(c) Respondent's answering brief shall be due 28 days after appellant's opening brief is served and filed. If respondent fails to file a brief within the prescribed time, the appeal will be submitted on appellant's opening brief and oral argument, and respondent will not be allowed to argue the case.

(2) On a petition for review of a decision of the Court of Appeals in an appeal under ORS 138.045(1)(a) or (d) ~~ORS 138.060(1)(a) or (c)~~ from a pretrial order dismissing or setting aside the accusatory instrument or suppressing evidence, when a defendant is charged with a felony and is in custody:

(a) The case caption of any brief, motion, petition, or other paper filed with the court shall include the words "EXPEDITED REVIEW UNDER ORS 138.045(1)."~~ORS 138.060(1).~~"

(b) If the petitioner on review files a notice of intent to file a brief on the merits and fails to file a brief within the time prescribed by ORAP 9.17, the review, if allowed, will be submitted to the court on the petitioner's petition for review, the response to the petition for review (if any), the brief on the merits filed by respondent (if any), the parties' briefs in the Court of Appeals, and oral argument.

(3 In all cases subject to this rule:

(a) Absent extraordinary circumstances, the court will not grant an extension of time or reschedule oral argument.

(b) A motion made before oral argument will not toll the time for transmitting the record, filing briefs, or hearing oral argument.

Rule 12.10
AUTOMATIC REVIEW IN DEATH SENTENCE CASES

(1) Whenever a defendant is sentenced to death, the judgment of conviction and sentence of death are subject to automatic and direct review by the Supreme Court without the defendant filing a notice of appeal.

(2) If, in addition to a conviction for aggravated murder forming the basis for the death sentence, a defendant is convicted of one or more charges arising from the same charging instrument, the Supreme Court shall have jurisdiction to review any such conviction without the filing of a notice of appeal.

(3) Immediately after entry of the judgment of conviction and sentence of death, the trial court administrator shall prepare a packet consisting of the following:

(a) A copy of the judgment of conviction.

(b) A copy of the order of sentence of death unless that sentence is contained in the judgment of conviction.

(c) A certificate by the trial court administrator stating:

(i) the date of entry of each writing described above.

(ii) the names, mailing addresses, telephone numbers, and email addresses of the attorneys of record for the state and for the defendant at the date of entry of each writing described above.

(d) A cover sheet captioned "In the Supreme Court of the State of Oregon" and showing the court in which the judgment of conviction and sentence of death were made, the title of the case, the trial court case number, the name of the judge who imposed the sentence of death and the caption: "Automatic Death Sentence Review."

(4) The trial court administrator shall serve a true copy of the packet on the defendant and on each attorney and the transcript coordinator. The trial court administrator shall endorse proof of service on the original of the packet and send the original to the Administrator, who shall immediately notify the Chief Justice of receipt thereof.

(5) (a) Service of a copy of the packet on the transcript coordinator shall be deemed to be authorization for the transcript coordinator to arrange for preparation of a transcript of all parts of the criminal proceeding, including all pretrial hearings and selection of the jury.

(b) A transcript shall meet the specifications of ORAP 3.35.

(c) A transcript shall be filed within 60 days after the date the packet is served on the transcript coordinator.

(d) Transcripts shall be settled in the same manner as on an appeal pursuant to ORS 138.015 ~~ORS 138.185~~ and ORS 19.370, except that a first extension of time of 30 days to file a motion to correct the transcript or add to the record will be deemed granted if, within 15 days after the transcript is filed, a party files a notice of need for additional time to file such a motion.

(6) (a) If the defendant desires to file an opening brief, the brief is due 180 days after the transcript is settled.

(b) If the state desires to file an answering brief, the brief is due:

(i) When the defendant does not desire to file an opening brief, 180 days after the transcript is settled.

(ii) When the defendant files an opening brief, 180 days after the defendant serves and files the defendant's opening brief.

(c) If the defendant has filed an opening brief, the defendant may file a reply brief, which shall be due 90 days after the state serves and files its answering brief.

(d) Motions for extension of time shall be made in accordance with ORAP 7.25. Other than a first motion for an extension of time of 60 days or less to file a brief, a motion for extension of time shall include a statement generally describing the work completed and remaining on the brief.

