OREGON RULES OF APPELLATE PROCEDURE

SUPREME COURT and COURT OF APPEALS

Permanent Amendments Effective January 1, 2019

Also includes:

CJO 18-04, CJO 18-057 / CJO 18-05, and CJO 18-083 / CJO 18-08,
Orders Adopting Temporary Amendments
effective January 1, 2019, through December 31, 2020;

CJO 19-016 / CJO 19-02, Order Adopting Temporary Amendment to ORAP 4.20
effective April 15, 2019, through December 31, 2020;

CJO 19-052 / CJO 19-05, Order Adopting Temporary Amendments effective October 7, 2019,
through December 31, 2020.

OJD Publications Section
1163 State Street
Salem, Oregon 97301-2563

Effective October 7, 2019
Hyperlinks corrected and cover page amended February 5, 2020

This page left blank intentionally.

TABLE OF CONTENTS

Oregon Rules of Appellate Procedure

FEES

1. GENERAL RULES

2. NOTICE OF APPEAL

3. RECORD ON APPEAL

4. JUDICIAL REVIEW OF ADMINISTRATIVE AGENCY PROCEEDINGS

A. Generally

B. Judicial Review of Certain Land Use Decisions

6. SUBMISSION OF CASES AND ORAL ARGUMENT; RECONSIDERATION IN COURT OF APPEALS

7. MOTIONS

8. MISCELLANEOUS RULES

9. PETITION FOR REVIEW AND RECONSIDERATION IN SUPREME COURT

10. SPECIAL COURT OF APPEALS RULES

11. ORIGINAL PROCEEDINGS IN THE SUPREME COURT

12. SPECIAL SUPREME COURT RULES

13. COSTS AND DISBURSEMENTS, ATTORNEY FEES, AND DAMAGES

14. APPELLATE JUDGMENT

15. APPELLATE SETTLEMENT CONFERENCE PROGRAM

16. FILING AND SERVICE BY ELECTRONIC MEANS

APPENDICES

FILING FEES
in the
Supreme Court and Court of Appeals
of the State of Oregon

FILING FEES

The Oregon Legislature may modify filing fees between publication dates of the Oregon Rules of Appellate Procedure. Confirm current filing fees on the Judicial Department's website, currently the following page:
<https://www.courts.oregon.gov/courts/appellate/rules/Pages/cases.aspx>

This page left blank intentionally.

1. GENERAL RULES

Rule 1.05
SCOPE OF RULES

These rules apply to all proceedings in the Supreme Court and Court of Appeals.

Rule 1.10
CITATION TO APPELLATE RULES; EFFECTIVE DATE; TEMPORARY AMENDMENTS AND RULES

(1) These rules shall be cited as ORAP.

(2) The effective date of any amendment to or new rule of the Oregon Rules of Appellate Procedure shall be January 1 of the year following the adoption of the amendment or new rule. The rules as amended shall apply to any thing filed or time period commenced in the appellate courts on or after the effective date of the amendment or new rule. The superseded rules shall apply to any thing filed or time period commenced in the appellate courts before the effective date of any amendment or new rule.[1]

(3) Notwithstanding subsection (2) of this rule, the appellate courts may adopt one or more temporary rules or temporary amendments to existing rules. Unless otherwise indicated in the order adopting the temporary rule or temporary amendment, the effective date of the rule or amendment shall be the date of the order, and the rule or amendment shall expire on the effective date of the next regularly adopted amendments to the Oregon Rules of Appellate Procedure.[2]

---

[1] These rules were last regularly amended effective January 1, 2019.

[2] A temporary new rule or temporary amendment to an existing rule will be published in the *Oregon Appellate Courts Advance Sheets* and on the Oregon Rules of Appellate Procedure page on the Judicial Department's website: <https://www.courts.oregon.gov/courts/appellate/rules/Pages/orap.aspx>

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.

---

[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, 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 1.20
ADMINISTRATIVE AUTHORITY TO REFUSE FILINGS; SANCTIONS FOR FAILING TO COMPLY WITH RULES; WAIVER OF RULES

(1) The Administrator may refuse to file any thing delivered for filing that does not comply with these rules or applicable statutes.

(2) The court on its own motion or on motion of a party may strike, with or without leave to refile, any brief, excerpt of record, motion or other thing that does not conform to applicable statutes or these rules.

(3) If a party responsible for causing a transcript to be prepared and filed fails to do so, after notice and opportunity to cure the default, the court may direct that the appeal proceed without the transcript. If the court directs that the appeal proceed without the transcript and the party is the appellant, the appellant shall file a statement of points relied on.[1]

(4) The court on its own motion or on motion of a party may dismiss an appeal for want of prosecution if:

(a) the appellant has failed to comply with applicable statutes or these rules;

(b) fourteen days' notice of the noncompliance has been given to each attorney of record and to parties not represented by counsel; and

(c) the court has not received a satisfactory response to the notice.

(5) For good cause, the court on its own motion or on motion of any party may waive any rule.

---

[1] *See* ORS 19.250(1)(e).

Rule 1.25
COMPUTATION OF TIME

(1) In computing any period of time prescribed or allowed by these rules or order of the court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless that day is a Saturday, a legal holiday (including Sunday), or a day or part of a day on which the court is closed for the purpose of filing documents, closed to the extent ordered by the Chief Justice, or closed before the end of normal working hours during which documents may be filed. In any of those events, the period runs until the end of the next day the court is open.

(2) When the period of time prescribed or allowed relates to serving a public officer

or filing a document at a public office, and if the last day falls on a day when that particular office is closed before the end of or for all of the normal work day, the last day shall be excluded in computing the period of time within which service is to be made or the document is to be filed, in which event the period runs until the close of office hours on the next day the office is open for business.

(3) When a party intends to file by mail a brief or other thing, other than a notice of appeal or other document subject to ORS 19.260, and the brief or other thing is due on a date that all local United States Postal Service facilities unexpectedly are closed in whole or in part, the party filing the brief or other thing shall have until the next day that United States Postal Service facilities are open to file the brief or other thing.

(4) As used in this rule, "legal holiday" means legal holiday as defined in ORS 187.010 and ORS 187.020.

(5) The normal work day of the Appellate Court Records Section is 8:00 a.m. to 5:00 p.m.

_____

See ORS 174.120 and ORCP 10 A.

Rule 1.30
LITIGANT CONTACT INFORMATION

(1) In these rules, "litigant contact information" means the name, bar number, address, telephone number, and email address of the attorney(s) for each party, identifying the party or parties appearing jointly that each attorney represents, and the name, mailing address, and telephone number of each self-represented party.

(2) If, pursuant to law or order of the court, a party's address or telephone number, or both, are not subject to public disclosure, the party submitting a document for filing must provide alternative contact information that the Administrator may make available for public inspection and for purpose of service under ORAP 1.35(2). The Administrator will not make the party's actual telephone number or address available for public inspection.

Rule 1.32
OUT-OF-STATE ATTORNEY AND SELF-REPRESENTED PARTY CONTACT INFORMATION; CHANGES IN CONTACT INFORMATION FOR ATTORNEY, OUT-OF-STATE ATTORNEY, AND SELF-REPRESENTED PARTY

(1) An out-of-state attorney who appears by brief or argues the cause under ORAP 6.10(4) or ORAP 8.10(4) and any self-represented party must provide the court with the address for that attorney or party.

(a) An out-of-state attorney also may consent to receive court notifications by email by providing an email address to the court.

(b) A self-represented party who consents to receive court notifications by email must provide the court with an email address and

(i) include a statement of consent to receive electronic notifications from the court in the party's initial filing in the cause; or

(ii) file a notice of consent to receive electronic notifications from the court.

(c) A self-represented party who has consented to receive electronic notifications from the court under paragraph (b) of this subsection may revoke that consent by notifying the court that the party's email address should no longer be used and that all court notifications should be sent to the party by conventional mail.

(d) An out-of-state attorney or self-represented party who provides the court with an address or email address under subsection (1) of this rule must notify the court of a change of address or email address.[1]

(2) If an attorney for a party files a change of address with the Oregon State Bar or if an out-of-state attorney or a self-represented party notifies the court of a change of mailing or email address in writing or otherwise, the attorney or party must inform all other parties to the cause of the change or mailing or email address within seven calendar days.

---

[1] *See also* ORAP 16.10(2)(a)(v), regarding updated email address for an Oregon State Bar member who is a registered user of the appellate electronic filing system.

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.

---

[1] At this time, only 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).

[5] *See, e.g.*, ORS 183.482(2), relating to cases arising under the Administrative Procedures Act, 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]

---

[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) regarding the signing of notices of appeal in civil cases, and ORAP 5.05(3)(e) regarding the signing of briefs.

Rule 1.45
FORM REQUIREMENTS

(1) Any document intended for filing with an appellate court must be legible and include:

(a) A caption containing the name of the court; the case number of the action, if one has been assigned; the title of the document; and the names of the parties displayed

on the front of the document.

(b) The name, address, and telephone number of the party or the attorney for the party, if the party is represented.

(2) As provided in ORAP 1.35(1)(a)(v), the caption of a corrected or amended filing must prominently display the word "CORRECTED" or "AMENDED," as applicable, and the entire corrected or amended document must be filed with the court.

(3) Except as otherwise provided in ORAP 5.05, parties may prepare any document to be filed in the appellate court using either uniformly spaced type (such as produced by typewriters) or proportionally spaced type (such as produced by commercial printers and many computer printers). Uniformly spaced type must not exceed 10 characters per inch (cpi) for both the text of the thing filed and footnotes. If proportionally spaced type is used, it must not be smaller than 13 point for both the text of the thing filed and footnotes. This subsection does not apply to the record on appeal or review.

(4) Parties conventionally filing any document in the appellate courts are:

(a) Encouraged to print on both sides of each sheet of paper of the document being filed.

(b) Required to use recycled paper if recycled paper is readily available at a reasonable price in the party's community. Further, parties are encouraged to use paper containing the highest available content of post-consumer waste, as defined in ORS 459A.500(3), that is recyclable in the office paper recycling program in the party's community. The court will not decline to accept any filing on the ground that the filing does not comply with paragraph (a) or (b) of this subsection.[1]

(c) Prohibited from using color highlighting on any part of the text.

[1] See ORS 7.250.

2. NOTICE OF APPEAL

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.

---

[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; *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 2.10
SEPARATE NOTICES OF APPEAL

(1) If the trial court consolidated two or more cases, a party must file a separate notice of appeal in each case in which the party seeks to appeal the judgment. The Administrator will decide whether to place the notices of appeal in the same appellate file, but the appellant may state in each notice of appeal a preference that the Administrator place them in the same appellate file or assign them separate appellate case numbers. If the Administrator assigns separate appellate case numbers to each notice of appeal, any party to either appeal may move to consolidate the appellate cases.

(2) After a party has filed a notice of appeal from a decision in a trial court case, if another party files a notice of appeal from a decision in the same trial court case, the Administrator may place the subsequent notice of appeal in the same appellate file as the first notice of appeal or may assign a new appellate case number to the subsequent notice of appeal, subject to the following:

(a) When the Administrator has placed a subsequent notice of appeal in the

same appellate case file, any party may move the court to sever the case and for assignment of a new appellate case number to the subsequent notice of appeal.

(b) When the Administrator has assigned a new appellate case number to a subsequent notice of appeal, any party to either appeal may move to consolidate the appellate cases.

(3) With respect to violation or infraction cases initiated by citations and heard by the trial court at the same time, one notice of appeal identifying the judgment or judgments being appealed is sufficient.

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.

---

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

[2] *See generally* ORS 21.010(1). *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 2.20
APPEAL FROM SUPPLEMENTAL JUDGMENTS ON COSTS AND ATTORNEY FEES AFTER NOTICE OF APPEAL FILED

(1) If the trial court enters a supplemental judgment awarding attorney fees or costs and disbursements under ORCP 68 C(5)(b) after the notice of appeal has been filed, and if the appellant intends to challenge the supplemental judgment on appeal, the appellant, within 30 days after entry of the supplemental judgment, shall serve and file an amended notice of appeal from the supplemental judgment.

(2) If the trial court enters a supplemental judgment disallowing, in whole or in part, any request for attorney fees or costs and disbursements after the notice of appeal has been served, and if a respondent intends to challenge the supplemental judgment on appeal:

(a) If that respondent has, before entry of the supplemental judgment, timely filed notice of cross-appeal, that respondent, within 30 days after entry of the supplemental judgment, shall serve and file an amended notice of cross-appeal from the supplemental judgment.

(b) If that respondent has not, before entry of the supplemental judgment, timely filed notice of cross-appeal, that respondent, within 30 days after entry of the supplemental judgment, shall serve and file a notice of cross-appeal.

See generally ORS 19.270(1)(a) and ORS 20.220.

Rule 2.22
APPEALS IN JUVENILE CASES

(1) For any eFiled document in any juvenile dependency case that must be served on the parties to the appeal under ORAP 1.35:

(a) The party filing the document must use the "notification information" function of the appellate courts' eFiling system to notify the attorney for any person who was a party under ORS 419B.875(1)(a)(A)-(C), (H), or ORS 419B.875(1)(b) to the case in the juvenile court from which the appeal was taken, when

(i) that person was not designated in the notice of appeal as a party to the appeal; and

(ii) that person has not filed a notice of intent to participate on appeal under ORAP 2.25(3).

(b) The notification sent to an attorney under subsection (a) will notify that attorney that the document has been eFiled, but will not permit the attorney to view the document, due to security that applies to juvenile cases in the eFiling system. The notification does not operate as service.[1] The attorney may access the document through the appellate courts' remote electronic access system, if the attorney has juvenile case permissions in that system.

(c) The certificate of service for a document eFiled must contain proof of the notification required by this subsection.

(2) If an appeal is pending from an order or judgment of a juvenile court, the juvenile court enters a subsequent appealable order or judgment, and a party to the juvenile court case wishes to appeal from the subsequent order or judgment:

(a) If the party who wishes to appeal is the appellant in the pending appeal, the appellant shall serve and file an amended notice of appeal from the subsequent order or judgment.

(b) If the party who wishes to appeal is the cross-appellant in the pending appeal, the cross-appellant shall serve and filed an amended notice of cross-appeal from the subsequent order or judgment.

(c) If the party who wishes to appeal is any other party to the case, that party shall file a notice of appeal from the subsequent order or judgment.

(d) Any such notice of appeal, amended notice of appeal, or amended notice of cross-appeal shall contain the appellate case number of the pending appeal and shall be served and filed within 30 days after entry of the subsequent order or judgment.[2]

(3) This subsection applies to a motion for relief from an order or judgment filed in juvenile court under ORS 419B.923 during the pendency of an appeal.

(a) If the copy of the motion required to be served on the appellate court is not entitled "MOTION FOR RELIEF FROM ORDER OR JUDGMENT UNDER ORS 419B.923," the copy shall be accompanied by a letter of transmittal identifying the motion as a motion for relief under ORS 419B.923.

(b) Any party to the appeal may request the appellate court to hold the appeal in abeyance pending disposition of the motion or allow the appeal to go forward. In the absence of a request from a party, the court on its own motion will review the motion for relief from judgment and decide whether to hold the appeal in abeyance. If the court does not order the appeal to be held in abeyance, the appeal will go forward.

(c) If the appellate court holds an appeal in abeyance pending disposition of a motion for relief from order or judgment and subsequently the court receives a copy of the juvenile court's order deciding the motion, after expiration of the period within which an appeal from the order may be filed, the appellate court will decide whether to reactivate the case or take other action.

(d) A party wishing to appeal an order deciding a motion for relief from order or judgment under ORS 419B.923 during the pendency of an appeal shall file a notice of appeal within the time and in the manner prescribed in ORS chapter 19. The notice of appeal as filed shall bear the same appellate case number assigned to the original notice of appeal.

(4) At the request of a party to a juvenile case or on the court's own motion, the Chief Judge may refer the case to the Appellate Settlement Conference Program under ORAP 15.05.

---

[1] *See* ORAP 16.45.

[2] *See* ORS 419A.205.

See ORAP 10.15 regarding expediting dependency cases.

See ORAP 7.50 regarding summary affirmance in juvenile cases.

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.

---

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

[2] *See* ORS 109.319 (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 2.30
CONSOLIDATION

The appellate court, on motion of a party or on its own motion, may consolidate cases for purposes of appeal. Any party may file an objection to another party's motion for consolidation within 14 days after the filing of the motion. The appellate court, on motion of a party or on its own motion, may consolidate cases for oral argument, whether or not the cases have been consolidated for appeal.

Rule 2.35
SUMMARY DETERMINATION OF APPEALABILITY AND EXPEDITED SUPREME COURT REVIEW

(1) As used in this rule, "decision" means any oral or written ruling of a circuit court or the Tax Court.

(2) The Supreme Court in a direct appeal of a decision to that court and the Court of Appeals in an appeal of a decision to that court may make a summary determination of whether the decision is appealable.

(3) (a) If the court makes a summary determination of appealability, the order or opinion expressing the court's determination shall expressly state that the determination is a summary determination under ORS 19.235(3). The order or opinion also shall contain a notice informing the parties that the order or opinion is a summary determination of appealability under ORS 19.235(3), that the determination is subject to review or reconsideration by the Supreme Court, that the petition for review shall be filed within 14 days after the order or opinion or such shorter time as may be ordered by either court and that the Supreme Court will expedite its consideration of the petition.

(b) If an appellate determination of appealability does not expressly state that it is a summary determination of appealability under ORS 19.235(3), then the determination is not subject to ORS 19.235(3) or this rule.

(4) Unless a shorter period of time is ordered by the Court of Appeals or the Supreme Court, a petition for review of a summary determination by the Court of Appeals or a petition for reconsideration of a summary determination by the Supreme Court shall be filed within 14 days after the date of the appellate court's determination. The caption of the petition shall prominently display the words "Expedited Summary Determination of Appealability Pursuant to ORAP 2.35(4)." The Supreme Court shall expedite its consideration of a petition for review or reconsideration of a summary determination of appealability.

(5) If the appellate court has determined that the decision is not appealable and has dismissed the appeal, and the opportunity for review or reconsideration of that determination as provided in this rule has been exhausted or has expired, the Administrator shall immediately issue the appellate judgment.

_____

See generally ORS 19.235.

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."

(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 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.

---

[1] *See* ORS 138.005(3) defining "colorable claim of error." *See* Appendix 2.40 for illustrations of colorable claims of error.

Rule 2.45
SUMMARY DETERMINATION OF AUTHORITY TO DECIDE ACTION AGAINST PUBLIC BODY

(1) Referral to Court of Appeals of Question of Authority to Decide Case

(a) This subsection applies to an action or other proceeding against a public body when a circuit court or other tribunal refers the question of its legal authority to decide the case pursuant to ORS 14.165.

(b) The court or other tribunal shall:

(i) Issue a referral order entitled "REFERRAL ORDER PURSUANT TO ORS 14.165" stating the nature of the question of authority to decide the action or proceeding that has arisen, briefly summarizing the parties' contentions, and, if time is of the essence, identifying the date by which the court or other tribunal requests that the matter be decided.

(ii) Transmit the referral order and the record to the Court of Appeals through the Administrator, and send a copy of the referral order to each party.

(c) Any party wishing to address in the Court of Appeals the question of which court or other tribunal, if any, has authority to decide the action or proceeding may file a memorandum addressing the question. Any such memorandum shall be in the form prescribed in ORAP 7.10 for motions generally, shall not exceed 10 pages without leave of the court, and shall be served and filed within 21 days after the date of receipt by the Court of Appeals of the referral order.