(e) Specifications for briefs shall be those set forth in ORAP 5.05, except that, unless the party files a motion at least 14 days before the filing deadline for the brief and obtains leave of the court for a longer brief,

(i) the maximum length of an opening or answering brief ~~without obtaining leave of the court for a longer brief is 28,000~~ is 70,000 words or, if the certification under ORAP 5.05(1~~2~~)(d) certifies that the preparer does not have access to a word-processing system that provides a word count, 250 ~~100~~ pages; and~~.~~

(ii) the maximum length of a reply brief is 20,000 words or, if the certification under ORAP 5.05(1)(d) indicates that the preparer does not have access to a word-processing system that provides a word count, 75 pages.

(7) Notwithstanding UTCR 6.120(1), the trial court administrator shall send the trial court file and exhibits to the Administrator.

(8) Preparation, service, and sending of the packet, the trial court file and exhibits offered, preparation of transcripts, preparation of briefs, and review by the Supreme Court shall be accorded priority over all other cases by all persons concerned.

Rule 12.20
CERTIFICATION OF QUESTION OF LAW TO SUPREME COURT BY FEDERAL COURTS AND OTHER STATE COURTS

The procedure for certifying a question of law to the Supreme Court under ORS 28.200 through 28.255 shall be as follows:

(1) (a) The certification order shall set forth the question of law sought to be answered and a statement of facts relevant to the question, including the nature of the controversy in which the question arose. The statement of facts may be a brief, memorandum, or other material from the file of the certifying court if it contains the relevant facts and shows the nature of the controversy.

(b) The certification order shall be signed by the presiding judge and forwarded to the Supreme Court by the certifying court's clerk of court or court administrator accompanied by a copy of the court's register of the case. If the certifying court's register does not show the names and addresses of the parties or their attorneys,

the court clerk or administrator shall separately provide that information.

(2) The filing and first appearance fees in the Supreme Court shall be equally divided between the parties unless otherwise ordered by the certifying court in its order of certification. The fees shall be collected when the parties file their stipulated or separate designations of record, as provided in subsection (5) of this rule.

(3) In deciding whether to accept a certified question, the Supreme Court will not consider written argument from the parties or hold argument unless it specifically directs otherwise. ~~The Supreme Court will consider whether to accept a question certified to it without oral or written argument from the parties unless otherwise directed by the Supreme Court.~~

(4) The Administrator shall send a copy of the court's order accepting or declining to accept a certified question of law to the certifying court and to the parties.

(5) (a) If the court accepts certification of a question of law, the parties to the certified question shall attempt to agree on a designation of the part of the record of the certifying court necessary to a determination of the question. If the parties are unable to agree on a designation of record, each party may file a separate designation of record.

(b) A stipulated designation of record or the parties' separate designations of record shall be filed within 14 days after the date of the court's order accepting certification.

(c) On receipt of a stipulated designation or separate designations of record, the Administrator shall request from the certifying court's clerk of court or court administrator the part or parts of the record as designated, and any parts of the record that the Supreme Court determines may be necessary in answering the certified question(s). The Administrator shall serve a copy of the request on the parties.

(6) (a) Unless otherwise ordered by the Supreme Court, the certified question of law shall be briefed by the parties. The proponent of the question certified to the court shall file the opening brief and any other party may file an answering brief. If the nature of the question is such that no party is the proponent of the question, the plaintiff or appellant shall file the opening brief and the defendant, respondent, or appellee shall file the answering brief.

(b) The opening brief shall be served and filed within 28 days after the date the Administrator requests the record from the certifying court. The answering brief shall be served and filed within 28 days after the date the opening brief is served and filed. The reply brief, if any, is due within 14 days of the date the answering brief is served and filed.

(c) As nearly as practicable, briefs shall be prepared as provided in ORAP 5.05 through 5.52, except that, in lieu of assignments of error, the brief shall address each certified question accepted by the court.

(7) ~~The case will be set for oral argument as soon as practicable after the parties' briefs are filed.~~

~~(8)~~ The court shall issue a written decision stating the law governing the question certified. Unless specifically ordered by the Supreme Court, costs will not be allowed to either party. The Administrator shall send to the parties copies of the court's decision at the time the decision is issued.

(8~~9~~) Petitions for reconsideration of the court's decision shall be subject to ORAP 9.25. After expiration of the period for filing a petition for reconsideration or after disposition of all petitions for reconsideration, the Administrator shall send a copy of the decision under seal of the Supreme Court to the certifying court and shall send copies thereof to the parties. Issuance of a sealed copy of the court's decision to the certifying court terminates the Supreme Court case.

Rule 12.35 ~~12.25~~
EXPEDITED JUDICIAL REVIEW OF ORDERS OF THE ENERGY FACILITY SITING COUNCIL AND THE PUBLIC UTILITY COMMISSION

On direct judicial review of an order of the Energy Facility Siting Council under ORS 469.403 or of the Public Utility Commission under ORS 758.017:

(1) The case caption of any brief, motion, or other paper filed with the court shall include the words "EXPEDITED JUDICIAL REVIEW UNDER ORS _____" and identifying the statute authorizing the expedited judicial review proceeding.

(2) Within seven days after being served with a copy of the petition for judicial review, the Energy Facility Siting Council or the Public Utility Commission, as appropriate, shall transmit the record to the Administrator. The record shall be accompanied by proof of service of copies of the record, except exhibits, on all other parties of record in the proceeding and on any other person required by law to be served.

(3) (a) Petitioner's opening brief and excerpt of record shall be served and filed not later than 14 days after the filing of the petition for judicial review. Failure to file the opening brief within the prescribed time will result in automatic dismissal of the petition.

(b) Any respondent's answering brief shall be served and filed within 14 days after the filing of petitioner's opening brief. If any respondent fails to file a brief within the prescribed time, the judicial review will be submitted without that respondent's answering brief and that respondent will not be allowed to argue the case.

(c) No party shall file a reply brief.

(4) Except as prescribed in ORS 469.403(6), (7), and (8), or ORS 758.017(5), (6), and

(7), as appropriate, the court shall not grant a continuance or extension for transmitting the record or filing briefs as specified in this rule, or for the time set for oral argument.

(5) A motion made before oral argument will not toll the time for transmitting the record, filing briefs, or hearing oral argument.

Rule 12.40
DIRECT REVIEW OF STATUTES

When the legislature provides for direct review of a statute, except as otherwise provided by statute or court order:

(1) The petition shall, to the extent practicable, allege one or more claims for relief as provided in ORCP 18.

(2) A response to the petition shall be filed within 14 days after the petition is filed and shall, to the extent practicable, respond to the petitioner's claims for relief as provided in ORCP 19.

(3) The petitioner may file a reply to assert any affirmative allegations in avoidance of any affirmative defenses asserted in the response. A reply shall be filed within 14 days after the response is filed.

(4) No later than 14 days after the response described in paragraph (2) is filed, the parties shall confer about the facts necessary for the court's resolution of the legal and procedural issues, and the petitioner shall file a joint statement that:

(a) Identifies all stipulated facts;

(b) States whether any facts are disputed and, if so, explains the parties' respective positions as to those facts; and

(c) Explains the parties' positions as to whether the court should appoint a special master.

(5) The time for filing briefs set out in ORAP 5.80 applies, except that the opening brief is due 49 days after the court settles the record.

(6) To the extent practicable, the rules set out in ORAP Chapter 5 apply to the form and content of any brief filed.

Rule 15.05
APPELLATE SETTLEMENT CONFERENCE PROGRAM

(1) Cases Subject

(a) The procedures in this rule apply to cases filed in the Court of Appeals. The Chief Judge or the Chief Judge's designee shall determine the individual cases or categories of cases that may be included or excluded from the appellate settlement conference program (program). Upon the court's own motion, at any time, a panel of the Court of Appeals may refer a case to the program.

(b) (i) A settlement conference shall be held for any case assigned to the program unless the program director or the court cancels the conference or removes the case from the program. A party or person with actual authority to settle the case must be present at the program settlement conference unless that person's absence or appearance by telephone is approved prior to the conference by the program director.

(ii) After the first settlement conference is held, any party may withdraw from the program, except that the program director may require the parties to attend one or more additional conferences as the program director deems reasonable and necessary to facilitate a settlement. If the program director requires the parties to attend one or more additional conferences, the neutral's fee for any additional conference will be paid by the program and not by the parties.

(2) Supervising Judge and Program Director

(a) The Chief Judge shall have overall responsibility for the program but may appoint a supervising judge and a program director for the program.

(b) If a supervising judge is appointed, the supervising judge shall have the powers needed to administer the program. The Chief Judge, and the supervising judge if one is appointed, may delegate authority to the program director.