(d) The Court of Appeals will decide the question as provided in ORS 14.165(5) summarily and as expeditiously as practicable, and will endeavor to decide the question by the date, if any, identified in the referral order.

(e) The Court of Appeals will issue an order communicating its decision to the parties and to the court or other tribunal that referred the question. If the Court of Appeals decides that another court or other tribunal has authority to decide the case, the Court of Appeals will enter a transfer order and send a copy of the order to each party. Pursuant to ORS 14.165(8), the person who filed the action or proceeding must comply with the provisions of ORS 14.165(8) to accomplish the transfer. At the request of the court or other tribunal to which the case has been transferred, the Court of Appeals will transmit the record to the court or other tribunal.

(f) No filing fee or first appearance fee is due for a referral to the Court of Appeals for a summary determination under ORS 14.165 of the question of authority to decide a case.

(2) Court of Appeals Determination that it is the Correct Forum

On referral of a question to the Court of Appeals under ORS 14.165(1)(b) or (3), if the Court of Appeals decides that it is the appropriate court to decide a case referred to it:

(a) The Administrator will assign the case a regular appellate case number.

(b) The Court of Appeals will enter an order stating its determination that it is the appropriate court to decide the case and identifying any actions that a party must take to perfect the case. On entry of the order, the case will be deemed to have been transferred to the Court of Appeals.

(c) For the purpose of determining the next event in the appellate process, the case will be deemed to have been filed in the Court of Appeals as of the date of entry of the order referred to in paragraph (2)(b) of this rule.*

(d) The appellant or petitioner shall pay the appellate court filing fee within 10 days after the date of entry of the order of the Court of Appeals or such additional time as the court may allow. Any respondent shall pay the respondent's first appearance fee on the respondent's first appearance thereafter.

(3) Transfer of Case to the Court of Appeals

(a) If the circuit court determines pursuant to ORS 14.165(1)(a) that the Court of Appeals is the court authorized by law to hear an action or proceeding against a public body and transfers the case to the Court of Appeals, the person who filed the action or proceeding must comply with ORS 14.165(8).

(b) When the person who filed the action or proceeding files a copy of the transfer order with the Administrator, the Administrator will assign a case number to the case. For the purpose of determining the next event in the appellate process, the case will be deemed to have been filed in the Court of Appeals on the day of filing of a copy of the circuit court's transfer order.*

(c) The person filing the action or proceeding shall pay the appellate filing fee at the same time as filing a copy of the transfer order or within such additional time as may be allowed by the Court of Appeals. Any respondent shall pay the respondent's first appearance fee on the respondent's first appearance thereafter.

(d) The Court of Appeals will give a party notice of any actions that the party must take to perfect the case in the Court of Appeals.

---

* Regardless of the date that the case is deemed filed in the Court of Appeals for the purpose of determining the next event in the appellate process, *see* ORS 14.165(6) and (7) regarding determining the timeliness of the filing of the action or proceeding.

See generally ORS 14.165. *See* ORS 14.165(10) for a definition of "public body" and "tribunal."

With respect to cases subject to referral to the Court of Appeals under ORS 34.102(5), *see* ORAP 4.74.

3. RECORD ON APPEAL

Rule 3.05
TRIAL COURT RECORD ON APPEAL; SUPPLEMENTING THE RECORD

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

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

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

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

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

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

---

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

Rule 3.07
INSPECTION OF CONFIDENTIAL AND SEALED MATERIALS, INCLUDING PRESENTENCE REPORTS IN CRIMINAL APPEALS

(1) If a trial court determines that the whole or a part of the trial court file or exhibits to be transmitted to the appellate court is not subject to inspection by one or more parties, by the attorney for any party, or by the public, and if the trial court is delivering the trial court file in paper form, the trial court shall place such material in a separate, sealed envelope labeled as follows:

(a) If the trial court determines that the material be subject to inspection only

by the parties or their attorneys, the trial court shall mark "confidential" on the envelope.

(b) If the trial court determines that the material not be subject to inspection by anyone, including any party or any party's attorney, the trial court shall mark "sealed" on the envelope.

(2) (a) In a criminal case, the presentence report is part of the record on appeal.

(b) After the notice of appeal is filed, upon request of counsel for either defendant or the state, the trial court shall cause a copy of the presentence report to be delivered forthwith to counsel, except that, if, pursuant to ORS 137.079, the trial court has excepted from disclosure any part of the presentence report, the trial court shall forward to counsel only those parts of the presentence report not excepted from disclosure, with an indication that other matter has been excepted from disclosure.

(c) When the appellate court requests the trial court to forward the trial court record, the trial court shall include the presentence report in a separate, sealed envelope marked "confidential."

(d) Any material excepted from disclosure under ORS 137.079 shall be placed in an envelope marked "sealed."

(e) The presentence report is not a public record and is not subject to inspection or disclosure to a party, a party's attorney, or the public except as provided in subsection (3) of this rule.

(3) (a) As to material other than a presentence report, upon request of a party or an attorney for a party, the Administrator shall permit the party or counsel to inspect material marked "confidential."

(b) As to a presentence report, upon request of counsel for either the defendant or the state, the Administrator shall permit the party's attorney to inspect the presentence report or any part thereof marked "confidential."

(4) The Administrator shall not permit any person to inspect "sealed" material, except on order of the trial or appellate court or pursuant to subsection (7) of this rule.

(5) If the Administrator declines a person's request to permit inspection of confidential or sealed material, the person may file a motion with the appellate court seeking leave to inspect the material. The appellate court may decide the motion itself or remand the motion to the trial court for a ruling.

(6) If the Administrator permits inspection of confidential or sealed material subject to restricted inspection under this rule, the Administrator shall note on the envelope the date of the inspection and the person who inspected the material.

(7) A judge of the appellate court, the judge's legal and administrative staff, and the appellate court's legal and administrative staff may open and inspect any confidential or sealed material as necessary to process or decide a matter pending before the court. If the material is contained in an envelope, the person inspecting confidential or sealed material shall note on the envelope the person's name and the date of the inspection.

(8) The provisions of this rule apply to the extent practicable and to the extent authorized by law to any material submitted to an appellate court when the appellate court determines that such material is not subject to inspection by a party, a party's attorney, or the public. The appellate court may designate material as not subject to inspection by a party, a party's attorney, or the public on its own motion or in response to a motion filed by any party.

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.

---

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

[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; an amended judgment specifying the amount of restitution to be paid by the defendant under ORS 137.105; 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.

---

[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.

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

Rule 3.20
TRIAL COURT FILE

(1) The trial court administrator shall prepare an index of the contents of the trial court file and shall securely fasten the index and file in a suitable cover or folder showing on the outside the title and trial court number of the case and the court and county from which the

appeal is taken. The index may consist of a printout of the computer case register showing next to each entry the page in the trial court file at which each item will be found.

(2) Pages shall be consecutively numbered at the bottom of the page, commencing with the bottom page of the trial court file. Each document shall be separately indexed, in chronological order, with the last filed document on the top.

_____

See ORS 19.005(7) and ORS 19.365(2).

Rule 3.25
EXHIBITS

(1) Exhibits designated as part of the record on appeal shall not be transmitted to the appellate court unless requested by the Administrator. The Administrator will request transmittal of documentary exhibits when it requests transmittal of the trial court file under ORAP 3.15(2), or sooner if requested by a party. The Administrator will request transmittal of a nondocumentary exhibit only if requested to do so by a party to the appeal or at the direction of the court. A party wishing to have one or more nondocumentary exhibits transmitted to the appellate court shall notify the Administrator by letter specifying the exhibit or exhibits to be transmitted. The letter shall be submitted to the Administrator no later than the date of filing of that party's brief and shall be copied to all other parties to the appeal.

(2) When the appellate court requests transmittal of documentary exhibits, the trial court administrator promptly shall transmit the documentary exhibits to the appellate court in a single envelope, so far as practicable, and shall note thereon or, if no envelope is used, on a separate list, the number and description of all exhibits being transmitted, with notations indicating those received and those not received in evidence.

(3) Notwithstanding a party's request for nondocumentary exhibits pursuant to subsection (1) of this rule, the trial court administrator need not transmit exhibits which are bulky, dangerous or difficult to transmit or store, such as machinery, firearms, clothing, narcotics, chemicals, money, or jewelry, unless a party in its request to the Administrator identifies the exhibit with particularity and requests that the Administrator arrange to have the exhibit transmitted to the appellate court. The trial court administrator shall make appropriate notation of retained exhibits on the exhibit list.

(4) If a party fails to comply with UTCR 6.120(2) requiring return of documentary exhibits within 21 days after receipt of the trial court's request, following the filing of a notice of appeal by any party, the appellate court may order that the appeal proceed without consideration of that party's exhibits.

(5) For purposes of this rule, "documentary exhibits" include text documents, photographs and maps, if not oversized, and audio and video recordings. An oversized document is one larger than standard letter size or legal size.

Rule 3.30
EXTENSION OF TIME FOR PREPARATION OF TRANSCRIPT

(1) Except as provided in ORAP 3.40(3), only the appellate court may grant an extension of time for the preparation of a transcript.

(2) A request for an extension of time to prepare a transcript may be filed by the party responsible for causing the transcript to be prepared or by the court reporter or transcriber (in audio and video record cases) responsible for preparing the transcript.

(3) A request for an extension of time shall include the amount of time sought, the number of previous extensions obtained and the reason for the extension of time.

(4) If all or part of the need for an extension of time is the failure to make satisfactory arrangements for payment of the transcript, the request shall so state. If a party makes a request for an extension of time under this rule, the party shall show why appropriate arrangements have not been made. The court in its discretion may deny the extension of time and direct that the appeal proceed without the transcript.

(5) A court reporter's or transcriber's request for an extension of time shall include the date on which the transcript was ordered, the number of days of proceedings designated on appeal, the approximate number of pages of transcript to be prepared, and information about other transcripts due on appeal. The request shall be substantially in the form illustrated in Appendix 3.30 and shall show proof of service on the parties and, for the second or any subsequent request for extension of time, on the trial court administrator.

(6) Any party may file an objection to a court reporter's or transcriber's request for an extension of time within 14 days after the request is filed. The objection must be served on all other parties, the court reporter or transcriber, and the trial court administrator. An objection received after the court has granted the request will be treated as a motion for reconsideration of the ruling. On reconsideration, if the court modifies the extension of time, the court reporter or transcriber and the parties will be notified; otherwise, the objection will be noted and placed in the file.

_____

See generally ORS 19.395.

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 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.

[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 3.35
FORM OF TRANSCRIPT

(1) A transcript shall meet these specifications:

(a) It shall be prepared using proportionally spaced 12-point type (such as produced by commercial printers and many computer printers). The font size shall be uniform and not vary from line to line or within the same line. Uppercase and lowercase letters shall be used according to rules of grammar; a transcript shall not be prepared using all uppercase letters.

(b) It shall be prepared on good quality white, opaque, unglazed paper, 8-1/2 x 11 inches in size, with numbered lines, and printed on both sides of each page.[1] It shall be double-spaced and each page shall contain 25 lines of text, no more and no less, except for the last page of the transcript. The margins of each page shall be one inch on each side, at the top, and at the bottom.

(c) Each question shall be prefaced by "Q" and each answer shall be prefaced by "A." Each question and answer shall begin on a separate line no more than five spaces from the left margin and no more than five spaces from the "Q" and "A" to the beginning of the text. Text that carries on to the next line shall begin at the left margin.

(d) Colloquy, parentheticals, and exhibit markings shall begin no more than 15 spaces from the left margin. Text that carries on to the next line shall begin at the left margin.

(e) Quoted material shall begin no more than 15 spaces from the left margin. Text that carries on to the next line shall begin no more than 10 spaces from the left margin.

(f) Each page shall be consecutively numbered at the top right corner, and to the left thereof shall be given the name of the witness followed by a notation indicating whether the testimony is on direct, cross, redirect or recross examination, indicated by

"D," "X," "ReD," or "ReX."

(g) Appropriate notation similarly shall be made of other proceedings, such as a motion for dismissal or a directed verdict, audio or video recording played in court, requested jury instructions, jury instructions, any opinion by the court, and other matters of special importance. If possible, the voice or voices on an audio or video recording played in court must be identified by name or by role (such as "police officer," "suspect," "interviewer," "child").

(h) It shall be preceded by an appropriate title page followed by an index noting:

(i) the first page of the direct, cross, redirect, and recross testimony of each witness;

(ii) all exhibits, with notation of the nature thereof and of the page of the record where offered and, when appropriate, where received in evidence; and

(iii) appropriate notations of other proceedings such as motions for involuntary dismissal and directed verdict, audio or video recording played in court, requested jury instructions, jury instructions, opinion of the court and other matters of special importance.

(i) Each transcript volume shall be bound in a manner that allows the pages of the transcript to lie flat when the transcript is open, as provided in this paragraph. The transcript volume shall be bound with a plastic comb binding, with the binding within 3/8 inch from the left edge of the transcript. A transcript volume may be bound by stapling if the transcript does not exceed 20 pages (10 pieces of paper), excluding the cover. A transcript volume bound by stapling shall be secured by a single staple placed as close to the upper left-hand corner as is consistent with securely binding the transcript.

(j) It shall have a cover sheet of clear plastic or 65-pound weight paper, front and back.

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

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

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

(b) If the transcript exceeds 200 pages, the electronic transcript shall be broken into separate PDF files of approximately equal length not to exceed 200 pages. Regardless of whether a transcript consists of one or more PDF files, each file shall be named in accordance with the file naming conventions set out in Appendix 3.35. If a PDF file contains more than one proceeding date, the beginning of each proceeding shall be bookmarked.

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

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

---

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

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.

_____

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 3.45
AGREED NARRATIVE STATEMENT

If the parties agree to a narrative statement in lieu of or in addition to a transcript and the parties are able to reconstruct the statements and testimony of the judge, parties, counsel, witnesses, and others present at the proceeding, the narrative statement shall follow as nearly as practicable the form prescribed for transcripts in ORAP 3.35; otherwise, the statement may be in narrative form. The appellant shall file the agreed narrative statement in the trial court for transmittal to the Administrator. When the narrative statement is delivered for filing with the trial court, the appellant shall give notice thereof to the Administrator, showing the date of filing.

_____

See ORS 19.380.

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.

_____

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

Rule 3.55
WITHDRAWAL OF PAPERS OR EXHIBITS

No one shall remove from the office of the Administrator or from the court any thing on file with the appellate court except:

(1) A judge or justice may do so for official business.

(2) An administrative or legal staff person may do so for official business:

(a) Respecting a matter in the Supreme Court, with the authorization of the Chief Justice or a justice authorized by the Supreme Court to decide motions;

(b) Respecting a matter in the Court of Appeals, with the authorization of the Chief Judge or a judge authorized by the Court of Appeals to decide motions.

(3) Any party or member of the public seeking to withdraw any thing shall file a motion stating the reason for the request and specifying the thing desired. If the court grants the motion, the person allowed to withdraw the thing shall furnish the Administrator a receipt for the thing withdrawn.

Rule 3.63
USE OF AUDIO OR VIDEO RECORD ON APPEAL

(1) Where the appeal will proceed on the audio or video record without a transcript, on payment of the prescribed fee,[1] the trial court administrator shall:

(a) Arrange for duplication of the audio or video record and the official log of the audio or video record. Any duplicate copy of an audio or video record prepared for appeal shall contain the caption and trial court number of the proceeding and the number of tapes used in the proceeding (*e.g.*, 1 of 5).

(b) Cause the copy of the audio or video record and official log to be served on the party requesting it and to have a certificate of duplication and proof of service prepared.

(c) Cause to be placed in the trial court file the original of the audio or video record, official log and certificate of duplication and proof of service, where they shall remain until the appellate court requests that the trial court record be forwarded to the appellate court, as provided in ORAP 3.15.

(2) The trial court administrator shall file and serve copies of the audio or video record within 14 days after receiving notice that the appellate court has waived preparation of a transcript and is allowing the appeal to be heard on the audio or video record alone.

(3) The appellate court may order the transcription of any part of an audio or video recording not previously transcribed that the appellate court determines necessary for deliberation. The cost of transcription under this subsection shall be paid in the first instance by the parties to the appeal in such proportions as directed by the appellate court.

(4) (a) If the trial court administrator has previously provided a copy of all or part of the audio or video record to a party, on appeal that party need not pay for and the trial court administrator need not provide another copy of the audio or video record to that party.

(b) If the trial court administrator does not provide a duplicate copy of the audio or video record to a party on appeal under paragraph (a) of this subsection, the trial court administrator shall prepare and sign a proof of service certifying the date or dates on which the party received a copy of the audio or video record. The trial court administrator's certificate shall constitute proof of service of the audio or video record on that party and shall be forwarded to the appellate court in lieu of the proof of service required in paragraph (1)(c) of this rule.

(c) If the trial court administrator has provided a copy of all or part of an audio or video record to a party or the attorney for a party and on appeal the party is represented by an attorney or by a different attorney, respectively, the party or the attorney for a party who received a certified copy of the audio or video record shall, on request and without charge, give the audio or video record to the attorney or different attorney representing the party on appeal. The person giving the audio or video record may require that the person receiving the audio or video record provide a receipt therefor.

(d) If the trial court administrator has provided part but not all of the audio or video record to a party, the provisions of paragraphs (a), (b), and (c) of this subsection shall apply to so much of the audio or video record as has been previously provided to a party.

(5) If a part of a recording is extracted from the official audio or video recording and duplicated for the purpose of appeal, the trial court administrator shall attach a certificate stating that the copy is an accurate copy of the extracted part of the original. The copy containing the extract of the official recording shall become the official recording on appeal in lieu of the copy referred to in subsection (1) of this rule. The trial court administrator shall make copies of the extracted copy of the recording for service on the parties to the appeal, and prepare a certified copy of the relevant part or parts of the official log, to be served and filed as part of the record on appeal.

---

[1] With respect to video records, Chief Justice Order No. 89-13, issued February 28, 1989, and amended March 8, 1989, prescribes a fee of $20.00 per cassette.

4. JUDICIAL REVIEW OF ADMINISTRATIVE AGENCY PROCEEDINGS

A. GENERALLY

Rule 4.05
PROCEDURE TO CONFORM TO CIVIL CASES

Insofar as practicable, and except where some other procedure is provided by statute or these rules, the procedure for judicial review of an order in a contested case, judicial review of a rule or judicial review of a ruling arising out of a declaratory ruling proceeding shall be the same as for appeals in civil cases.

_____

See generally ORS 183.400, ORS 183.410, and ORS 183.482.

Rule 4.10
REVIEW OF ORDERS OF BOARD OF PAROLE

Judicial review of reviewable orders of the Board of Parole and Post-Prison Supervision, which shall be entitled "Parole Review," shall be in accordance with the rules for judicial review of orders of state agencies in contested cases and shall show the Board of Parole and Post-Prison Supervision as respondent.

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 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] 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.

---

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

[2] *See* ORAP 4.20 regarding transmitting and serving the agency by Secure File Transfer Protocol (SFTP).

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

[4] 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 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 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.

(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.

(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.

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

[2] he 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 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) The motion shall be captioned "Before the [name of agency to which the motion is directed]." The party shall serve the court with a copy of the motion, which shall include on the title page the notation "Court Service Copy."

(3) The agency shall file with the court a copy of its order disposing of the motion 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 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 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 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 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 its order.