(c) If the Chief Judge, or the supervising judge if one is appointed, serves as a judge or judge pro tempore of the Court of Appeals, the Chief Judge or supervising judge may not participate in the consideration of any case in which the judge is aware of confidential information concerning the case obtained from the program.

(d) If a judge or judge pro tempore of the Court of Appeals serves as the neutral in a case and the case does not settle and proceeds in the Court of Appeals, that judge shall not thereafter participate in any way in the case. Further, such judge shall take steps as necessary to insure that the judge does not disclose to other judges or to court staff any communication from the settlement conference.

(3) Neutrals

(a) The Chief Judge shall determine the responsibilities and qualifications of

neutrals to be provided by the program and shall approve the neutrals selected for the program. The supervising judge, if one is appointed, or program director will assign neutrals for individual cases.

(b) A neutral shall not act in any other capacity in the case.

(4) Abeyance of Appeal

(a) (i) On assignment of a case to the program, the court will hold preparation of the transcript (including correcting it or adding to it), preparation of the record, and briefing, in abeyance for a period of 120 days after the date of the notice of assignment of the case to the program. During that time, a party to the appeal may file an amended designation of record. A party wishing to hold in abeyance any other aspect of the appeal or seeking an extension of time to complete any other task required by law or by the Oregon Rules of Appellate Procedure must file an appropriate motion with the court.

(ii) At the end of the 120-day abeyance period, if the parties have engaged in settlement negotiations and need more time to reduce the settlement to writing or to implement a settlement, any party may request the program director to order, and the program director may order, an extension of the abeyance period for up to 60 days. If all parties to an appeal agree to an extension for longer than 60 days, the program director may extend the abeyance period for as long as reasonably necessary to implement a settlement.

(b) If a respondent files a motion to dismiss the appeal or an appellant files a motion to stay enforcement of the judgment when the case is being held in abeyance, in addition to serving a copy of the motion on all other parties to the appeal, the party shall serve a copy of the motion on the program director accompanied by a letter of transmittal stating whether the party prefers that the motion be decided before the case proceeds in the program. The program director may direct that the case proceed in the program or may terminate the referral. If the program director terminates the referral, the case may be re-referred to the program after the court disposes of the motion to stay enforcement or denies the motion to dismiss.

(c) The program director may reactivate a case held in abeyance at any time:

(i) On the program director's own motion; or

(ii) On motion of a party showing good cause for reactivating the appeal. In addition to serving a copy of the motion on all other parties to the appeal, a party filing a motion to reactivate shall serve a copy of the motion on the program director.

(5) Submission of Information

The parties may be required to submit information to facilitate the screening of cases for the program or the program settlement conference. The parties shall submit this information in a timely manner to the program director or the neutral as designated in the request. Each party also shall submit the requested information to the other parties, with the exception of material that is designated by the party as confidential, which shall be treated by the program director or the neutral as confidential pursuant to subsection (6) of this rule.

(6) Confidentiality

(a) ~~Program settlement conferences are subject to ORS 36.210 to 36.238. Program communications made from the assignment of an appeal to the program through the reactivation and removal of that appeal from the program are confidential.~~ The Appellate Settlement Conference Program is a "mediation program," as defined in ORS 36.110(8), and the provisions of ORS 36.100 to 36.238 apply to the program, including the provisions of ORS 36.220 providing that "mediation communications," as defined in ORS 36.110(7), are confidential. For purposes of the program, "mediation," which is defined in ORS 36.110(5), begins when an appeal is referred to the program and ends when the program director removes the appeal from the program, or when the court dismisses the appeal, whichever occurs first.

(b) All materials submitted to the supervising judge or to the neutral and all materials created by the supervising judge or the neutral that pertain to a program settlement conference and are not a part of the record on appeal shall be maintained separately from the record of the case. These materials shall not be subject to disclosure, except as the law may require or as the parties and the supervising judge may all agree. The materials referred to in this paragraph shall be destroyed at the time and in the manner prescribed by the policy adopted by the program director pursuant to the Task Force on Records Retention.

(c) The supervising judge or program director may request the parties or the neutral or both to provide oral and written evaluations of the case settlement process. The materials referred to in paragraph (6)(b) of this rule, and oral and written evaluations of the case settlement process, may be used to evaluate the program. Any evaluation of the program, whether disseminated to the appellate courts or to the public, shall not disclose specific case identifying information.