(c) If a party files a motion 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) 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 4.25
ADDITIONAL EVIDENCE

(1) An application under ORS 183.482(5) for leave to present additional evidence on judicial review shall be submitted as a motion. The motion shall be accompanied by an affidavit describing the evidence sought to be presented, specifying why the evidence was not produced at the agency hearing and stating whether an extension of time was requested for the purpose of producing the evidence before the agency.

(2) When the court grants an application to present additional evidence pursuant to ORS 183.482(5), it may designate the time in which the new evidence, together with the agency's new findings and order, or certificate that it elects to stand on its original findings and order, shall be filed with the court.

(3) The filing by the agency of the new evidence and findings and order, or certificate that it elects to stand on its original findings and order, shall be accompanied by proof of service of copies of the new evidence, except exhibits unless otherwise provided by law, and the agency's new findings and order or certificate on all parties required to be served.

(4) The granting of an application to present additional evidence shall suspend the time for filing briefs until the filing by the agency of the findings upon the additional evidence, unless otherwise ordered by the court.

Rule 4.30
REVIEW OF AGENCY DENIAL OF MOTION TO STAY

A party may move for review of an agency's denial of a motion to stay. The motion shall include all documents that the party believes to have been considered by the agency on the party's request for a stay from the agency, the agency's written decision, if any, and any other documents the party considers relevant. The court may lengthen or shorten the period of time in which the agency may respond to the motion, as provided in ORAP 7.05(3).

_____

See ORS 183.482(3)(d).

Rule 4.35
AGENCY WITHDRAWAL OF ORDERS

(1) (a) If an agency, pursuant to ORS 183.482(6), withdraws an order for the purpose of reconsideration, it shall file with the Administrator a notice of the withdrawal. The notice shall include a statement of reasons why the order is being reconsidered and the date the agency expects to submit a new order to the court after reconsideration. An order on reconsideration shall be filed within 60 days after the filing of the notice of withdrawal or within such other time as the court may allow.

(b) If an agency not subject to ORS 183.482(6) withdraws an order on judicial review for the purpose of reconsideration it shall file with the Administrator a copy of its order or other decision withdrawing that order, accompanied by a statement of reasons why the order is being withdrawn and a statement whether the agency expects to submit a new order to the court following the withdrawal and, if so, when.

(2) The filing of a notice under subsection (1) of this rule shall suspend proceedings on the petition for judicial review until an order on reconsideration is filed, or the time designated therefor expires, unless otherwise ordered by the court.

(3) Regardless whether an order first has been withdrawn for the purpose of reconsideration under paragraphs (1)(a) or (b) of this rule, if an agency issues an order on reconsideration, the Attorney General shall file a copy of the order on reconsideration with the Administrator. The order shall be filed within seven days after the agency issues the order on reconsideration.

(4) (a) (i) Except as provided in subparagraph (4)(a)(ii) of this rule, after the filing of an order on reconsideration, if the petitioner desires judicial review of the order on reconsideration, the petitioner shall file an amended petition for judicial review or notice of intent to proceed with judicial review within a period equal to that allowed for filing an original petition.[1] No filing fee is required for an amended petition.

(ii) If the petitioner on judicial review of an order of the Board of Parole and Post-Prison Supervision desires to continue the judicial review after the Board issues its order on reconsideration, the petitioner shall file a notice of intent to proceed with judicial review within the period equal to that allowed for filing an original petition, unless the court allows additional time.[2]

(b) A person who is dissatisfied with the order on reconsideration and who does not file under paragraph (4)(a) of this rule may file a petition for judicial review of the order on reconsideration in accordance with statute and these rules.

(c) If no petition or notice of intent to proceed with judicial review is timely filed, the judicial review proceeding in the Court of Appeals will be dismissed.

(5) If the agency has considered any material beyond the present record, the agency shall submit an amended record to the Administrator within 14 days after the filing of a petition, amended petition for judicial review, or notice of intent to proceed with judicial review. The amended record on review shall be prepared pursuant to ORAP 4.20.

(6) If the petitioner filed an opening brief before the withdrawal of the order for reconsideration, in addition to filing an amended petition for judicial review or notice of intent to proceed with judicial review as required by paragraph (4)(a) of this rule, the petitioner may give notice to the Administrator of the petitioner's intent to proceed on the original opening brief. If the petitioner had not filed an opening brief or desires to file a supplemental brief, the petitioner's opening or supplemental brief shall be filed 28 days after the date the amended petition for judicial review or notice of intent to proceed with judicial review was filed or the date the agency submitted the amended record to the Administrator, whichever is later. A respondent's answering brief, if any, shall be filed within 28 days after the filing of the petitioner's opening or

supplemental brief or notice that the petitioner will proceed on the original brief.

---

[1] *See* ORS 183.482(6).

[2] *See* ORS 144.335(7).

Rule 4.40
APPEARANCE BY AGENCY
NOT A PARTY

(1) If an agency whose order, rule, ruling, policy, or other action is at issue is not a party to the proceeding, it may intervene as a party in the Court of Appeals by filing a brief. The brief shall be due on the same date that the respondent's answering brief is due.

(2) If an agency has filed a brief in the Court of Appeals and the decision is adverse to the agency's view of its order, rule, ruling, policy, or other action, the agency may petition for review as provided in ORAP 9.05.

(3) If an agency has not intervened in the Court of Appeals, it may file a petition for intervention and for reconsideration or review under ORAP 9.05 and ORAP 9.10.

(4) If the Supreme Court accepts review in a proceeding in which an agency's order, rule, ruling, policy, or other action is at issue, the agency may intervene by filing a brief. The brief shall be due on the same date that the respondent's brief on the merits on review is due.

(5) If an agency has intervened under this rule, it may move to argue orally before the Supreme Court or Court of Appeals. The motion must be filed at least seven days before the date set for argument.

(6) An agency intervening in a proceeding under this rule is a party only in the appellate courts and the agency's party status terminates upon issuance of the appellate judgment.

This page left blank intentionally.

B. JUDICIAL REVIEW OF CERTAIN LAND USE DECISIONS

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, 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), or decision of a referee under ORS 197.375(2), as appropriate.[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.[3]

(4) In a LUBA or referee 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 or by petitioner's affidavit accompanying the petition, that the petitioner has statutory standing to invoke the jurisdiction of the court.[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).

[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, 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 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 4.67
LOCAL GOVERNMENT AND CRGC DOCUMENTS

The petitioner shall include copies of all provisions of local government documents (*e.g.*, ordinances, plans) and CRGC documents (*e.g.*, management plans), as applicable, pertinent to its arguments on judicial review in the excerpt of record if the provisions are part of the record or in an appendix to the petitioner's opening brief if the provisions are not part of the record.[1]

_____

[1] To determine whether material properly belongs in the excerpt of record or in an appendix, *see* ORAP 5.50 and ORAP 5.52.

Rule 4.68
CROSS-PETITIONS

(1) On judicial review of a LUBA decision, an LCDC decision, or 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 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 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 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 4.74
SUMMARY DETERMINATION OF LUBA JURISDICTION BY COURT OF APPEALS

(1) When a question arises whether authority to review a case lies in a circuit court or in LUBA, the circuit judge or the chairperson of LUBA shall refer the question to the Court of Appeals through the Administrator.

(2) The circuit judge or chairperson, as appropriate, shall sign an order referring the matter to the Court of Appeals, setting forth why the question has arisen and briefly summarizing the jurisdictional contentions.

(3) The circuit judge or chairperson, as appropriate, may either request counsel for one of the parties to have copies of all documents in the file prepared for transmittal to the Court of Appeals or may direct that it be done by the trial court administrator or the equivalent LUBA staff person. In either event, either the counsel so designated or the circuit judge or chairperson shall address a letter to the Administrator to accompany the transmittal of the file stating that the file is being transmitted pursuant to ORS 34.102(5) and informing the Administrator whether the matter needs to be decided within a certain time.

(4) If counsel for either party or the circuit judge or chairperson, as appropriate, desires to set forth legal points or authorities in support of a position, a memorandum of points

and authorities shall accompany the file and cover letter and be transmitted to the Administrator with the file.

(5) The decision of the Court of Appeals shall be made as expeditiously as practicable, and the decision shall be communicated in writing to the circuit judge or chairperson, with copies to counsel for the parties.

(6) Nothing in this rule shall be construed as limiting the authority of a judge of any court to transfer a case to another court that has jurisdiction over the matter.

_____

See ORS 34.102(5).

This page left blank intentionally.

5. PREPARATION AND FILING OF BRIEFS

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:

(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) 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 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 5.12
BRIEFS OR PETITIONS FOR REVIEW CHALLENGING CONSTITUTIONALITY OF STATUTES OR CONSTITUTION

A party filing a brief, petition for review, or petition invoking the court's original jurisdiction that challenges the constitutionality of an Oregon statute or an Oregon constitutional provision shall, at the time the brief or petition is filed, provide the Attorney General[1] with a copy of the brief or petition. The cover of the brief or petition shall state that the brief or petition includes a challenge to the constitutionality of a statute or constitutional provision and shall identify the statute or constitutional provision being challenged.

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

Rule 5.15
REFERENCES IN BRIEFS TO PARTIES AND CRIME VICTIMS OF OFFENSES AGAINST PERSONS

(1) In the body of a brief, parties shall not be referred to as appellant and respondent, but as they were designated in the proceedings below, except that in domestic relations proceedings the parties shall be referred to as husband or wife, father or mother, or other appropriate specific designation.

(2) In the body of a brief on appeal in a criminal, post-conviction, or habeas corpus case or on judicial review of an order of the Board of Parole and Post-Prison Supervision that includes a conviction for an offense, or attempt to commit an offense, compiled in ORS Chapter 163, any references to the victim of the offense must not include the victim's full name.

Rule 5.20
REFERENCE TO EVIDENCE AND EXHIBITS; CITATION OF AUTHORITIES

(1) Briefs, in referring to the record, shall make appropriate reference to pages and volumes of the transcript or narrative statement, or in the case of an audio record, to the tape number and official cue or numerical counter number or, in the case of an exhibit, to its identification number or letter.

(2) If the precise location on the audio record cannot be determined, it is permissible to indicate between which cue numbers the evidence is to be found.

(3) In referring to any part of the record transmitted to the Administrator by optical disk or by Secure File Transfer Protocol (SFTP) in Portable Document Form (PDF), the court prefers citation to the page number of the PDF file. In any judicial review in which the agency has served a self-represented party with the record in conventional paper form, a party citing to the record may either:

(a) Include in the party's brief parallel citations to the record in conventional paper form; or

(b) On request of any self-represented party, provide in writing to that party parallel citations to the record in conventional paper form.

(4) The following abbreviations may be used:

"P Tr" for pretrial transcript;

"Tr" for transcript;

"Nar St" for narrative statement;

"ER" for Excerpt;
"App" for Appendix;

"AR Tape No. ___, Cue No. ___" for audio record;

"PAR" for pretrial audio record;

"PDF" for PDF of agency record filed by electronic means with the Administrator;

"TCF" for trial court file;

"Rec" for record in judicial review proceedings only;

"Ex" for exhibit.

Other abbreviations may be used if explained.

(5) Guidelines for style and conventions in citation of authorities may be found in the Oregon Appellate Courts Style Manual.[1]

(6) Cases affirmed without opinion by the Court of Appeals should not be cited as authority.

---

[1] Copies of the Oregon Appellate Courts Style Manual may be obtained from the Publications Section of the Office of the State Court Administrator, 1163 State Street, Salem, Oregon 97301-2563; (503) 986-5656; the Style Manual also is published on the Judicial Department's website at: <https://www.courts.oregon.gov/publications/Pages/default.aspx>.

Rule 5.30
ORDINANCES, CHARTERS, STATUTES, AND OTHER WRITTEN PROVISIONS TO BE SET OUT

If an appeal involves an ordinance, charter, statute, constitutional provision, regulation, or administrative rule, so much of the provision as relevant shall be set forth verbatim with proper citation. If lengthy, such matter should be appended or footnoted and need not be set out verbatim if it appears in another brief in the case and is cross-referenced appropriately.

Rule 5.35
APPELLANT'S OPENING BRIEF: INDEX

The appellant's combined opening brief and excerpt shall begin with:

(1) an index of the contents of the brief, including a statement of the substance of each assignment of error, without argument, with appropriate page references;

(2) an index of appendices, if any; and

(3) an index of all authorities referred to, classified by cases (alphabetically arranged and with complete citations), constitutional and statutory provisions, texts, treatises, and other authorities, and indicating the pages of the brief where the authorities are cited. Citations are to be in the form prescribed by the Oregon Appellate Courts Style Manual. Reference to "*passim*" or "*et seq.*" in the index of authorities is discouraged.

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

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

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

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

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

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

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

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

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

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

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

(c) The Court of Appeals will exercise its discretion to try the cause anew on the record or to make one or more factual findings anew on the record only in exceptional cases. Consistently with that presumption against the exercise of discretion, requests under paragraph (a) or (b) of this section are disfavored.

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

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

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

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

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

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

(9) A concise summary, without argument, of all the facts of the case material to determination of the appeal. The summary shall be in narrative form with references to the

places in the transcript, narrative statement, audio record, record, or excerpt where such facts appear.

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

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

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

_____

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

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). *See also* ORS 138.257(2): "Subject to Article VII (Amended), section 3, Oregon Constitution, the appellate court shall not reverse, modify or vacate a trial court judgment or order if there is little likelihood that any error affected the outcome."

[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. 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 5.50
THE EXCERPT OF RECORD

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

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

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

(b) Any written or oral rulings by the lower tribunal or agency addressing the issues presented by the assignments of error.

(c) Any pleading or excerpt of pleadings, particular part of the transcript, exhibit, evidentiary submission and other filing necessary for reviewing and understanding the assignments of error in advance of oral argument, if the parties anticipate that the case will be orally argued.[3]

(d) If preservation of error is or is likely to be disputed in the case, parts of memoranda and the transcript pertinent to the issue of preservation presented by the case.

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

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

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

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

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

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

(b) Contents must be set forth in chronological order, except that the OECI case register must be the last document in the excerpt of record. The excerpt must be consecutively paginated, with the first page being page ER-1. The excerpt must begin with an index organized chronologically, describing each item and identifying where the item may be found in the trial court or agency record, and the page where the item may be found in the excerpt. The index may include bookmarks as described in ORAP 16.50. A supplemental excerpt of record must substantially conform to the same requirements, except that a supplemental excerpt must be paginated using "SER," *e.g.*, SER-1, SER-2, SER-3.

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

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

(6) Self-represented parties are not required to file an excerpt of record or a supplemental excerpt of record. If a self-represented party files an excerpt of record or a supplemental excerpt of record, it must contain only those documents specified in ORAP 5.50(2)(a) and (b), must contain no other documents, and must otherwise comply with this rule.[4]

(7) The appellate court may strike any excerpt of record or supplemental excerpt of record that does not substantially comply with the requirements of this rule.

---

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

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

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

[4] Under ORAP 6.05(2), cases in which a self-represented party files a brief are submitted without argument by any party. For that reason, any excerpt or supplemental excerpt of record submitted by a self-represented party shall not contain any of the documents otherwise required by ORAP 5.50(2)(c) to (f) to assist the appellate court in preparing for oral argument.

Rule 5.52
APPENDIX

The purpose of an appendix to a brief is to provide, for the convenience of the reader, materials that would be helpful in understanding and resolving an issue raised on appeal. A party appropriately may include in an appendix, for instance, copies of a statute or statutes at issue in the appeal, or copies of cases that are not readily available from standard research sources. A party should not include in the appendix materials from the record of the tribunal from which the appeal is taken that should be in the excerpt of record.[1]

---

[1] For other requirements for appendices to briefs in land use cases, *see* ORAP 4.67.

Rule 5.55
RESPONDENT'S ANSWERING BRIEF

(1) (a) The respondent's answering brief must follow the form prescribed for the appellant's opening brief, omitting repetition of the verbatim parts of the record in appellant's assignments of error.

(b) The brief must contain a concise answer to each of the appellant's assignments of error preceding respondent's own argument as to each.

(2) Under the heading "Statement of the Case," the respondent specifically shall accept the appellant's statement of the case, or shall identify any alleged omissions or inaccuracies, and may state additional relevant facts or other matters of record as may apply to the appeal, including any significant motion filed on appeal and the disposition of the motion. The additional statement shall refer to the pages of the transcript, narrative statement, audio record, record, or excerpt in support thereof but without unnecessary repetition of the appellant's statement.

(3) If a cross-appeal is abandoned, the respondent shall immediately notify the appellate court in writing and, if notice has not been given previously, the respondent shall notify

the court of the abandonment when the respondent's answering brief is filed, in writing and separately from the brief.

(4) If the court gives an appellant leave to file a supplemental brief after the respondent's answering brief has been filed, the respondent may file a supplemental respondent's answering brief addressing those issues raised in the appellant's supplemental brief.

Rule 5.57
RESPONDENT'S ANSWERING BRIEF: CROSS-ASSIGNMENTS OF ERROR

(1) A respondent must cross-assign as error any trial court ruling described in subsection (2) of this rule in order to raise the claim of error in the appeal.[1]

(2) A cross-assignment of error is appropriate:

(a) If, by challenging the trial court ruling, the respondent does not seek to reverse or modify the judgment on appeal; and

(b) If the relief sought by the appellant were to be granted, respondent would desire reversal or modification of an intermediate ruling of the trial court.

(3) The appellant's answer to a cross-assignment of error shall be in the form prescribed by ORAP 5.55 for a respondent's answering brief and shall be:

(a) Contained in a separate section of the appellant's reply brief, if a reply brief is permitted under ORAP 5.70, and designated "response to cross-assignment of error;" or

(b) Filed within 21 days after the filing of the respondent's answering brief, if a reply brief is not permitted under ORAP 5.70, and entitled "appellant's answer to cross-assignment of error."

(4) A respondent may file a reply to an appellant's answer to a cross-assignment of error only if the nature of the case is one in which a reply brief is permitted under ORAP 5.70 and ORAP 5.80(3). The reply must comply with the requirements for a reply brief prescribed by ORAP 5.05, and it must be filed within 21 days after the filing of the appellant's answer to a cross-assignment of error.

---

[1] This rule does not apply to a respondent who also is a cross-appellant and is assigning error as a cross-appellant.

Rule 5.60
FAILURE OF RESPONDENT TO FILE BRIEF

If the respondent files no brief, the cause will be submitted on the appellant's opening brief and appellant's oral argument, and the respondent shall not be allowed to argue the case.

Rule 5.65
CROSS-APPELLANT'S OPENING BRIEF

(1) When a respondent has cross-appealed,[1] the opening brief on cross-appeal shall be presented in a separate part of the respondent's answering brief immediately following the body of the answering brief. The opening brief on cross-appeal shall be appropriately indexed at the front of the answering brief. Pages of the opening brief on cross-appeal shall be numbered consecutively following the numbering of the answering brief.

(2) A cross-appellant's opening brief shall be in the form of an appellant's opening brief.

---

[1] *See* ORAP 5.55(3) regarding abandoned cross-appeals.

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.

(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;

(iv) civil commitment;

(v) forcible entry and detainer;

(vi) 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.

Rule 5.75
ANSWERING BRIEF ON CROSS-APPEAL

When an appellant files an answering brief on cross-appeal, that party may file the brief separately or as a separate part of a reply brief, if a reply brief is filed. The answering brief on cross-appeal shall follow the form of a respondent's answering brief. If filed as part of a reply brief, it shall be presented in a separate part of the reply brief and be shown in the index of the reply brief as "Answering Brief on Cross-Appeal." An answering brief on cross-appeal and a reply brief, whether filed as one brief or as separate briefs, shall be subject to the length limitations prescribed in ORAP 5.05.