(7) Appellate Settlement Conference Program Fees

(a) For the purposes of this paragraph, multiple parties who are represented by the same attorney or attorneys shall be deemed to be a single party. Except as provided in paragraph (d) of this subsection, each party to the appeal who participates in the program shall pay the initial program fee prescribed in this subsection. Each party shall pay the initial program fee directly to the neutral or, if instructed by the program director, to the State Court Administrator. Except as provided in paragraph (f) of this subsection, each party shall pay the initial program fee no later than the date of the first settlement conference. Unless otherwise agreed to by the parties, the neutral, and the program

director, each party to a general civil or domestic relations appeal must pay an initial program fee of $350, and each party to a workers' compensation appeal must pay an initial program fee of $150. In all other appeals, the parties, neutral, and program director shall agree on the fees.

(b) (i) The initial program fee shall cover up to one hour of neutral preparation time and up to five hours of settlement conference time whether or not the settlement conference involves more than one session.

(ii) In unusual cases, if the neutral reasonably needs more than one hour of preparation time, the neutral may contact the program director and the program director may contact the parties to discuss whether to exclude the additional preparation time from the initial program fee.

(iii) If the parties agree to extend the settlement conference beyond the initial five hours, the parties shall compensate the neutral for any additional time that is expended and recorded by the neutral, with the total cost of the additional time being shared equally by the parties. The rate shall be $150 per hour, unless otherwise agreed to by the parties, the neutral, and the program director.

(c) If an individual or entity who is not a party to the appeal participates in the settlement conference as part of an attempt to reach a global resolution of a dispute or disputes outside the scope of the appeal but involving some or all of the parties to the appeal, the program director may require each such individual or entity to pay the program fees prescribed in paragraph (a) of this subsection.

(d) The Chief Judge or the Chief Judge's designee may waive or defer payment of program fees on motion of a party based on a showing that the party is financially unable to pay the fees without substantial economic hardship in providing basic economic necessities to the party or the party's dependent family. If liability for payment of a party's share of program fees is waived or deferred, that party's portion of program fees shall be paid by the program from funds appropriated for that purpose.

(e) When a settlement conference is conducted by a neutral, an administrative law judge, "Plan B" retired judge, or other person who does not accept a fee for the services, the parties shall make the program fees payable to the State Court Administrator, reference the case name and number, and mail it to: Appellate Settlement Conference Program, 1163 State Street, Salem, OR 97301-2563.

(f) A party whose program fees are deferred and who has not paid the fees by the conclusion of the settlement conference shall remain liable for the unpaid fees, unless the fees are waived following completion of the settlement conference. If a party's program fees have been paid by the program and the party thereafter pays the fees, the fees shall be paid to the program as provided in paragraph (e) of this subsection.

(8) Actions Are Not Reviewable

Except as necessary to decide a motion for sanctions under subsection (9) of this rule, the actions of a neutral, a program director, or a supervising judge shall not be reviewed by the Court of Appeals or by the Supreme Court.

(9) Sanctions

At the request of the program director, the court may impose sanctions against a party, or counsel for a party, or both, for the failure of the party, or counsel, or both to perform any act required by this rule or by the written policies of the Appellate Settlement Conference Program. Sanctions include but are not necessarily limited to monetary assessments and dismissal of the appeal.

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See ORS 2.560(3).

Rule 16.03
APPLICABILITY

These rules apply to electronic filing in the Oregon Court of Appeals and the Oregon Supreme Court. At this time, only ~~attorneys who are~~ members of the Oregon State Bar ~~and are authorized to practice law in Oregon~~ are eligible to file documents electronically.

Rule 16.10
eFILERS

(1) Authorized eFilers

(a) Any member of the Oregon State Bar ~~who is authorized to practice law~~ may register to become an eFiler.

(b) To become an eFiler, an attorney must complete a registration form to request a username and must complete a training program, either online or in person, regarding the appellate court eFiling system. Links to the registration form and to the online training program are available at Appellate eFiling. An attorney who has been assigned a username, has created a password, and has completed training may eFile documents with the appellate courts.

(2) Conditions of Electronic Filing

(a) To access the eFiling system, each eFiler agrees to and shall

(i) review the technical requirements for electronic filing at Appellate eFiling FAQs;

(ii) register for access to the eFiling system;

(iii) comply with the electronic filing terms and conditions when using the eFiling system;

(iv) furnish required information for case processing;

(v) advise the Oregon Judicial Department Enterprise Technology Services Division of any change in the eFiler's email address.[1]

(b) An eFiler's username and password may be used only by the attorney to whom the username and password were issued or by an employee of that attorney's law firm or office or by another person authorized by that attorney to use the username and password.

(c) The appellate court may suspend the electronic filing privileges of an eFiler if the court becomes aware of misuse of the eFiling system or of the eFiler's username and password.

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[1] Use the form located on the Judicial Department's website, at the following address: <https://www.courts.oregon.gov/services/online/Pages/appellate-eFile-support.aspx>.

An eFiler should allow two business days for processing the update. Once the update is made, it becomes effectively immediately. This obligation is independent from the obligation of Oregon lawyers to notify the Oregon State Bar when the lawyer's email address changes.

Rule 16.15
FORMAT OF DOCUMENTS TO BE FILED ELECTRONICALLY

(1) Any document filed via the eFiling system must be in a Portable Document Format (PDF) or Portable Document Format/A (PDF/A) that is compatible with the eFiling system requirements and that does not exceed 25 megabytes. An eFiler should break down a document that exceeds the size limit into as few smaller separate documents as possible, which the filer may upload as supporting documents under subsection (5) of this rule.[1] Unless the PDF document is a pro se supplemental brief filed under ORAP 5.92, the ~~The PDF~~ document shall allow text searching and shall allow copying and pasting text into another document.

(2) A submitted document, when viewed in electronic format and when printed, shall comply, to the extent practicable, with the formatting requirements of any applicable Oregon Rule of Appellate Procedure. Except as provided in ORAP 16.40**,** a document submitted for electronic filing need not contain a physical signature.

(3) An eFiler who submits a document that does not comply with an applicable

Oregon Rule of Appellate Procedure will receive from the court an acknowledgement of the electronic filing and a notice of the deficiency or deficiencies to be corrected.[2]

(4) The court may require that an eFiler submit, in the manner and time specified by the court, an electronic version of a document in its original electronic format.

(5) Except as provided in subsection (1) and paragraphs (5)(a) through (c) of this rule, to the extent practicable, an electronic filing must be submitted as a unified single PDF file, rather than as separate eFiled documents or as a principal eFiled document with additional supporting documents attached through the eFiling system.[3]

(a) The following documents must be submitted as supporting documents through the eFiling system:

(i) One or more parts of an eFiled document that exceeds the size limit set out in subsection (1) of this rule, as a supporting document to the initial eFiled document.

(ii) A memorandum of law accompanying a petition in a mandamus, habeas corpus, or quo warranto proceeding in the Supreme Court under ORAP 11.05 or ORAP 11.20, as a supporting document to the eFiled petition.

(b) For an electronic filing containing an attachment that is confidential or otherwise exempt from disclosure, the eFiler must eFile the attachment separately from the principal document, not as a supporting document attached through the eFiling system. For the principal document, the eFiler must include a comment that the related eFiling is a confidential attachment to the principal document. For the eFiled attachment, the eFiler must select the document name "Notice to Court Confidential Attachment."

(c) For an electronically filed motion seeking approval to file another document, including an application to appear *amicus curiae* with an accompanying brief, where the eFiler intends to submit the brief or other document for filing at the same time, the brief or other document must be electronically filed separately from the motion seeking approval or application to appear *amicus curiae*, rather than being submitted as a supporting document attached to the motion. For each electronic filing transaction under this paragraph, the eFiler must include the following comments:

(i) For the motion seeking approval or application to appear *amicus curiae*, a comment that the eFiler is submitting the brief or other document through a separate eFiling transaction; and

(ii) For the brief or other document, a comment that the electronic filing transaction relates to the earlier electronic filing transaction that submitted the motion or application to appear *amicus curiae*.

(6) An eFiled document may not contain an embedded audio or video file.

(7) Unless otherwise provided by these rules or directed by the court, an eFiler shall not submit to the court paper copies of an eFiled document.

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[1] *See* Appellate eFiling FAQ for more information about the technical requirements of eFiling: <https://www.courts.oregon.gov/services/online/Pages/appellate-faq.aspx>.