Rule 5.77
JOINT AND ADOPTED BRIEFS

(1) In a case involving more than one party on the same side, including cases consolidated on appeal, the court discourages the filing of briefs that duplicate arguments made in another brief in the same case and encourages parties to file joint briefs or to adopt to the extent practicable a brief filed by another party in the same case.[1]

(2) A party may join or adopt a brief submitted in the same case or consolidated case but shall not join or adopt a brief in another case.

(3) Joint Briefs

(a) If two or more parties join in a brief by signing the brief and have not previously appeared and paid a filing fee, only one filing fee need be paid.

(b) A party who has not signed a brief filed by another may join that brief provided that the party:

(i) Obtains the consent of the party who filed the brief;

(ii) Pays a filing or first appearance fee; and

(iii) Submits a letter to the court copied to all parties on appeal stating that the party joins in the brief filed by another party and has the consent of the other party.

(4) Adopted Briefs

(a) A party who concurs with all or part of a brief filed by another party and who has no other position to assert may adopt the other party's brief by filing a brief adopting in whole or in part the brief of another party. If a party adopts only part of the brief of another, the brief shall identify the part of the brief of the other party being adopted.

(b) A party who concurs with all or part of a brief submitted by another party but who wishes to argue additional matters may submit a brief adopting by reference the part of the other party's brief in which the party concurs.

---

[1] As used in this rule, "party" includes *amicus curiae*.

Rule 5.80
TIME FOR FILING BRIEFS

(1) Unless otherwise provided by statute or these rules, the appellant's opening brief and excerpt of record shall be served and filed within 49 days after:

(a) the entry of the trial court order settling the transcript; or

(b) the filing of an agreed narrative statement with the trial court; or

(c) the transcript is deemed settled under ORS 19.370(7) or ORAP 3.40(5); or

(d) the appellate court enters an order waiving a transcript under ORAP 3.05(2); or

(e) if a transcript or narrative statement is not designated, the filing of the notice of appeal; or

(f) in a judicial review case, the agency record has been settled.

(2) The respondent's answering brief shall be served and filed within 49 days after the filing of the appellant's opening brief. If the court has given an appellant leave to file a supplemental brief after the respondent's answering brief has been filed, the respondent's supplemental brief shall be served and filed within 21 days after the filing of the appellant's supplemental brief.

(3) A reply brief, if any, shall be served and filed within 21 days after the filing of the respondent's answering brief or after a motion to file a reply brief is allowed, unless otherwise provided in the order allowing the motion.

(4) An appellant's answering brief on cross-appeal or, in a case in which the appellant is permitted to file a reply brief, an appellant's combined reply brief on appeal and answering brief on cross-appeal shall be served and filed within 49 days after the filing of the opening brief on cross-appeal.

(5) When a party other than an appellant is made a cross-respondent, that party shall have 49 days after the filing of the opening brief on cross-appeal to serve and file an answering brief on cross-appeal.

(6) A cross-appellant shall have 21 days after the date of the filing of an answering brief on cross-appeal in which to serve and file a reply brief on cross-appeal, if permitted to do so by these rules or by order of the court.

(7) In cases in which the appellant is represented in the Court of Appeals by the Office of Public Defense Services, the appellant's opening brief shall be served within a period of time established by the Chief Judge in consultation with Office of Public Defense Services.

(8) In complex cases, such as cases with multiple parties, multiple appeals or cross-appeals, or both, the parties are encouraged to confer to develop a briefing schedule that varies from the schedule that would otherwise result under this rule but that will present the parties' positions in an orderly manner and to file a motion seeking approval of that suggested briefing schedule.

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 Civil Appeal from Circuit Court not listed above Tax Court	49 49	49 49	0 21*	21 21*	 49*	 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.
	49	49	21	21	21	21	
Adoption Juvenile[2]	28	28	0				
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.

BRIEF TIME CHART 2

CASE TYPE	Opening Brief	Answering and	Reply Brief	Answering Brief to Cross-	Petition for Review	Response to Petition	Petitioner's Brief	Respondent's Brief	Reply Brief on the Merits	Petition for	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.
Judicial Review of all other Agency Action	49	49	21	21							Date record has been deemed settled. ORAP 4.22.
Petition for Review					35						Date of Court of Appeals decision.
Response						14					Date petition for review was filed.
Petitioner's Brief on the Merits							28				Date petition for review allowed by Supreme Court.
Respondent's Brief on the Merits								28			Date petitioner's brief on the merits filed.
Reply Brief on the Merits									14		Date respondent's brief on the merits filed.
Petition for Reconsideration										14	Date of Supreme Court decision.
Bar Discipline	28	28	14								Date of acknowledgment of receipt of record.
Judicial Discipline and Disability	28	28	0								
Certified Questions of Law											
Mandamus	28	28	0								Date that the case is at issue
Habeas Corpus											
Quo Warranto											
Energy Facility Siting Council/Public Utility Commission	14	14	0								Date petition for review is filed.
Reapportionment Review											
Legislative	8/1	10*	5*								Legislative Assembly enacts reapportionment.
Secretary of State	9/15										Secretary of State adopts reapportionment.

* Business days. *See* ORAP 1.15(3)(i).

Rule 5.85
ADDITIONAL AUTHORITIES

(1) Any party filing a memorandum of additional authorities or a response memorandum shall submit the memorandum in the manner provided in this rule, subject to any instructions of the court. A party may submit a memorandum of additional authorities after the filing of the party's brief but before oral argument without leave of the court. After oral argument, a party must file a motion for leave to file a memorandum of additional authorities. If the party submits a memorandum of additional authorities with the motion, then:

(a) if the court grants the motion, the date of filing for the memorandum of additional authorities relates back to the date of filing for the motion; or

(b) if the court denies the motion, the court will strike the memorandum of additional authorities.

(2) A memorandum of additional authorities and a response, if any:

(a) Shall include citations to relevant cases and statutes and shall identify the issue that has been previously briefed to which the new citations apply;

(b) Shall not exceed two pages, without leave of the court;

(c) Shall be filed with the Administrator.[1]

(d) If filed less than five business days before oral argument, shall include in the caption the words "ORAL ARGUMENT SCHEDULED FOR [DATE]."

(3) If a party files or is given leave to file a memorandum of additional authorities, any other party to the case who has filed a brief may file a response. Unless the court directs otherwise, a response is due

(a) 14 days after the date of filing of the memorandum of additional authorities to which the party is responding; or

(b) if the date of filing of the memorandum of additional authorities relates back to the date of filing of the motion under paragraph (1)(a) or this rule, 14 days after the date of entry of the order granting the motion.

---

[1] *See* ORAP 1.35(1)(a) for the filing address of the Administrator.

Rule 5.90
"*BALFOUR*" BRIEFS FILED BY COURT-APPOINTED COUNSEL

(1) If counsel appointed by the court to represent an indigent defendant in a criminal case on direct appeal has thoroughly reviewed the record, has discussed the case with trial counsel and the client, and has determined that the case does not raise any arguably meritorious issues, counsel shall file an opening brief with two sections:

(a) Section A of the brief shall contain:

(i) A statement of the case, including a statement of the facts of the case. If the brief contains a Section B with one or more claims of error asserted by the client, the statement of facts shall include facts sufficient to put the claim or claims of error in context.

(ii) A description of any demurrer or significant motion filed in the case, including, but not limited to, a motion to dismiss, a motion to suppress and a motion *in limine*, and the trial court's disposition of the demurrer or motion.

(iii) A statement that the case is being submitted pursuant to this rule, that counsel has thoroughly reviewed the record and discussed the case with trial counsel and the client, and that counsel has not identified any arguably meritorious issue on appeal. If the brief does not contain a Section B, counsel also shall state that counsel contacted the client, gave the client reasonable opportunity to identify a claim or claims of error, and that the client did not identify any claim of error for inclusion in the brief.

(iv) Counsel's signature.

(b) (i) Section B of the brief is the client's product and may contain any claim of error that the client wishes to assert. The client shall attempt to state the claim and any argument in support of the claim as nearly as practicable in proper appellate brief form. Section B of the brief shall not exceed 48 pages in length. The last page of Section B of the brief shall contain the name and signature of the client.

(ii) Counsel's obligation with respect to Section B of the brief shall be limited to correcting obvious typographical errors, preparing copies of the brief, serving the appropriate parties, and filing the original brief and the appropriate number of copies with the court.

(2) A case in which appellant's opening brief is prepared and filed under this rule shall be submitted without oral argument, unless otherwise ordered by the court.

(3) On reviewing the record and the briefs filed by the parties, if the court identifies

one or more arguably meritorious issues in the case, the court shall notify appellant's counsel of the issue or issues so identified. Appellant's counsel shall have 28 days after the date of the court's notice to file a supplemental opening brief addressing those issues. In addition to addressing the issue or issues identified by the court, counsel may address any other arguably meritorious issue counsel has identified. Respondent shall have 28 days after appellant files a supplemental opening brief to file a response or supplemental answering brief addressing the issues raised in the supplemental opening brief.

(4) In a case other than a criminal case on direct appeal, court-appointed counsel who determines that there are no meritorious issues on appeal may submit a brief under this rule, in which case the matter will be submitted without oral argument, unless otherwise ordered by the court.

(5) In any case in which the appellant is represented by court-appointed counsel on appeal and counsel filed a brief in the Court of Appeals under subsection (1) of this rule, counsel may submit a petition for review that contains a Section A that complies with ORAP 9.05(3)(a) and a Section B that complies with paragraph (1)(b) of this rule.

_____

See generally State v. Balfour, 311 Or 434, 451-53, 814 P2d 1069 (1991).

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.

---

[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.

---

[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) 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.

This page left blank intentionally.

6. SUBMISSION OF CASES AND ORAL ARGUMENT; RECONSIDERATION IN COURT OF APPEALS

Rule 6.05 REQUEST FOR ORAL ARGUMENT; SUBMISSION WITHOUT ARGUMENT

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

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

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

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

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

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

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

Rule 6.10
WHO MAY ARGUE;
FAILURE TO APPEAR AT ARGUMENT

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

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

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

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

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

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

(c) If a party fails to give at least 48 hours' notice of nonappearance at argument, the court may order counsel for that party to pay the costs and attorney fees that reasonably would have been incurred but for failure to give timely notice of nonappearance.

Rule 6.15
PROCEDURE AT ORAL ARGUMENT

(1) In all cases in the Supreme Court:

(a) The appellant, petitioner, or petitioner on review shall have not more than 30 minutes to argue; and the respondent or respondent on review shall have not more than 30 minutes to argue.

(b) The appellant, petitioner, or petitioner on review shall argue first and may reserve not more than 10 minutes of the time allowed for argument in which to reply.

(c) If there are two or more parties on one side, they shall divide their allotted

time among themselves, unless the court orders otherwise.

(2) (a) Unless the court otherwise orders, on oral argument in the Court of Appeals in all cases the appellant or petitioner shall have not more than 15 minutes and the respondent shall have not more than 15 minutes to argue.

(b) The appellant or petitioner may reserve not more than five minutes of the time allowed for argument in which to reply.

(3) A motion for additional time for argument shall be filed at least seven days before the time set for argument.

(4) No point raised by a party's brief shall be deemed waived by the party's failure to present that point in oral argument.

(5) For the purpose of this rule, a cross-appellant shall be deemed a respondent.

(6) It is the general policy of Oregon appellate courts to prohibit reference at oral argument to any authority not cited either in a brief or in a pre-argument memorandum of additional authorities.[1] If a party intends to refer in oral argument to an authority not previously cited, counsel shall inform the court at the time of argument and shall make a good faith effort to inform opposing counsel of the authority at the earliest practicable time. The court may, in its discretion, permit reference at argument to that authority and may give other parties leave to file a post-argument memorandum of additional authorities or a memorandum in response.

(7) If counsel desires to have present at oral argument an exhibit that has been retained by the trial court, it is counsel's responsibility to arrange to have the exhibit transmitted to the appellate court.[2]

---

[1] See ORAP 5.85 regarding memoranda of additional authorities.

[2] See ORAP 3.25 regarding arranging to have exhibits transmitted to the appellate court.

Rule 6.20
ARGUMENT IN SALEM AND OTHER LOCATIONS

The Court of Appeals will set most cases for oral argument in Salem, but, pursuant to Chief Justice Order 98-007, dated January 12, 1998, the court may set cases for oral argument in other locations throughout the state.

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

Rule 6.25
RECONSIDERATION BY COURT OF APPEALS

(1) As used in this rule, "decision" means an opinion, per curiam opinion, affirmance without opinion, and an order ruling on a motion or an own motion matter that disposes of the appeal. A party seeking reconsideration of a decision of the Court of Appeals shall file a petition for reconsideration. A petition for reconsideration shall be based on one or more of these contentions:

(a) A claim of factual error in the decision;

(b) A claim of error in the procedural disposition of the appeal requiring correction or clarification to make the disposition consistent with the holding or rationale of the decision or the posture of the case below;

(c) A claim of error in the designation of the prevailing party or award of costs;

(d) A claim that there has been a change in the statutes or case law since the decision of the Court of Appeals; or

(e) A claim that the Court of Appeals erred in construing or applying the law. Claims addressing legal issues already argued in the parties' briefs and addressed by the Court of Appeals are disfavored.

(2) A petition for reconsideration shall be filed within 14 days after the decision. The petition shall have attached to it a copy of the decision for which reconsideration is sought. The form of the petition and the manner in which it is served and filed shall be the same as for motions generally, except that the petition shall have a title page printed on plain white paper and containing the following information:

(a) The full case caption, including appropriate party designations for the parties as they appeared in the court from which the appeal was taken and as they appear on appeal, and the trial and appellate court case numbers; and

(b) A title designating the party filing the petition, such as "Appellant's Petition for Reconsideration" or "Respondent's Petition for Reconsideration."

(3) The filing of a petition for reconsideration is not necessary to exhaust remedies or as a prerequisite to filing a petition for review.

(4) If a response to a petition for reconsideration is filed, the response shall be filed within seven days after the petition for reconsideration was filed. The court will proceed to consider a petition for reconsideration without awaiting the filing of a response, but will consider a response if one is filed before the petition for reconsideration is considered and decided.[1]

(5) A request for reconsideration of any other order of the Court of Appeals ruling on a motion or an own motion matter shall be entitled "motion for reconsideration." A motion for reconsideration is subject to ORAP 7.05 regarding motions in general.

---

[1] *See* ORAP 9.05(2) regarding the effect of a petition for reconsideration by the Court of Appeals on the due date and consideration of a petition for review by the Supreme Court.

This page left blank intentionally.

7. MOTIONS

Rule 7.05
MOTIONS IN GENERAL

(1) (a) Unless a statute or these rules provide another form of application, a request for an order or other relief must be made by filing a motion in writing.

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

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

(d) Other than a first motion for an extension of time of 28 days or less to file a brief, a motion must contain a statement whether opposing counsel objects to, concurs in, or has no position regarding the motion. If opposing counsel objects to the motion, the motion must include a statement whether opposing counsel intends to file a response to the motion. If the moving party has not been able to learn opposing counsel's position on the motion, then the motion must so state.

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

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

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

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

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

(6) Parties must be referred to by their designation in the appellate court. Hyphenated designations are discouraged. However, in motions in domestic relations cases, parties must be

referred to as husband or wife, mother or father, or other appropriate specific designations.

---

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

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

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.

---

[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) 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 7.15
DECISIONS ON MOTIONS

(1) The Chief Justice or the Chief Judge, except as otherwise provided in ORAP 7.55, may determine any motion made before submission of a case to the court or after the date of the decision or may refer the motion to any other judge or judges of the court for decision.[1]

(2) Any motion filed after submission of a case, but before decision, shall be decided by the court or, in the Court of Appeals, may be decided by the department to which the case has been submitted.

(3) If any motion other than a challenge to the court's jurisdiction is denied before submission of the case, the motion may not be resubmitted without leave of the court in the order on the motion.

(4) Except for a ruling on an oral motion for extension of time under ORAP 7.27, the court will rule on a motion by written order.

---

[1] *See* ORAP 7.55 regarding the authority of the appellate commissioner of the Court of Appeals to decide motions and own motion matters in that court.

Rule 7.25
MOTION FOR EXTENSION OF TIME

(1) Only the appellate court may grant an extension of time for the performance of any act pertaining to an appeal.

(2) A motion for an extension of time shall contain:

(a) The date the notice of appeal was filed (or in the case of a petition for review, the date of the decision of the Court of Appeals for which review is being sought);

(b) The date the brief or other action is due;

(c) The date to which the extension is requested;

(d) Whether it is the first or other request;

(e) The specific circumstances which caused the act not to be completed in the allotted time; and

(f) In a criminal case, whether the defendant is incarcerated.

(3) An objection to a motion for extension of time shall articulate specific grounds for the objection and shall identify how an extension of time will prejudice the objector's interest. An attorney may object on the ground that the client has instructed counsel to object to any extension, but that alone will not be a sufficient ground to deny or reduce any extension of time.

(4) An objection to a request for an extension of time may be filed by facsimile transmission,[1] provided that the objection does not exceed five pages. Filing shall be deemed complete when the entirety of the objection being transmitted has been received by the Administrator. The facsimile transmission shall have the same force and effect as filing of the original.

(5) A motion for an extension of time generally will be decided within a few days after it is filed. An objection to a motion for an extension of time filed after the court has granted the extension will be treated as a motion for reconsideration of the ruling. On reconsideration, if the court modifies the extension of time, the parties to the appeal will be notified; otherwise, the objection will be noted and placed in the appellate file.

(6) Requests for extensions of time for preparation of transcripts shall be made in accordance with ORAP 3.30.

---

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

See ORAP 7.10(1)(c) concerning captions of motions for extension of time and Appendix 7.10-3 for illustrations of motions for extension of time.

Rule 7.27
ORAL REQUEST FOR EXTENSION OF TIME TO FILE BRIEF

(1) For good cause shown, the Administrator may grant an oral request for an extension of time of no more than 14 days to file an opening, answering, or reply brief, provided that:

(a) The party making the request for an extension of time under this rule shall give prior notice to the other parties to the appeal, except that such notice need not be given to a person confined in a state institution and not represented by counsel; and

(b) The party previously has not obtained written extension or extensions of time of more than 28 days.

(2) A party may request an oral extension of time under this rule, and the Administrator may grant or deny the motion, by telephone.

(3) The Administrator acting on an oral request for an extension of time shall enter the grant or denial of the request in the appellate case register.

(4) The grant of an extension of time under this rule will bar any further motion for time to file the brief unless such motion, made in writing, demonstrates extraordinary and compelling circumstances.

Rule 7.30
MOTIONS THAT TOLL TIME

(1) Except as otherwise provided in subsection (2) of this rule or if the court otherwise orders, any motion that must be ruled on before the next event in the appellate process occurs, including but not necessarily limited to a motion to hold the appeal in abeyance, a motion to amend a designation of record, to dismiss, to determine jurisdiction, for summary affirmance under ORS 34.712, ORS 138.225, or ORS 138.660, to remand, to strike a brief, to supplement the record, or for leave to present additional evidence under ORS 183.482(5),[1] tolls the time for the next event in the appellate process as established in these rules, until the court disposes of the motion. The motions listed in this rule do not toll the running of any period of time established by statute.

(2) If the court has ordered that no further extensions of time will be granted, no motion tolls the time for the next event in the appellate process as established in these rules. A party may move for relief from a no-further-extensions-of-time order based on a showing of extraordinary and compelling circumstances; any such motion must include in its title the notation "RELIEF FROM NONTOLLING REQUESTED."

---

[1] *See* ORAP 4.25.

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. The motion shall state whether the other party has been notified and served.

(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]

---

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

[2] S*ee* ORCP 9 F.

Rule 7.40
DISMISSAL OF APPEAL FOR LACK OF AN UNDERTAKING FOR COSTS ON APPEAL

(1) A motion to dismiss an appeal for lack of an undertaking for costs on appeal shall not be filed without at least seven days' notice to the appellant.[1] Notice may be written or oral. The notice shall not be filed with the court.

(2) A motion to dismiss an appeal for lack of an undertaking for costs on appeal shall state that the movant has given the notice required by subsection (1) of this rule or explain why it has not. If written notice was given, a copy of the notice shall be attached to the motion.

(3) The filing of an undertaking in response to a motion to dismiss shall not, in and of itself, be a sufficient response to the motion. Appellant shall file an answer to the motion explaining whether there was good cause for the failure to comply with the notice or the statutory deadline for filing and shall append a copy of the undertaking filed in the trial court.

(4) The movant may, but is not required to, assert that the movant has been prejudiced by appellant's failure to file timely an undertaking for costs on appeal. If, however, the motion is based on an assertion that appellant's failure to meet the statutory filing deadline should result in dismissal, even though appellant complied with a later filing deadline stated in the notice provided under subsection (1) of this rule, the movant must establish that substantial

prejudice resulted from appellant's failure to meet the statutory filing deadline.

---

[1] *See* ORS 19.300 regarding filing an undertaking for costs on appeal.

Rule 7.45
MOTIONS ARISING FROM SETTLEMENT, MEDIATION, OR ARBITRATION

(1) If a party files a motion to dismiss an appeal filed by that party, or files a response to such a motion, and the motion is the result of a negotiated settlement or compromise, the motion or response shall so state.

(2) If a party files a motion to dismiss or to determine jurisdiction arising from an arbitration or mediation required or offered by a court, or files a response to such a motion, the caption of the motion or response shall so state.

Rule 7.50
MOTION FOR SUMMARY AFFIRMANCE IN COURT-APPOINTED COUNSEL CASES

(1) Except as provided otherwise by statute,[1] in any case in which one of the parties is represented by court-appointed counsel,[2] the court on motion of the respondent may summarily affirm the judgment if the court concludes, after submission of the appellant's opening brief and without submission of the respondent's answering brief, that the appeal does not present a substantial question of law. The Chief Judge may deny a motion for summary affirmance and may grant an unopposed motion for summary affirmance. Only the court may grant, in the manner provided by ORS 2.570, a motion for summary affirmance to which the appellant has filed written opposition. A summary affirmance under this rule constitutes a decision on the merits of the appeal.

(2) If a motion for summary affirmance is filed under ORS 138.225, ORS 138.660, or ORS 34.712, or subsection (1) of this rule and counsel has filed a *Balfour* brief under ORAP 5.90 with a Section B or, with leave of the court, counsel's client has filed a supplemental *pro se* brief,[3] counsel forthwith shall forward a copy of the motion for summary affirmance to the client. The client shall have 35 days after the date the motion for summary affirmance was filed to file an answer to the motion.

---

[1] *See, e.g.*, ORS 138.225 (relating to appeals in criminal cases), ORS 138.660 (relating to appeals in post-conviction relief cases), and ORS 34.712 (relating to appeals in habeas corpus cases).

[2] For example, appeals in civil commitment cases under ORS chapters 426 or 427 and appeals arising from juvenile court under ORS 419A.200.

[3] "*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.

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.

---

[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."

8. MISCELLANEOUS RULES

Rule 8.05
SUBSTITUTION OF PARTIES IN CIVIL CASES; EFFECT OF DEATH OR ABSCONDING OF DEFENDANT IN CRIMINAL CASES

(1) Oregon Rule of Civil Procedure (ORCP) 34, relating to substitution of parties in civil cases, is adopted.

(2) (a) Any party who learns of the death of a defendant in a criminal case that is pending on appeal shall notify the court and all other parties of the death within 28 days after learning of the death. Any party may move to dismiss the appeal.

(b) If the appeal is from a judgment of conviction and sentence, the party filing the notice also may, concurrently with filing the notice of the defendant's death, file a memorandum addressing whether the court should dismiss the appeal or vacate the judgment, or both. Within 28 days after the filing of the notice of the defendant's death, any other party or interested person may file a memorandum addressing the same issues.

(c) The following are presumptive dispositions under this subsection:

(i) For a state's appeal, the court will dismiss the appeal.

(ii) For a defendant's appeal, if the defendant has made an assignment of error that, if successful, would result in reversal of the conviction, the court will vacate the judgment and dismiss the appeal.

(iii) For a defendant's appeal, if the defendant has assigned error only to a part of the sentence other than a monetary provision, the court will dismiss the appeal but will not vacate the judgment. If the defendant has assigned error to a monetary provision of the sentence, the court will dismiss the appeal and vacate the challenged monetary provision, but will not vacate the remainder of the judgment.

(iv) Notwithstanding subparagraphs (ii) and (iii) of this paragraph, if the defendant dies after issuance of a Court of Appeals decision affirming the judgment and after all right to petition for review has expired, the court will dismiss the appeal but will not vacate the judgment.

(3) If a defendant in a criminal case, a petitioner in a post-conviction relief proceeding, a plaintiff in a habeas corpus proceeding, a petitioner in a parole review proceeding, or a petitioner in a prison disciplinary case, on appeal of an adverse decision, escapes or absconds from custody or supervision, the respondent on appeal may move for dismissal of the appeal. If the court determines that the appellant is on escape or abscond status at the time the

court decides the motion, the court may dismiss the appeal or judicial review. If the court has not been advised otherwise, the court may infer that the appellant remains on escape or abscond status when the court considers and decides the motion.

Rule 8.10
WITHDRAWAL, SUBSTITUTION, AND ASSOCIATION OF ATTORNEYS ON APPEAL

(1) During the pendency of an appeal, an attorney may not withdraw from or substitute new counsel in a case except on order of the appellate court. A motion to withdraw or substitute new counsel must be filed and served on the client and every other party to the appeal, and is subject to ORS 9.380(1)(b) and ORS 9.390.

(2) Except as provided in ORAP 8.12, unless it appears otherwise from the record, the court will presume that good and sufficient cause exists for substitution of counsel if both attorneys sign the motion for substitution of counsel. On filing of the motion for substitution of counsel in proper form and bearing the signatures of both attorneys, the substitution shall be deemed to have been ordered by the appellate court.

(3) An attorney who associates another attorney from a different firm on appeal shall file a notice of association with the appellate court, accompanied by proof of service on every other party to the appeal.

(4) An attorney admitted to the practice of law in another jurisdiction, but not in Oregon, may appear by brief and argue the cause in a proceeding before an appellate court in the manner prescribed in UTCR 3.170.[1]

---

[1] *See* ORS 9.241; *see also* ORAP 6.10(4) concerning appearing for oral argument only.

Rule 8.12
APPOINTMENT, WITHDRAWAL, AND SUBSTITUTION OF COURT-APPOINTED COUNSEL OR LEGAL ADVISOR ON APPEAL

(1) (a) During the pendency of an appeal, withdrawal or substitution of court-appointed counsel is subject to ORAP 8.10(1).

(b) A court-appointed attorney shall have no obligation to move to withdraw or substitute counsel at the client's request unless the attorney has a good faith basis for the motion.

(2) (a) If court-appointed counsel of record wishes to substitute another court-appointed attorney as counsel for a party, counsel of record first must consult with the

Office of Public Defense Services regarding the need for a substitution and who should be substituted as new counsel. Thereafter, if counsel of record files a motion for substitution, in addition to satisfying the service requirements provided in ORAP 8.10(1), counsel of record shall serve a copy of the motion on the Office of Public Defense Services. Upon expiration of seven days after the date of filing the motion, unless it appears otherwise from the record, the court will presume that good and sufficient cause exists for substitution of counsel and the substitution shall be deemed to have been ordered by the court if:

(i) Counsel of record has signed the substitution;

(ii) The new attorney to be substituted as counsel for a party has been determined by the Office of Public Defense Services to be qualified for the type of case in which the motion for substitution is filed; and

(iii) No objection is filed to the proposed substitution.

(b) If, after consultation by counsel of record with the Office of Public Defense Services, the Office of Public Defense Services does not concur with the need for substitution of counsel or does not approve the attorney to be substituted into the case, counsel of record may file a motion for substitution of counsel. Any such motion must satisfy the service requirements of subsection (1) of ORAP 8.10, must include proof of service on the Office of Public Defense Services, and is subject to ORAP 7.05 and any other rule relating to motions generally.[1]

(3) (a) If the client of a court-appointed attorney moves to appoint new counsel based on the client's dissatisfaction with professional services rendered by the attorney, the client shall file the motion in the appellate court and serve the motion on the court-appointed attorney.

(b) If a party has a statutory or constitutional right to be represented by court-appointed counsel, the filing of any motion that would result in the party proceeding on appeal or review without counsel constitutes an attempt to waive the right to counsel.[2]

(c) If the court declines to accept a party's attempt to waive counsel, the court shall give the party an opportunity to file a supplemental *pro se* brief as provided in ORAP 5.92(2) and (3).[3]

(4) To the extent practicable, the provisions of this rule are applicable to a legal advisor appointed under ORS 135.045(1)(d).[4]

---

[1] *See* ORS 138.500(2)(d) regarding substitution of counsel pursuant to the policies and procedures of the Public Defense Services Commission; Public Defense Payment Policies and Procedure 1.7 (Substitution of Appointed Counsel).

[2] *See* ORS 135.045(1)(c) regarding waiver of counsel in criminal cases generally and in death sentence cases. *See* ORS 138.504 regarding waiver of court-appointed counsel on appeal in criminal cases. *See also Hendricks v. Zenon*, 993 F2d 664, 668-71 (9th Cir 1993), regarding waiver of the right to counsel on appeal in criminal cases.

[3] "*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.

[4] *See* ORS 135.045(1)(d) regarding appointment of a legal advisor for a defendant in a criminal case who waives the right to counsel.

Rule 8.15
AMICUS CURIAE

(1) A person[1] may appear as *amicus curiae* in any case pending before the appellate court only by permission of the appellate court on written application setting forth the interest of the person in the case. The application must:

(a) state whether the 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) identify the party with whom the amicus is aligned or state that the amicus is unaligned;

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

(d) explain why the application is timely relative to that deadline.

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

(2) The application shall be submitted by an active member of the Oregon State Bar. A filing fee is not required. The form of the application shall comply with ORAP 7.10(1) and (2) and the applicant shall file the original and one copy of the application. A copy of the application shall be served on all parties to the proceeding.

(3) 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) if the court grants the application, the date of filing for the brief relates back to the date of filing for the application; or

(b) if the court denies the application, the court will strike the brief.

(4) In the Court of Appeals, unless the court grants leave otherwise for good cause shown, an *amicus* brief shall be due seven days after the date the brief is due of the party with whom *amicus curiae* is aligned or, if *amicus curiae* is not aligned with any party, seven days after the date the opening brief is due.

(5) With respect to cases in the Supreme Court on petition for review from the Court of Appeals:

(a) A 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.

(b) 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.

(c) Unless the court grants leave otherwise for good cause shown, an application to appear *amicus curiae* on the merits of a case on review shall be filed:

(i) On the date the brief is due of the party on review with whom *amicus curia*e is aligned,

(ii) 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) 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 a brief 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 the *amicus curiae* brief is automatically extended to the same date.

(6) Except as provided in ORAP 11.30(7), 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 that a party could file a memorandum of additional authorities under ORAP 5.85.

(8) *Amicus curiae* shall not be allowed to orally argue the case, unless the court specifically authorizes or directs oral argument.[4]

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

---

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

[2] *See* 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 8.20
EFFECT OF BANKRUPTCY PETITION

(1) When a matter is pending in the appellate courts and a party learns that the matter is subject to the stay provisions of 11 USC § 362(a)(1)[1] (relating to bankruptcy proceedings), the party shall give notice of that fact to the appellate court, together with proof of service of the notice on all other parties to the case. The court will enter an order holding the matter in abeyance until it is shown to the court's satisfaction that the stay has been lifted or that 11 USC § 362(a)(1) is not applicable to the case.

(2) If a petition in bankruptcy is filed after entry of a judgment or final order but before a notice of appeal or petition for judicial review is filed and the adverse party desires to appeal, the notice or petition must nonetheless be filed within the time provided by statute or rule.

(3) If an appellant believes that a pending bankruptcy proceeding involving a party to the judgment being appealed should stay the appeal pending disposition of the bankruptcy proceeding, the notice of appeal or petition for judicial review shall contain, in addition to all other requirements under a statute or these rules, a statement identifying the party that has filed a petition in bankruptcy and a request to hold the appeal in abeyance on account of the bankruptcy proceeding.

(4) (a) Whether the petition in bankruptcy is filed after judgment or final order but before a notice of appeal or petition for judicial review is filed, or after a notice or petition is filed, the appellate court will not exercise jurisdiction as to the debtor party as long as the stay under 11 USC § 362 remains in effect.

(b) If more than one creditor and debtor are parties to the case on appeal and the presence of the debtor subject to the bankruptcy petition is necessary to resolve on appeal the claims of the other parties, then the appellate court will not exercise jurisdiction of the entire cause as long as the stay under 11 USC § 362 remains in effect.

---

[1] The filing of a petition in bankruptcy under 11 USC §§ 301, 302, or 303 operates as a stay as to all entities, of:

> "the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title * * *."

11 USC § 362(a)(1).

Rule 8.25
MOTION UNDER ORCP 71 FOR RELIEF FROM JUDGMENT

(1) If the copy of a motion for relief from judgment under ORCP 71 A or ORCP 71 B required to be served on the appellate court[1] is not entitled "MOTION FOR RELIEF FROM JUDGMENT UNDER ORCP 71," it shall be accompanied by a letter of transmittal identifying the motion as a motion for relief under ORCP 71 A or ORCP 71 B.

(2) When a party has filed a motion for relief from judgment under ORCP 71 A or ORCP 71 B while the judgment is on appeal, the appellate court will decide whether to hold the appeal in abeyance pending disposition of the motion or to allow the appeal to go forward. Any party to the appeal may move the court to hold the appeal in abeyance or to allow the appeal to go forward. In the absence of a motion from a party, the court on its own motion will review the motion for relief from judgment, decide whether to hold the appeal in abeyance and notify the parties if it decides to do so. If the court does not order the appeal to be held in abeyance, the appeal will go forward.

(3) A party wishing to appeal an order deciding a motion filed under ORCP 71 A or ORCP 71 B during the pendency of an appeal shall file a notice of appeal within the time and in the manner prescribed in ORS chapter 19. The notice of appeal as filed shall bear the same appellate case number assigned to the original notice of appeal.

(4) If the appellate court holds an appeal in abeyance pending disposition of a motion under ORCP 71 A or ORCP 71 B and subsequently receives a copy of the trial court's order deciding the motion, the appellate court shall decide whether to reactivate the case or take other action after expiration of the period within which an appeal from the order may be filed.

---

[1] *See* ORCP 71 B(2).

Rule 8.27
MODIFICATION OF JUDGMENT OF DISSOLUTION OF MARRIAGE DURING PENDENCY OF APPEAL

(1) During the pendency of an appeal from a judgment of dissolution of marriage, if it comes to the attention of the court that a party has filed a motion under ORS 19.275(1) to modify the judgment of dissolution of marriage, including a motion to reconsider spousal or child support provisions of a judgment pursuant to ORS 107.135, the appellate court may hold the appeal in abeyance pending disposition of the motion or allow the appeal to go forward. Any party to the appeal may move the court to hold the appeal in abeyance or to allow the appeal to go forward. In the absence of a motion from a party, the court on its own motion may review the motion filed in the trial court, decide whether to hold the appeal in abeyance and notify the parties if it decides to do so. If the court does not order the appeal to be held in abeyance, the appeal will go forward.

(2) A party wishing to appeal the trial court's final decision on a motion under ORS 19.275 during the pendency of an appeal shall file a notice of appeal within the time and in the manner prescribed in ORS chapter 19. The notice of appeal as filed shall bear the same appellate case number assigned to the original notice of appeal.

(3) If the appellate court holds an appeal in abeyance pending disposition of a motion under ORS 19.275(1) and subsequently receives a copy of the trial court's final decision, the appellate court shall decide whether to reactivate the appeal or take other action after expiration of the period within which an appeal from the final decision may be filed. If a timely appeal from the final decision on a motion under ORS 19.275 is filed, the court may direct that both appeals be heard at the same time or may allow the appeals to proceed independently of one another.

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.

---

[1] *See, e.g.*, a motion in the trial court under ORS 137.172 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 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 8.30
DISQUALIFICATION OF JUDGE

(1) If a party or counsel for a party discovers that a sitting Court of Appeals or Supreme Court judge participated in the case in the proceedings being appealed or reviewed, the party or counsel shall notify the Administrator by letter of the judge's participation as soon as possible after discovering the judge's participation.

(2) The duty of a party or counsel to notify the Administrator of a sitting appellate judge's previous participation in the proceeding includes, in post-conviction relief and habeas corpus cases, the underlying criminal proceeding.

(3) (a) In addition to the notice required by subsection (1) of this rule, a party or

attorney for a party in a case before the Supreme Court or Court of Appeals may move to disqualify a judge of the Supreme Court or Court of Appeals for one or more of the grounds specified in ORS 14.210, or upon the ground that the judge's participation in the case would violate the Oregon Code of Judicial Conduct. The motion shall be filed as soon as practicable after the party or attorney learns of the ground for disqualification.

(b) (i) The Administrator shall forward a copy of the motion to the judge against whom the motion is directed without waiting for an answer to the motion. The judge may grant the motion with or without an answer having been filed. If the judge does not believe that the motion is well taken, the judge shall refer the motion to the presiding judge for decision. The judge's referral may be accompanied by any written response the judge may wish to make. If the judge accompanies the referral with written response, the judge shall provide the parties with a copy of the written comments. The presiding judge may rule on the motion or may refer the motion to the full court for a decision.

(ii) In the Court of Appeals, "presiding judge" means the Chief Judge, unless the motion to disqualify is directed at the Chief Judge, in which case "presiding judge" means the next senior judge available to rule on the motion. In the Supreme Court, "presiding judge" means the Chief Justice, unless the motion to disqualify is directed at the Chief Justice, in which case "presiding judge" means the next senior judge available to rule on the motion.

Rule 8.35
MEDIA COVERAGE OF APPELLATE COURT PROCEEDINGS

(1) As used in this rule, "judge presiding in a proceeding" means the Chief Justice of the Supreme Court, the Chief Judge of the Court of Appeals, or the justice or judge presiding in a public proceeding in the Supreme Court or Court of Appeals, as appropriate.

(2) The judge presiding in a proceeding shall have the authority and responsibility to control the conduct of proceedings before the court, insure decorum and prevent distractions, and insure the fair administration of justice in proceedings before the court. Subject to that authority and responsibility, radio, television, and still photography coverage of public judicial proceedings in the appellate courts shall be allowed in accordance with this rule.

(3) Where available, audio pickup for all media purposes shall be accomplished from existing audio systems present in the courtroom, except if the audio pickup is attached to and operated as part of a television or videotape camera. If no technically suitable audio system exists in the courtroom, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance of the proceeding by the judge presiding in the proceeding.