[2] *See* ORAP 1.20.

[3] Examples of content that should be included as part of a unified single PDF file include: (1) notice of appeal, judgment being appealed, and certificate of service; (2) petition for judicial review, agency order as to which review is sought, and certificate of service; (3) petition for reconsideration, underlying decision as to which reconsideration is sought, and certificate of service; (4) petition for review, Court of Appeals decision as to which review is sought, and certificate of service; (5) motion, affidavit or declaration (if any) and certificate of service; (6) Supreme Court mandamus or habeas corpus petition, copy of order or written decision, and certificate of service; (7) Supreme Court memorandum in support of a mandamus or habeas corpus petition, excerpt of record, and certificate of service.

Rule 16.30
CONVENTIONAL FILING REQUIREMENTS

(1) The following documents must be conventionally filed:

(a) A document filed under seal, including a motion requesting that a simultaneously filed document be filed under seal or a document with an attachment that is sealed by statute or court order.

(b) An oversized demonstrative exhibit or oversized part of an appendix or excerpt of record. Such a document must be filed within three business days of eFiling the document to which the oversized document relates. An eFiler may note, in the "comments" section of the eFiling screen, that an oversized appendix or excerpt of record will be filed conventionally.

~~(c) An opinion of a trial panel of the Disciplinary Board filed with the State Court Administrator under Bar Rule of Procedure 10.1.~~

(2) An eFiler who is not a lawyer of record for a party in a case must conventionally file any document in any case that is confidential by law or court order.

(a) The conventional filing requirement in this subsection applies to a lawyer for a person or entity appearing as amicus curiae.

(b) The Administrator is authorized to develop a means of electronic

transmission for the filing of a notice of appointment of counsel in a confidential case, for the purpose of documenting a lawyer of record on the case.

(3) The following documents may be conventionally filed or eFiled:

(a) A notice of appeal, petition for judicial review, cross-petition for judicial review, or petition under original Supreme Court or Court of Appeals jurisdiction.[1]

(b) A request or motion for waiver of the mandatory eFiling requirement, as set out in ORAP 16.60(2). If the request is approved or the motion granted, then the approval or order filed in a case under ORAP 16.60(2)(c) or (d), and any document subject to that approval or order may be conventionally filed.

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[1] ORS 19.260 ~~ORS 19.260(1)~~ provides that the filing of a notice of appeal may be accomplished by mail or commercial delivery service; ORS 19.260(4) provides that, except as otherwise provided by law, subsection (1) applies to petitions for judicial review, cross-petitions for judicial review, and petitions under original jurisdiction of the Supreme Court or Court of Appeals.

APPENDIX 3.33-1

Illustration for ORAP 3.33(4)(c~~b~~) and ORS 19.370

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

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

CERTIFICATE OF PREPARATION
AND SERVICE OF TRANSCRIPT

I certify that I prepared ~~:~~

~~All of the transcript designated as part of the record for this appeal. [or]~~

~~T~~these parts of the transcript designated as part of the record for this appeal: ~~[List the dates of all proceedings transcribed, the volume number of the transcript(s), and the page~~

~~numbers specific to each transcript.]~~

Volume #	Date	Page #s

I certify that the original of this Certificate was filed with the Appellate Court Administrator and copies were served on the trial court administrator and transcript coordinator on [date].

I certify that on [date] a copy of the transcript or part thereof prepared by me and a copy of this Certificate were served on:

[name and address of each person served]

[Date]

_____
Court Reporter or Transcriber

APPENDIX 3.33-2

Illustration for ORAP 3.33(4)(d~~e~~)

IN THE COURT OF APPEALS OF THE STATE OF OREGON

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

CERTIFICATE OF FILING OF TRANSCRIPT

I certify that I prepared ~~:~~

~~All of the transcript designated as part of the record for this appeal. [or]~~

~~T~~ these parts of the transcript designated as part of the record for this appeal:

Volume #	Date	Page #s

~~_____.~~

The transcript is now settled.

I certify that on _____[date]_____ the transcript or part thereof prepared by me was filed with the Appellate Court Administrator in electronic form in the form required by ORAP 3.35(2).

I certify that on __[date]__ a copy of this Certificate was served on:

[name and address of each person served]

[Date]

_____
Court Reporter or Transcriber