(4) One still photographer, utilizing not more than two still cameras and related

equipment, and one television or videotape camera operator shall be permitted to cover any public proceeding in an appellate court. The judge presiding in the proceeding shall designate:

(a) Where in the courtroom the photographer or television or videotape camera operator shall be positioned; and

(b) Where outside the courtroom videotape recording equipment that is not part of the television or videotape camera shall be positioned.

(5) Microphones and cameras shall be placed in the courtroom before proceedings each day or during a recess and, once positioned, shall not be moved during the proceeding. Microphones and cameras shall be removed only after adjournment of proceedings each day or during a recess. Broadcast media representatives shall not move about the courtroom while proceedings are in session.

(6) (a) Audio and photographic equipment that produces distracting sound or light shall not be used, nor shall artificial lighting device of any kind be used. Broadcast media representatives shall eliminate all excessive noise while in the courtroom; *e.g.*, any equipment coverings or cassette cases should be removed or opened before being brought into the courtroom and may not be replaced or closed inside the courtroom. Television film magazines (as distinct from videotape) and still camera film or lenses shall not be changed in the courtroom except during a recess.

(b) The judge presiding in the proceedings may require any media representative intending to cover the proceeding to demonstrate adequately in advance of the proceeding that the equipment that will be used meets the light and sound standards of this rule.

(7) "Pooling" arrangements required by the limitations of this rule on media equipment and personnel shall be the sole responsibility of the media without calling on the judge presiding in the proceeding to mediate any dispute as to the appropriate representative or equipment authorized to cover a particular proceeding. In the absence of advance media agreement on disputed equipment or personnel issues, the judge presiding in the proceeding shall exclude all radio, television and still photography coverage.

(8) Media representatives attending an appellate court proceeding shall be dressed so as not to detract from the dignity of the court and may be removed from the courtroom for failure to wear appropriate attire.

Rule 8.40
REVIEW OF TRIAL COURT RULINGS AFFECTING APPEAL

During the pendency of an appeal, if the trial court rules on a matter affecting the appeal,[1] any party aggrieved by the trial court's ruling may request, by motion filed within 14 days after

the date of entry of the trial court's ruling, that the appellate court review the trial court's ruling and grant appropriate relief. The appellate court may review the ruling of the trial court on a matter affecting an appeal as necessary to decide a matter before the court.

---

[1] *See, e.g.*, ORS 19.235(1) and (2) (trial court summary determinations of appealability); ORS 19.370(5)-(7) (correction of, addition to, and settling of transcripts); ORS 19.375(2) (designating party responsible for preparation of additional parts of transcript); ORS 138.500 (determinations of indigency and preparation of a transcript at state expense and appointment of counsel on appeal).

With respect to undertakings and stays on appeal, *see* ORS 19.360 (providing for appellate review and prescribing time within which to move for appellate review of trial court orders relating to undertakings and stays on appeal, prescribing the standard of the court's review, and prescribing the scope of relief the appellate court may grant generally); ORS 19.300 (amount of undertaking for costs on appeal); ORS 19.305 (qualifications of sureties and objections to sufficiency of an undertaking); ORS 19.310 (approval of stipulations dispensing with undertaking requirements and waiver, reduction, or limitation of undertaking for good cause); ORS 19.335 (supersedeas undertakings); ORS 19.340 (sale of perishable property); ORS 19.350 (discretionary stays); and ORS 19.355 (stays in domestic relations cases).

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

Except as to facts the disclosure of which is barred by the attorney-client privilege, when a party becomes aware of facts that probably render an appeal moot,[1] that party shall provide notice of the facts to the court and to the other party or parties to the appeal, and may file a motion to dismiss the appeal. If a party becomes aware of facts that probably render an appeal moot and fails promptly to inform the other party or parties to the appeal and the court dismisses the appeal as moot, the court, on motion of the aggrieved party, may award costs and attorney fees incurred by the aggrieved party incurred after notice should have been given of the facts probably rendering the appeal moot, payable by the party who had knowledge of the facts.

---

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

Rule 8.47
NOTIFICATION OF RELATED CASES

When a party files a brief in the Court of Appeals, if the party is aware of another case pending in an appellate court that arises out of the same case or consolidated case, or that

involves the same transaction or event, the party must file a notice with the Court of Appeals identifying the related case by case title and appellate case number. The notice must be a separate document from the party's brief. A party may likewise notify the Court of Appeals if the party is aware of another case pending in an appellate court that raises the same or a closely related issue. A party need not notify the Court of Appeals of a related case if another party has already done so.

Rule 8.50
SEGREGATION OF
PROTECTED PERSONAL INFORMATION

(1) For purposes of this rule, "protected personal information" is information that:

(a) Identifies a person beyond that person's name (*e.g.*, Social Security number, maiden name, driver license number, birth date and location) or identifies a person's financial activities (*e.g.*, credit card number, credit report, bank account number or location); and

(b) The appellate court is permitted to maintain as confidential and not subject to public inspection.

(2) (a) A person or entity required to file a document in the appellate court that contains protected personal information may submit that information on a separate document together with a motion describing the information and requesting that the appellate court keep the separate document segregated from the appellate court file. The caption of the separate document must prominently display the words "Segregated Personal Protected Information, ORAP 8.50(2)(a), Confidential." The moving party shall serve a copy of the motion on all other parties to the appeal, review, or other proceeding. During the pendency of the motion, the separate document will not be available for public inspection.

(b) A person or entity who has filed a document in the appellate court that contains protected personal information may submit a motion to replace the document with a document that redacts the protected personal information and requesting that the appellate court keep the original document segregated from the appellate court file. The caption of the motion must prominently display the words "Motion -- Redact Previously Filed Document, ORAP 8.50(2)(b)." The moving party shall submit the proposed redacted document with the motion. The moving party shall serve a copy of the motion and the proposed redacted document on all other parties to the appeal, review, or other proceeding. During the pendency of the motion, the document containing protected personal information will not be available for public inspection.[1]

(3) If the court grants the motion, then the court will segregate the document containing protected personal information from the appellate court file. The motion will remain in the appellate court file. Any request for public inspection of such a document containing

protected personal information must be made in writing, filed with the appellate court, and served on all other parties to the appeal, review, or other proceeding.

---

[1] Chief Justice Order No. 06-050, issued October 31, 2006, under authority of ORS 1.002(1)(a) and ORS 21.020(2), and effective January 1, 2007, prescribes a fee of $25.00 per case and $1.00 per existing appellate file page replaced with redacted entries.

See Oregon Laws 2003, chapter 380, adopting ORS 107.840 and amending other statutes and protecting the confidentiality of Social Security numbers; *see also* ORAP 1.35(1)(b) concerning requirement that parties with contact information that is shielded by law or court order provide appellate courts with alternative contact information that may be made available for public inspection.

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) 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 8.55
CRIMINAL CONVICTION SET ASIDES; DELINQUENCY ADJUDICATION EXPUNGEMENTS

If a circuit court sets aside the conviction of a party in a criminal case under ORS 137.225 or expunges the delinquency adjudication in a juvenile court case under ORS 419A.262 and the party wishes to have the appellate court record sealed, the party must provide the Administrator with a true and complete copy of the circuit court order. After taking such steps as

appropriate to confirm the validity of the order:

(1) If the circuit court order sets aside all convictions or expunges all delinquency adjudications in the case, the Administrator will seal the appellate court record and modify the version of the court's opinion published on the Judicial Department's website to avoid use of the party's name in the case title and body of the opinion.*

(2) If a circuit court order sets aside fewer than all convictions or adjudications in a case, the Administrator will not seal the appellate court record, but may modify the version of the court's opinion published on the Judicial Department's website to avoid use of the party's name in the case title and body of the opinion.*

---

* 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.

This page left blank intentionally.

9. PETITION FOR REVIEW AND RECONSIDERATION IN SUPREME COURT

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 under ORAP 7.55(4)(c) or an order of the appellate commissioner under ORAP 7.55(4)(d).

(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) (i) If a timely petition for reconsideration of a decision of the Court of Appeals is filed 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]

(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.[3]

(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.[4]

(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.[5]

(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.

---

[1] S*ee 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.

[2] Paragraph (2)(b) of this rule does not apply to a motion for reconsideration filed under ORAP 6.25(5).

[3] *See* Appendix 9.05.

[4] *See* ORAP 9.17 regarding briefs on the merits.

[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 9.07
CRITERIA FOR GRANTING DISCRETIONARY REVIEW

The Supreme Court considers the items set out below to be relevant to the decision whether to grant discretionary review. These criteria are published to inform and assist the bar and the public. They are neither exclusive nor binding. The court retains the inherent authority to allow or deny any petition for review. A petition for review may refer to those items that are relevant to the case and need not address each listed item.[1]

(1) Whether the case presents a significant issue of law. A significant issue of law may include, for example:

(a) The interpretation of a constitutional provision,

(b) The interpretation of a statute,

(c) The constitutionality of a statute,

(d) The legality of an important governmental action,

(e) The use or effect of a rule of trial court procedure,

(f) The jurisdiction of the Court of Appeals or the trial court, or

(g) The application or proposed modification of a principle of common law.

(2) Whether the issue or a similar issue arises often.

(3) Whether many people are affected by the decision in the case. Whether the consequence of the decision is important to the public, even if the issue may not arise often.

(4) Whether the legal issue is an issue of state law.

(5) Whether the issue is one of first impression for the Supreme Court.

(6) Whether the same or a related issue is pending before the Supreme Court.

(7) Whether the legal issue is properly preserved, and whether the case is free from factual disputes or procedural obstacles that might prevent the Supreme Court from reaching the legal issue.

(8) Whether the record does, in fact, present the desired issue.

(9) Whether present case law is inconsistent (among Court of Appeals cases, between Court of Appeals cases and Supreme Court cases, or among Supreme Court cases).

(10) Whether it appears that trial courts or administrative agencies are inconsistent or confused in ruling on the issue that the case presents.

(11) Whether the Court of Appeals published a written opinion.

(12) Whether the Court of Appeals was divided on the case.

(13) Whether the Court of Appeals decided the case en banc.

(14) Whether the Court of Appeals decision appears to be wrong. If the decision appears to be wrong:

(a) Whether the error results in a serious or irreversible injustice or in a distortion or misapplication of a legal principle.

(b) Whether the error can be corrected by another branch of government, such as by legislation or rulemaking.

(15) Whether the issues are well presented in the briefs.

(16) Whether an *amicus curiae* has appeared, or is available to advise the court.

---

[1] A party may include in an appendix to a petition for review materials in support of criteria under this rule that are not otherwise part of the record on appeal, such as materials demonstrating how the case may affect persons other than the parties to the immediate case or how the case is important to the public.

Rule 9.10
RESPONSE TO PETITION FOR REVIEW

(1) A party to an appeal or judicial review in the Court of Appeals may, but need not, file a response to a petition for review. The response may include the party's contingent request for review of any question properly before the Court of Appeals in the event that the court grants the petition for review. In the absence of a response, the party's brief in the Court of Appeals will be considered as the response.

(2) A response to a petition for review is due within 14 days after the petition for review is filed.

(3) A response 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 response 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. Any party filing a response shall

file with the Administrator one original response, serve two copies of the response on every other party to the review, and file proof of service.

Rule 9.17
BRIEFS ON THE MERITS ON REVIEW

(1) After the Supreme Court allows review, the parties to the case on review may file briefs on the merits of the case, as provided in this rule. A respondent may file a brief on the merits on review even if the petitioner on review elects not to do so.

(2) (a) If a petitioner on review has given notice of intent to file a brief on the merits as provided in ORAP 9.05(3)(a)(v), the petitioner shall have 28 days after the date that the Supreme Court allows review to file the brief.

(b) The petitioner's brief on the merits on review shall contain:

(i) Concise statements of the legal question or questions presented on review and of the rule of law that petitioner proposes be established. The questions should not be argumentative or repetitious. The phrasing of the questions need not be identical with any statement of questions presented in the petition for review, but the brief may not raise additional questions or change the substance of the questions already presented.

(ii) A concise statement of:

(A) The nature of the action or proceeding, the relief sought in the trial court, and the nature of the judgment rendered by the trial court; and

(B) All the facts of the case material to determination of the review, in narrative form with references to the places in the record where the facts appear.

(iii) A summary of the argument.

(iv) The argument.

(v) A conclusion, specifying with particularity the relief which the party seeks.

(c) The petitioner's brief on the merits on review shall conform to ORAP 5.05, ORAP 5.35, ORAP 5.95, and ORAP 9.05(3).

(3) (a) The respondent's brief on the merits on review shall be filed within these time limits:

(i) If petitioner files a brief on the merits on review, respondent's brief on the merits on review is due within 28 days thereafter;

(ii) If petitioner gives notice of intent to file a brief on the merits on review but ultimately either does not do so or does not do so within the time allowed, respondent's brief on the merits on review is due within 28 days after the date on which petitioner's brief on the merits on review was due;

(iii) If petitioner either has failed to give notice of intent to file a brief on the merits on review as provided in ORAP 9.05(3)(a)(v) or has given notice of intent not to file a brief on the merits on review, respondent's brief on the merits on review is due within 28 days after review is allowed.

(b) Items required by paragraph (2)(b) of this rule need not be included in respondent's brief on the merits on review unless respondent is dissatisfied with their presentation in petitioner's brief on the merits on review.

(c) The respondent's brief on the merits on review shall conform to ORAP 5.05, ORAP 5.35, and ORAP 5.95.

(4) The petitioner on review may file an optional reply brief to the respondent's brief on the merits. The petitioner's reply brief on the merits shall conform to ORAP 5.05, ORAP 5.35, and ORAP 5.95. The reply brief on the merits, if any, is due within 14 days of the date on which respondent's brief on the merits on review was due.

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

Rule 9.20
ALLOWANCE OF REVIEW BY SUPREME COURT

(1) A petition for review of a decision of the Court of Appeals shall be allowed if one less than a majority of the judges eligible to vote on the petition vote to allow it.

(2) If the Supreme Court allows a petition for review, the court may limit the questions on review. If review is not so limited, the questions before the Supreme Court include all questions properly before the Court of Appeals that the petition or the response claims were erroneously decided by that court. The Supreme Court's opinion need not address each such question. The court may consider other issues that were before the Court of Appeals.

(3) When the Supreme Court allows a petition for review, the court may request the parties to address specific questions. Those specific questions should be addressed at oral argument and may also be addressed in the parties' briefs on the merits on review or by

additional memoranda. If addressed by additional memoranda, the original additional memoranda shall be filed and copies served not less than seven days before argument or submission of the case.

(4) The parties' briefs in the Court of Appeals will be considered as the main briefs in the Supreme Court, supplemented by the petition for review and any response, brief on the merits on review, or additional memoranda that may be filed.[1]

(5) The record on review shall consist of the record before the Court of Appeals.

---

[1] *See* ORAP 9.10 regarding responses to petitions for review; *see* ORAP 9.17 regarding briefs on the merits.

Rule 9.25
RECONSIDERATION IN SUPREME COURT

(1) A party seeking reconsideration of a decision of the Supreme Court shall file a petition for reconsideration within 14 days after the date of the decision. The petition shall be in the form of a brief, prepared in conformity with ORAP 5.05 and ORAP 5.95, insofar as they are applicable. The petition must be no longer than a petition for review in the Supreme Court as prescribed by ORAP 9.05(3)(a). The petition shall include a copy of the court's decision. A petitioner shall identify on the cover which party is the petitioner, the date of the decision, and, if there is an opinion or if there are opinions, the judges who joined therein.

(2) Any response to a petition for reconsideration must be filed within seven days after the filing of the petition for reconsideration.

(**3**) The court shall either deny or allow reconsideration. If the court allows reconsideration, the court may reconsider with or without further briefing or oral argument. Reconsideration shall result in affirmance, modification, or reversal of the decision that has been reconsidered.

Rule 9.30
AUTHORITY OVER MATTERS, INCLUDING MOTIONS, WHEN CASE IS PENDING IN THE SUPREME COURT

(1) The Supreme Court has authority to decide matters, including motions, if the case is pending in that court. For purposes of this rule, a case is pending in the Supreme Court in the following circumstances:

(a) If a petition for review is filed, until the Supreme Court finally disposes of the review proceeding;

(b) If a motion for an extension of time to file a petition for review is filed, until the Supreme Court denies the motion or, if the Supreme Court allows the motion, until the time for filing the petition for review expires;

(c) If a motion to hold a case in abeyance pending disposition of another case in the Supreme Court is filed, until the Supreme Court denies the motion or, if the Supreme Court grants the motion, until the abeyance period expires.

(2) The Court of Appeals has authority to decide matters, including motions, in an appeal that was filed in that court in the following circumstances:

(a) If the case is not pending in the Supreme Court, until the appellate judgment issues.[1]

(b) If the case is pending in the Supreme Court, until the later of these two events occurs: (1) the time for filing a petition for reconsideration pursuant to ORAP 6.25 expires or (2) if a timely petition for reconsideration is filed, the date the Court of Appeals disposes of the petition for reconsideration.

(c) In connection with claims for attorney fees, costs and disbursements, and damages[2] in connection with the proceedings in the Court of Appeals, until the appellate judgment issues, notwithstanding that the case is pending in the Supreme Court.

(d) If a case is pending in the Supreme Court as to any action of the Court of Appeals that does not dispose of an appeal, until the appellate judgment issues. In these circumstances, the Court of Appeals, in its discretion, may proceed with the case or await disposition by the Supreme Court.

(3) Motions should not be filed simultaneously in both the Supreme Court and Court of Appeals. If either the Supreme Court or Court of Appeals receives a motion that it determines should have been filed in the other court, it shall transfer the motion to the other court. In the event a dispute arises concerning which court should rule on a motion, the Chief Justice of the Supreme Court and the Chief Judge of the Court of Appeals may confer and decide which court will rule on the motion.

---

[1] *See* ORS 19.270, ORS 19.450, and ORAP 14.05.

[2] *See, e.g.*, ORS 19.445 and ORS 20.105

This page left blank intentionally.

10. SPECIAL COURT OF APPEALS RULES

Rule 10.05
APPLICATION FOR INTERLOCUTORY APPEAL IN CLASS ACTION

The practice and procedure governing applications to appeal from certain court orders involving questions of law under ORS 19.225 shall be as follows:

(1) An application to file an interlocutory appeal under ORS 19.225 shall be entitled "Appellant's Application for Interlocutory Appeal Pursuant to ORS 19.225." The applicant shall be entitled "Appellant" and the opposing party "Respondent." The application shall be accompanied by the appellant's filing fee.

(2) The application shall consist of:

(a) A statement not exceeding three pages formally applying for leave to file notice of appeal and informing the court of the nature of the cause or causes of action involved, the specific order desired to be appealed and its effect on the litigation, and the controlling question of law pertinent to the application.

(b) A memorandum not exceeding 10 pages explaining why the application should be allowed, accompanied by a copy of any exhibits necessary to the explanation.

(c) A notice of appeal in the form provided in ORAP 2.05.

(3) An applicant shall file with the Administrator the original application and all accompanying papers, together with proof of service on all other parties to the case and the trial court judge.

(4) The opposing party shall be allowed 14 days within which to file an answer, which shall be entitled, "Respondent's Memorandum in Response to Application for Interlocutory Appeal Pursuant to ORS 19.225." The answering memorandum shall not exceed 10 pages and shall be accompanied only by the exhibits necessary to support the explanation why the application should not be allowed.

(5) The respondent shall file with the Administrator the original answering memorandum and all accompanying papers, together with proof of service on all other parties to the case and the trial court judge. The answering memorandum shall be accompanied by the respondent's appearance fee.

(6) If the respondent seeks to appeal from an order under ORS 19.225 independently of the appellant, the respondent shall accompany the answering memorandum with an application in the form required by this rule and an appellant's filing fee. If the respondent seeks to cross-appeal from the same order that the appellant seeks to appeal only if the court allows the

appellant's application, respondent shall tender a notice of cross-appeal but need not comply with subsections (2), (3), and (5) of this rule.

(7) An applicant shall be allowed seven days within which to file a reply, consisting of no more than seven pages, which shall be entitled "Appellant's Reply to Memorandum in Response to Application for Interlocutory Appeal Pursuant to ORS 19.225." The applicant shall file the original reply together with proof of service on all other parties to the case and the trial court judge.

(8) If the Court of Appeals allows an application under ORS 19.225, the notice of appeal and notice of cross-appeal are deemed filed as of the date of the order allowing the application. The appeal shall then proceed in accordance with the statutes and rules governing civil appeals.

Rule 10.10
CERTIFICATION OF APPEAL TO SUPREME COURT BY COURT OF APPEALS

(1) Certification of an appeal to the Supreme Court pursuant to ORS 19.405 shall be through the Chief Judge by a majority of the judges of the Court of Appeals not disqualified to consider the appeal to be certified.

(2) Written notice of certification shall be given to the parties to the appeal by the Administrator, but failure to give or receive the notice shall not affect the validity of the certification.

(3) Certification shall have the same effect as a motion subject to ORAP 7.30, except that the Court of Appeals may consider any motion, petition or other matter presented by a party pending the acceptance or denial of acceptance of the certification, on a showing that the matter presented should be considered during the pendency of the certification.

(4) If the Supreme Court denies acceptance of a certified appeal, or if the Supreme Court fails to accept or deny acceptance of a certified appeal within the time provided by ORS 19.405, the Administrator shall notify the Court of Appeals and the parties to the appeal in writing; the case shall thereafter proceed in due course in the Court of Appeals.

(5) The Court of Appeals may not certify an appeal more than one time.

(6) To accept a certified appeal, a majority of the judges of the Supreme Court considering the certification must vote in favor of acceptance. The court shall file an order accepting or denying the certification within 20 days after the date of receiving the certification, except that the court, by order entered within that 20-day period, may extend by not more than 10 days the time for acceptance or denial of the certified appeal. If the court does not file an order accepting or denying the certification within that time, the certification is deemed denied.

If the court accepts or denies a certification by written order, the Administrator shall send a copy of the order to the parties and to the Court of Appeals.

(7) If the Supreme Court accepts a certified appeal, the Court of Appeals shall transmit the record of the case and the briefs of the parties to the Supreme Court, and the Supreme Court shall thereafter have jurisdiction of the case, and it shall be considered pending in the Supreme Court without additional notice of appeal, filing fee, undertaking or, except as the Supreme Court may require, briefs. The case shall then proceed in the Supreme Court as directed in its notification of acceptance.

_____

See ORS 250.044 regarding special provisions for certifying certain appeals arising from cases filed in Marion County Circuit Court challenging the constitutionality of a state statute or an amendment to the Oregon Constitution by a ballot measure.

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.

(d) The court shall not grant an extension of time of more than 14 days for the filing of any brief, nor shall the court grant more than one extension of time.

(7) The court will set the case for oral argument within 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 10.20
ARBITRATION OF DISPUTES OVER PROVISION OF PUBLIC SERVICES FOR PRISON SITES

(1) When a motion is filed under ORS 421.628(7) seeking selection of an arbitrator:

(a) The case title shall identify the moving party as the petitioner and the adverse party as the respondent.

(b) The motion shall be entitled "MOTION FOR SELECTION OF ARBITRATOR UNDER ORS 421.628(7)."

(c) The motion may nominate one or more arbitrators and shall suggest rules and procedures for the arbitration proceeding.

(d) The moving party shall serve a copy of the motion on the adverse party and the motion shall contain proof of service on the adverse party.

(e) The adverse party shall have 14 days after the date the motion was filed to file an answer to the motion. The adverse party may nominate one or more arbitrators and may suggest alternative rules and procedures for the arbitration proceeding.

(f) When the Chief Judge of the Court of Appeals selects an arbitrator and decides the rules and procedures to be followed in the proceeding, the Administrator shall so inform the parties. Thereafter, the parties will be responsible for contacting the arbitrator and making arrangements for the arbitration proceeding, including sharing the expense of the arbitration proceeding and the arbitrator's fee.

(2) Following the arbitration proceeding, if either party files exceptions to the arbitrator's decision and award:

(a) The case caption shall contain the same case title and appellate case number as the motion for selection of arbitrator and the exceptions shall have attached to it a copy of the arbitrator's decision and award.

(b) The arbitrator shall have 14 days after the date of being served with a copy of the exceptions to submit to the Court of Appeals the original of the arbitration decision together with any exhibits, memoranda or other written materials made part of the record by the arbitrator.

(c) No later than 14 days after the arbitrator's record is submitted to the Court of Appeals, any party wishing to have a special master appointed shall file a motion demonstrating the need for a special master. The adverse party shall have 14 days to file an answer to the motion. If the court appoints a special master, the court's order will prescribe the rules and procedure for the proceeding before the special master.

(d) If no party requests appointment of a special master, the party filing objections shall have 14 days after the arbitrator submits the record to the court to serve and file a memorandum in support of the objections.

(e) If a special master is appointed, the party filing objections shall have 14 days after the special master submits the special master's findings to the court to file a memorandum in support of the objections.

(f) The adverse party shall have 14 days after being served with the memorandum in support of the objections to file an answer to the objections.

(g) The court in its discretion will hear oral argument on the objections to the arbitrator's decision.

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) or (d) 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.

11. ORIGINAL PROCEEDINGS IN THE SUPREME COURT

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) regarding alcohol and drug abuse records. *See generally* ORAP 16.15(5)(b) for procedure for eFiling attachments that are confidential or otherwise exempt from disclosure.

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

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

Rule 11.10
MANDAMUS:
RESPONSE BY ADVERSE PARTY AND CONSIDERATION BY THE COURT

(1) Unless the court directs otherwise, the adverse party in a mandamus proceeding that challenges the action of a judge in a particular case in the circuit court, the Tax Court, or the Court of Appeals or the defendant in any other mandamus proceeding may file a memorandum in opposition.[1] The form of the memorandum shall comply with ORAP 7.10(1) and (2). The original memorandum shall be filed within 14 days after the date the petition was filed. A relator may not file a reply memorandum unless the court has requested one.

(2) The petition and any memoranda in opposition to the petition shall be considered by the court without oral argument unless otherwise ordered. If the court determines to accept jurisdiction, it shall issue an order allowing the petition. Otherwise, the petition shall be denied by order of the court.

(3) If the court issues an alternative writ of mandamus 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 Administrator shall mail copies of the order allowing the petition and the alternative writ of mandamus to the relator, to the adverse party, to any intervenor, and to the judge or court whose action is challenged in the petition. Proof of service of an alternative writ of mandamus need not be filed with the court. Unless the alternative writ of mandamus specifically requires that a return, answer, or responsive pleading be filed, the judge or court to which the writ is issued need not file a return, answer, or responsive pleading.

(4) If the court issues an alternative writ in any other mandamus proceeding, the court shall set a return date in the writ, and the Administrator shall mail copies of the order allowing the petition and the alternative writ of mandamus to the relator, to the defendant, and to any intervenor. On or before the return date in the writ, the defendant shall either file a certificate of

compliance or show cause by answer or motion to dismiss as provided by ORS 34.170. If the defendant fails to file a certificate of compliance or show cause by answer or motion to dismiss on or before the return date set in the writ, the court, without further notice to the parties, may issue a peremptory writ of mandamus, as provided in ORS 34.180. When the case is at issue on the pleadings,[2] the court will notify the parties to that effect.

(5) At any time after the filing of a petition for writ of mandamus or the issuance of an alternative writ of mandamus, if the defendant, judge, or court performs the act sought in the petition or required in the alternative writ, the relator shall notify, and the defendant, judge, court, or any other party to the lower court case may notify, the court of that compliance. After receiving notice of the compliance, the court on motion of any party or on its own motion may dismiss the mandamus proceeding.

---

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

[2] *See* ORS 34.170, ORS 34.180, and ORS 34.190.

See generally ORS 34.105 through 34.250 and Article VII (Amended), section 2, of the Oregon Constitution.

Rule 11.15
MANDAMUS:
BRIEFS AND ORAL ARGUMENT

(1) Unless otherwise directed by the court, and provided that the court does not receive notice of compliance with the alternative writ of mandamus by the official to whom the writ was issued, the relator shall file the opening brief:

(a) Within 28 days after the date of issuance of the alternative writ of mandamus, in a mandamus proceeding that challenges the action of a judge in a particular case in the circuit court, the Tax Court, or the Court of Appeals; or

(b) Within 28 days after the date that the case is at issue on the pleadings, in any other mandamus proceeding.

(2) The adverse party in a mandamus proceeding that challenges the action of a judge in a particular case in the circuit court, the Tax Court, or the Court of Appeals, or the defendant in any other mandamus proceeding, shall have 28 days after the date the relator serves and files the opening brief to file the answering brief.

(3) The relator may file a reply brief only with leave of the court. A motion

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

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

(5) All briefs shall be prepared in substantial conformity with ORAP 5.35 through 5.50. An original brief shall be filed with the Administrator with proof of service showing that two copies were served on each party.

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

Rule 11.17
MANDAMUS: ISSUANCE OF COMBINED PEREMPTORY WRIT OF MANDAMUS AND APPELLATE JUDGMENT

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

_____

See ORS 34.250(8).

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) 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 11.22
LENGTHY MEMORANDA

A memorandum longer than 20 pages, exclusive of appendices and exhibits, in support of or in opposition to a petition invoking the Supreme Court's original jurisdiction in a mandamus, habeas corpus, or quo warranto case, or any other original proceeding in the Supreme Court shall contain an index of contents, an index of appendices or exhibits, and an index of authorities, each with page references.[1]

---

[1] *See* ORAP 5.35.

Rule 11.25
BAR ADMISSION, REINSTATEMENT, AND DISCIPLINARY PROCEEDINGS

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

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

(b) The respondent in a disciplinary proceeding.

(c) The applicant in a contested reinstatement proceeding.

(d) The applicant in a contested admission proceeding.

(2) Disciplinary and Contested Reinstatement Proceedings

(a) A petition concerning a disciplinary proceeding or a trial panel opinion in a former member's contested reinstatement shall be filed with the Administrator, with proof of service on all parties, within 30 days after written notice by the Bar's Disciplinary Board Clerk of receipt of the trial panel opinion.

(b) The Bar's Disciplinary Counsel must file the record of the proceedings before the trial panel 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.

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

(d) 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.

(3) Contested Admission Proceedings

(a) The Bar must file the decision of the Board of Bar Examiners on reinstatement with the Administrator pursuant to RFA 9.55. The Bar also must 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.

(b) A petition concerning a bar applicant's contested admission under Rule for Admission 9.60(1) shall be filed with the Administrator, together with an opening brief, with proof of service on all parties, within 28 days after the Administrator's written notice

to the parties of the court's receipt of the record of the proceedings before the Board.

(c) 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.

(4) A brief in any of the proceedings described in this rule must conform to ORAP 5.05, 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.

(5) If 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 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.

---

[1] *See generally* ORS 1.430.

* *See* ORS 1.440(1).

Rule 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.

(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. 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.

(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).

---

[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 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.

_____

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

See ORS 251.235.

Rule 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) 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) 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). 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.

---

[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.

12. SPECIAL SUPREME COURT RULES

Rule 12.05
DIRECT APPEAL OR JUDICIAL REVIEW IN THE SUPREME COURT

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

(2) 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, the judicial review shall be initiated and conducted in the manner prescribed in the rules of appellate procedure relating to judicial review of agency orders generally.

(3) The notice of appeal or petition for judicial review shall state the statutory authority under which a direct appeal or judicial review is 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.

---

[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) (certain pretrial orders in murder and aggravated murder cases).

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

[3] *See, e.g.*, ORS 138.261(6) and ORS 138.045(2) (requiring expedited disposition on appeal to the Supreme Court of a pretrial order dismissing or setting aside the accusatory instrument or suppressing evidence in a murder case).

Rule 12.07
EXPEDITED APPEAL OF CERTAIN PRETRIAL ORDERS IN CRIMINAL CASES

(1) On appeal under ORS 138.045(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)."

(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) 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)."

(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 12.08
INTERLOCUTORY APPEAL OF ORDER CONCERNING CRIME VICTIM'S RIGHTS

(1) A notice of interlocutory appeal filed in the Supreme Court pursuant to ORS 147.537 shall be substantially in the form illustrated in Appendix 12.08 and shall comply substantially with ORAP 2.05(1), (3), (4), (5), (6), (9), (10), and (11), except:

(a) The notice must be entitled "NOTICE OF INTERLOCUTORY APPEAL UNDER ORS 147.537";

(b) The notice must include a statement of why the notice is timely; and

(c) The notice must contain proof of service on persons identified in ORS 147.537(6).

(2) A notice of interlocutory appeal must be accompanied by:

(a) A copy of the order for which appellate review is sought;

(b) Excerpts of the record, as described in ORS 147.537(4);

(c) A memorandum of law with a statement of material facts and supporting arguments and citations, in a form in compliance with ORAP 7.10(1) and (2), except as provided by this rule.

(3) The appellant shall file the original notice of interlocutory appeal with the Administrator.

(4) Notwithstanding ORAP 1.35(1)(c), a notice of interlocutory appeal and the response are deemed filed when those documents are physically received by the Administrator or, if the documents are filed electronically, as provided by ORAP 16.25.

(5) (a) Notwithstanding ORAP 1.35(2)(b), the appellant shall serve a copy of the notice of interlocutory appeal and, if applicable, accompanying materials as provided in ORS 147.537(6) and (7).

(b) In addition to any other method authorized by law, and notwithstanding ORAP 16.45(3), or ORCP 9 G,[1] service may be by:

(i) Facsimile transmission, if the person or entity being served is represented by an attorney, the attorney maintains such a device at the attorney's office, and the device is operating at the time the service is made.

(ii) Electronic mail, if the person or entity being served is represented by an attorney, and the email has been sent to the email address that the attorney has listed with the Oregon State Bar.

(iii) A document served by facsimile transmission or electronic mail must also be served in a manner that complies with ORAP 1.35(2)(b).

(c) Where service is made by facsimile transmission or electronic mail, the filing must be accompanied with either an acknowledgment of service or a proof of service that complies with ORAP 1.35(2)(d).

(6) A respondent may file a response within seven days of the date the notice of interlocutory appeal is filed with the Supreme Court. A respondent shall file the original response with the Administrator. The response shall comply with ORAP 7.10(1) and (2), except

as otherwise provided by this rule. The response may contain a designation of parts of the trial court record not designated in the notice of interlocutory appeal.

(7) No reply shall be filed except with leave of the Supreme Court.

(8) Notwithstanding ORAP 6.15, either the appellant or respondent may request oral argument. The Supreme Court may grant or deny such a request or may order oral argument on its own motion.

(9) A petition for reconsideration of a Supreme Court decision under this rule shall comply with ORAP 9.25, except that it shall be filed within seven days of the date of the decision.

(10) A victim may request that the court use initials in lieu of his or her first name in the case caption. The court will grant such a request if filed within seven days of the notice of interlocutory appeal. Requests filed after seven days may be granted at the court's discretion.

---

[1] *See* ORS 147.537(20) (permitting service "by electronic mail or facsimile transmission, in a manner consistent with any applicable rules of appellate procedure").

Rule 12.09
PETITIONS FOR SUPREME COURT REVIEW OF ORDERS CONCERNING CRIME VICTIM'S RIGHTS

(1) A petition for review filed in the Supreme Court pursuant to ORS 147.539 shall comply substantially with ORAP 9.05(3)(a)(i) to (iii) and (vii) and ORAP 9.05(4), except:

(a) The petition must be entitled "PETITION FOR REVIEW UNDER ORS 147.539";

(b) The petition must include a statement of why the petition is timely; and

(c) The petition must contain proof of service on persons identified in ORS 147.537(6) and ORS 147.539.

(2) A petition for review under this rule must be accompanied by:

(a) A copy of the order for which appellate review is sought;

(b) Excerpts of the record, as described in ORS 147.537(4) and ORS 147.539;

(c) A memorandum of law with a statement of material facts and supporting arguments and citations, in a form in compliance with ORAP 7.10(1) and (2), except as otherwise provided by this rule.

(3) The petitioner shall file the original petition for review and the excerpts of the record with the Administrator.

(4) A petition for review filed under this rule may refer to the criteria in ORAP 9.07 for allowing a petition for review and the following additional criterion: Whether the case presents a significant issue involving the rights granted to crime victims by Article I, sections 42 and 43, of the Oregon Constitution.

(5) Notwithstanding ORAP 1.35(1)(c), a petition for review and the response, if any, are deemed filed when those documents are physically received by the Supreme Court or, if the documents are filed electronically, as provided by ORAP 16.25.

(6) Notwithstanding ORAP 1.35(2)(b), the petitioner shall serve a copy of the petition for review and, if applicable, accompanying materials as provided in ORS 147.537(6) and (7) and ORS 147.539. In addition to any other method authorized by law, and notwithstanding ORAP 16.45(3) or ORCP 9 G,[1] service may be by facsimile transmission or electronic mail as provided in ORAP 12.08(5).

(7) The respondent may, but need not, file a response to a petition for review filed under this rule. The respondent may file the original response within seven days of the petition for review or within seven days after the Supreme Court issues an order granting review. The response shall comply with ORAP 9.10, unless otherwise provided by this rule. The response may contain a designation of parts of the trial court record not designated in the petition for review.

(8) No briefs on the merits shall be filed, except as otherwise provided by court order.

(9) A petition for review under this rule shall be allowed if one less than a majority of the judges eligible to vote on the petition vote to allow it.

(10) In cases where the court has allowed review, either the appellant or respondent may request oral argument. Notwithstanding ORAP 6.15, the Supreme Court may grant or deny such a request or may order oral argument on its own motion.

(11) A petition for reconsideration of a Supreme Court decision under this rule shall comply with ORAP 9.25, except that it shall be filed within seven days of the date of the decision.

(12) A victim may request that the court use initials in lieu of his or her first name in the case caption. The court will grant such a request if filed within seven days of the petition for review. Requests filed after seven days may be granted at the court's discretion.

---

[1] *See* ORS 147.537(20) (permitting service "by electronic mail or facsimile transmission, in a manner consistent with any applicable rules of appellate procedure").

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 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) Specifications for briefs shall be those set forth in ORAP 5.05, except that the maximum length of a brief without obtaining leave of the court for a longer brief is 28,000 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, 100 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 12.12
APPOINTMENT OF COUNSEL IN DEATH SENTENCE CASES

(1) On receipt of notice of a conviction of aggravated murder and sentence of death as provided in ORAP 12.10, the Administrator shall send a letter to the defendant acknowledging receipt of the notice of conviction and sentence of death, and notifying the defendant of the court's automatic and direct review of the conviction and sentence. The letter shall inform the

defendant of the right to be represented by counsel and the procedure for notifying the court if the defendant has retained counsel or for requesting court-appointed counsel. The letter shall be copied to the defendant's trial attorney, the Solicitor General of the Department of Justice, the Office of Public Defense Services, and the transcript coordinator.

(2) If the defendant or the defendant's attorney gives notice to the Administrator that the defendant is represented by retained counsel on appeal, the retained attorney shall be shown as the attorney of record.

(3) If the defendant requests appointment of counsel and establishes eligibility for appointed counsel, the court shall appoint the Office of Public Defense Services. If the defendant does not respond within 28 days to the letter informing the defendant of the right to be represented by counsel and it appears from the record that the defendant is indigent, the court shall appoint the Office of Public Defense Services.

(4) (a) Should defendant object at any time to particular court-appointed counsel, a motion for substitution of counsel or appointment of legal advisor shall be made in accordance with ORAP 8.12.

(b) If the court allows the motion for substitution of court-appointed counsel or appointment of legal advisor, the court shall notify the Office of Public Defense Services.[1]

---

[1] *See* ORS 138.500(2)(d) regarding substitution of counsel pursuant to the policies and procedures of the Public Defense Services Commission; Public Defense Payment Policies and Procedures 1.7 (Substitution of Appointed Counsel).

Rule 12.15
COORDINATION OF CLASS ACTIONS IN TRIAL COURTS

The practice and procedure for coordination of class actions in circuit court shall be as follows:

(1) A motion filed pursuant to ORCP 32 K shall set forth the grounds for coordination and may be accompanied by an affidavit. Service by mail shall be made on all counsel and the trial court administrators of the courts where the cases are pending. If the motion is filed by a party, the presiding judge shall allow or deny it within 10 days. If the motion is allowed, the presiding judge shall immediately request the Supreme Court to assign a judge to determine whether coordination is appropriate and to forward to the Supreme Court a copy of the motion and of the papers filed in support and in opposition to the motion.

(2) The Supreme Court will assign a judge, pursuant to ORCP 32 K(1)(a), within seven days after receiving a request for the assignment, and shall notify by mail all counsel and

trial court administrators of the identity and address of the assigned judge. The Supreme Court shall forward to the assigned judge copies of all papers accompanying the request for appointment.

(3) Within 14 days after the Supreme Court designates the assigned judge, any party may file a memorandum in favor of coordination and serve it on all counsel. Any party may serve and file a memorandum in opposition to coordination within 21 days after the Supreme Court designates the assigned judge. The assigned judge may take testimony and hear oral argument on the issue of coordination. Within 28 days after being designated by the Supreme Court, the assigned judge shall determine which, if any, cases are to be coordinated and, if any are coordinated, recommend the court in which they shall proceed.

(4) In the absence of a stay order, a case which is being considered for coordination may proceed as if no motion for coordination had been filed, but no trial shall be commenced and no judgment shall be entered in that action.

(5) If the assigned judge orders coordination, the judge shall send a copy of the order to the Chief Justice and to all counsel and the trial court administrators of the respective trial courts. The Chief Justice shall sign an order within 14 days designating a trial judge and the court where the coordinated cases will proceed and shall serve all counsel and trial court administrators with a copy of the order. An order coordinating the cases shall operate as a stay of all proceedings in the coordinated cases except as otherwise permitted by the trial judge designated to hear them. If the assigned judge denies coordination, the judge shall send a copy of the order to the Chief Justice and to all counsel and the trial court administrators of the respective trial courts.

(6) The trial judge designated to hear the coordinated cases shall have full power to control pleadings, discovery, notices, conferences, hearings, and the schedule of the trial or trials in any manner the judge deems appropriate with due consideration to the convenience of the witnesses, parties, and counsel, efficient judicial administration, and the ends of justice. The trial judge may decoordinate all or some or one of the cases and may order any issue tried separately. The trial judge shall pass on motions filed under ORCP 32 K(3) to include an additional case or cases.

(7) On a showing of good cause, any time limit in this rule may be extended for a period not exceeding seven days by the judge before whom the issue of coordination is then pending.

See ORS 1.004 regarding the authority of the Supreme Court to adopt a rule prescribing procedure for coordination of class actions under ORCP 32.

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) 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.

(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 12.25
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.

13. COSTS AND DISBURSEMENTS, ATTORNEY FEES, AND DAMAGES

Rule 13.05
COSTS AND DISBURSEMENTS

(1) As used in this rule, "costs" includes costs and disbursements. "Allowance" of costs refers to the determination by the court that a party is entitled to claim costs. "Award" of costs is the determination by the court of the amount that a party who has been allowed costs is entitled to recover.[1]

(2) The court will designate a prevailing party and determine whether the prevailing party is allowed costs at the time that the court issues its decision.

(3) When an allowance of costs is dependent on identification of a party as a prevailing party, the appellant or petitioner (or cross-appellant or cross-petitioner, as appropriate) is the prevailing party only if the court reverses or substantially modifies the judgment or order from which the appeal or judicial review was taken. Otherwise, the respondent (or cross-respondent, as appropriate) is the prevailing party.

(4) When a party prevails on appeal or on review and the case is remanded for further proceedings in which the party who ultimately will prevail remains to be determined, the court may allow costs to abide the outcome of the case. If the court allows costs to abide the outcome of the case, the prevailing party shall claim its costs within the time and in the manner prescribed in this rule. The appellate court may determine the amount of costs under this subsection, and may condition the actual award of costs on the ultimate outcome of the case. In that circumstance, the award of costs shall not be included in the appellate judgment, but shall be awarded by the court or tribunal on remand in favor of the prevailing party on appeal or review, if that party also prevails on remand, and shall be awarded against the party designated on appeal or review as the party liable for costs.

(5) (a) A party seeking to recover costs shall file a statement of costs and disbursements within 21 days after the date of the decision. The filing of a petition for review or a petition for reconsideration does not suspend the time for filing the statement of costs and disbursements.

(b) A party must file the original statement of costs and disbursements, accompanied by proof of service showing that a copy of the statement was served on every other party to the appeal.

(c) A party objecting to a statement of costs and disbursements shall file objections within 14 days after the date of service of the statement. A reply, if any, shall be filed within 14 days after the date of service of the objections. The original objection or reply shall be filed with proof of service.

(6) (a) (i) Except as provided in paragraph (ii) of this subsection, whether a brief

is printed or reproduced by other methods, the party allowed costs is entitled to recover 10 cents per page for the number of briefs required to be filed or actually filed, whichever is less, plus two copies for each party served and two copies for each party on whose behalf the brief was filed.

(ii) If a party filed a brief using the eFiling system, the party allowed costs is entitled to recover the amount of the transaction charge and any document recovery charge* incurred by that party for electronically filing the brief, as provided in subsection (b) of this section. The party allowed costs is not entitled to recover for the service copy of any brief served on a party via the eFiling system, but is entitled to recover for two copies for each party served conventionally.

(b) If the party who has been allowed costs has incurred transaction charges or any document recovery charges* in connection with electronically filing any document, the party is entitled to recover any such charge so incurred.

(c) If the prevailing party who has been allowed costs has paid for copies of audio or video tapes in lieu of a transcript or incident to preparing a transcript, the party is entitled to recover any such charge so incurred.

(d) (i) For the purposes of awarding the prevailing party fee under ORS 20.190(1)(a), an appeal to the Court of Appeals and review by the Supreme Court shall be considered as one continuous appeal process and only one prevailing party fee per party, or parties appearing jointly, shall be awarded.

(ii) The prevailing party fee will be awarded only to a party who has appeared on the appeal or review.

(iii) A prevailing party is not entitled to claim more than one prevailing party fee, nor may the court award more than one prevailing party fee against a nonprevailing party, regardless of the number of parties in the action.[2]

(e) If a prevailing party who has been allowed costs timely files a statement of costs and disbursements and no objections are filed, the court will award costs in the amount claimed, except when the entity from whom costs are sought is not a party to the proceeding or when the court is without authority to award particular costs claimed.

(f) If a prevailing party who has been allowed costs untimely files a statement of costs and disbursements, that party is entitled to recover the party's filing or first appearance fee and the prevailing party fee under ORS 20.190(1).

(g) If a prevailing party who has been allowed costs does not file a statement of costs and disbursements, the court shall award that party's filing or first appearance fee and the prevailing party fee under ORS 20.190(1) as part of the appellate judgment.

(7) Parties liable for payment of costs and disbursements shall be jointly liable.

---

[1] *See generally* ORS 20.310 to 20.330 concerning costs and disbursements on appeal and in cases of original jurisdiction.

[*] Document recovery charges were charges collected to offset the cost incurred by the courts in making the necessary number of printed copies of documents eFiled before February 8, 2016, under the authority of a prior version of ORAP 16.20(2). *See, e.g.*, ORAP 16.20(2) (2017).

[2] *See* ORS 20.190(4).

Rule 13.10
PETITION FOR ATTORNEY FEES

(1) This rule governs the procedure for petitioning for attorney fees in all cases except the recovery of compensation and expenses of court-appointed counsel payable from the Public Defense Services Account.[1]

(2) A petition for attorney fees shall be served and filed within 21 days after the date of decision. The filing of a petition for review or a petition for reconsideration does not suspend the time for filing the petition for attorney fees.

(3) When a party prevails on appeal or on review and the case is remanded for further proceedings in which the party who ultimately will prevail remains to be determined, the appellate court may condition the actual award of attorney fees on the ultimate outcome of the case. In that circumstance, an award of attorney fees shall not be included in the appellate judgment, but shall be awarded by the court or tribunal on remand in favor of the prevailing party on appeal or review, if that party also prevails on remand, and shall be awarded against the party designated on appeal or review as the party liable for attorney fees. The failure of a party on appeal or on review to petition for an award of attorney fees under this subsection is not a waiver of that party's right later to petition on remand for fees incurred on appeal and review if that party ultimately prevails on remand.

(4) When the Supreme Court denies a petition for review, a petition for attorney fees for preparing a response to the petition for review **may** be filed in the Supreme Court.

(5) (a) A petition shall state the total amount of attorney fees claimed and the authority relied on for claiming the fees. The petition shall be supported by a statement of facts showing the total amount of attorney time involved, the amount of time devoted to each task, the reasonableness of the amount of time claimed, the hourly rate at which time is claimed, and the reasonableness of the hourly rate.

(b) If a petition requests attorney fees pursuant to a statute, the petition shall address any factors, including, as relevant, those factors identified in ORS 20.075(1) and

(2) or ORS 20.105(1), that the court may consider in determining whether and to what extent to award attorney fees.[2]

(6) Objections to a petition shall be served and filed within 14 days after the date the petition is filed. A reply, if any, shall be served and filed within 14 days after the date of service of the objections.

(7) A party to a proceeding under this rule may request findings regarding the facts and legal criteria that relate to any claim or objection concerning attorney fees. A party requesting findings must state in the caption of the petition, objection, or reply that the party is requesting findings pursuant to this rule.[3] A party's failure to request findings in a petition, objection, or reply in the form specified in this rule constitutes a waiver of any objection to the absence of findings to support the court's decision.

(8) The original of any petition, objections, or reply shall be filed with the Administrator together with proof of service on all other parties to the appeal, judicial review, or proceeding.

(9) In the absence of timely filed objections to a petition under this rule, the Supreme Court and the Court of Appeals, respectively, will allow attorney fees in the amount sought in the petition, except in cases in which:

(a) The entity from whom fees are sought was not a party to the proceeding; or

(b) The Supreme Court or the Court of Appeals is without authority to award fees.

---

[1] This subsection does not create a substantive right to attorney fees, but merely prescribes the procedure for claiming and determining attorney fees under the circumstances described in this subsection.

[2] *See, e.g., Tyler v. Hartford Insurance Group*, 307 Or 603, 771 P2d 274 (1989), and *Matizza v. Foste*r, 311 Or 1, 803 P2d 723 (1990), with respect to ORS 20.105(1), and *McCarthy v. Oregon Freeze Dry, Inc.*, 327 Or 84, 957 P2d 1200, *adh'd to on recons*, 327 Or 185, 957 P2d 1200 (1998), with respect to ORS 20.075.

[3] For example: "Appellant's Petition for Attorney Fees and Request for Findings Under ORAP 13.10(7)" or "Respondent's Objection to Petition for Attorney Fees and Request for Findings Under ORAP 13.10(7)."

See Appendix 13.10.

Rule 13.15
APPEAL OF PUBLIC DEFENSE SERVICES COMMISSION DECISION REGARDING COURT-APPOINTED COUNSEL COMPENSATION, COSTS, AND EXPENSES

(1) This rule governs the procedure under ORS 138.500(6) for an appeal from the Public Defense Services Commission executive director's disposition of a payment request.

(2) The person who submitted the payment request shall take an appeal by filing a motion for review of the executive director's decision in the court in which all or a majority of compensation and expenses were incurred. The person shall accompany the motion with a copy of the request for payment as submitted to the Public Defense Services Commission and a copy of the executive director's disposition of the request. The person shall serve a copy of the motion on the executive director of the Public Defense Services Commission and shall include with the motion proof of service on the executive director.

Rule 13.25
PETITIONS AND MOTIONS FOR DAMAGES AND SANCTIONS

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

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

Rule 13.30
REQUESTS FOR JUDGMENT AGAINST SURETIES

(1) A party entitled to judgment against a surety under ORS 19.450(4) shall file with the Administrator and serve on the other parties to the appeal and on the surety a notice requesting entry of judgment as part of the appellate judgment. The notice shall identify the party in whose favor judgment will be entered, the surety against whom judgment will be entered, the amount of the judgment, the rate of interest and the date from which interest will run. In the absence of an indication otherwise, the interest will be simple, at nine percent per annum, from the date of entry of the appellate judgment.

(2) All parties served with the notice shall have 14 days after the date of filing to file objections.

This page left blank intentionally.

14. APPELLATE JUDGMENT

Rule 14.05
APPELLATE JUDGMENT

(1) As used in this rule,

(a) "Appellate judgment" means a decision of the Court of Appeals or Supreme Court together with a final order and the seal of the court.

(b) "Decision" means a designation of prevailing party and allowance of costs together with,

(i) In an appeal from circuit court or the Tax Court, or on judicial review of an agency proceeding, an order disposing of the appeal or judicial review or affirming without opinion; or with respect to a per curiam opinion or an opinion indicating the author, the title page of the opinion containing the court's disposition of the appeal or judicial review.

(ii) In a case of original jurisdiction in the appellate court, in addition to the documents specified in subparagraph (i) of this paragraph, an order denying, dismissing, or allowing without opinion the petition or other document invoking the court's jurisdiction. An order allowing a petition for an alternative writ of mandamus or writ of habeas corpus is not a decision within the meaning of this rule.

(c) "Designation of prevailing party and allowance of costs" means that part of a decision indicating, when relevant, which party prevailed before the appellate court, whether costs are allowed, and, if so, which party or parties are responsible for costs.

(d) "Final order" means that part of the appellate judgment ordering payment of costs or attorney fees in a sum certain by specified parties or directing entry of judgment in favor of the Judicial Department for unpaid appellate court filing fees, or both.

(2) The decision of the Supreme Court or Court of Appeals is effective:

(a) With respect to appeals from circuit court or the Tax Court, on the date that the Administrator sends a copy of the appellate judgment to the court below.

(b) With respect to judicial review of administrative agency proceedings, on the date that the Administrator sends a copy of the appellate judgment to the administrative agency.

(c) With respect to original jurisdiction proceedings, within the time or on the date specified in the court's decision or, if no time period or date is specified, on the date

of entry of the appellate judgment. When the effective date is specified in the court's decision, the decision is effective on that date notwithstanding the date the appellate judgment issues.

(3) The Administrator shall prepare the appellate judgment, enter the appellate judgment in the register, send a copy of the appellate judgment with the court's seal affixed thereto to the court or administrative agency from which the appeal or judicial review was taken, and send a copy of the appellate judgment to each of the parties.

(a) With respect to a decision of the Court of Appeals, the Administrator will not issue the appellate judgment for a period of 35 days after the decision to allow time for a petition for review pursuant to ORS 2.520 and ORAP 9.05. If a petition for review is filed, the appellate judgment will not issue until the petition is resolved.

(b) With respect to an order of the Supreme Court denying review or a decision of the Supreme Court, the Administrator will not issue the appellate judgment for a period of 21 days after the order or decision to allow time for a petition for reconsideration under ORAP 9.25 or a petition for attorney fees or submission of a statement of costs and disbursements under ORAP 13.05 and ORAP 13.10.

(c) If one or more statements of costs and disbursements, petitions for attorney fees, or motions or petitions for reconsideration are filed, the Administrator will not issue the appellate judgment until all statements of costs and disbursements, petitions for attorney fees, or petitions for reconsideration are determined by order of the court.

(d) Notwithstanding paragraphs (a), (b), and (c) of this subsection, a party may request immediate issuance of the appellate judgment based on a showing that no party intends to file a petition for review, petition for attorney fees, or any other thing requiring a judicial ruling.

(4) (a) The money award part of an appellate judgment for costs, attorney fees, or both, in favor of a party other than the Judicial Department that has been entered in the judgment docket of a circuit court may be satisfied in the circuit court in the manner prescribed in ORS 18.225 to 18.238, or other applicable law.

(b) The money award part of an appellate judgment for an unpaid filing fee or other costs in favor of the Judicial Department shall be satisfied as follows. Upon presentation to the Administrator of sufficient evidence that the amount of the money judgment has been paid:

(i) The Administrator shall note the fact of payment in the appellate court case register; and

(ii) If requested by the party and upon payment of the certification fee, the Administrator shall issue a certificate showing the fact of satisfaction of the money award. As requested by the party, the Administrator shall issue a

certificate to the party, to the court or administrative agency to which a copy of the appellate judgment was sent, or to both.

See generally ORS 19.450 regarding appellate judgments in appeals from circuit court and Tax Court. A party considering petitioning the United States Supreme Court for a writ of certiorari with respect to an Oregon appellate court decision should review carefully 28 USC § 2101(c) and the United States Supreme Court Rules, currently US Sup Ct Rule 13, to determine the event that triggers the running of the time period within which to file the petition. *See also International Brotherhood v. Oregon Steel Mills, Inc.*, 180 Or App 265, 44 P3d 600 (2002) (majority, concurring, and dissenting opinions).

Rule 14.10
STAY PENDING ACTION BY THE SUPREME COURT OF THE UNITED STATES

(1) A party may file a motion requesting a stay of the issuance of the appellate judgment, a stay of the enforcement of the appellate judgment, or a recall of the appellate judgment pending the filing of a petition for a writ of certiorari with the Supreme Court of the United States.[1] The motion must show that the certiorari petition would present a substantial question and that there is good cause for a stay.

(2) The motion shall be addressed to and acted upon by:

(a) the Court of Appeals when the Oregon Supreme Court has denied review of a Court of Appeals decision;

(b) the Oregon Supreme Court in all other instances.

(3) The stay will automatically terminate in 90 days, unless:

(a) The appellate court extends the period for good cause shown, or

(b) The party who obtained the stay files a petition for a writ of certiorari with the United States Supreme Court and so notifies the Appellate Court Administrator in writing within the period of the stay. In that case, the stay will continue until the final disposition by the United States Supreme Court.

---

[1] A stay granted under the terms of this rule does not affect the time for petitioning for a writ of certiorari. *See* 28 USC § 2101 (generally establishing deadlines for certiorari); US Sup Ct Rule 13 (addressing certiorari deadlines specifically). *See* ORS 19.270(6)(b) and (c).

15. APPELLATE SETTLEMENT CONFERENCE PROGRAM

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) 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.

_____

See ORS 2.560(3).

Rule 15.10
APPELLATE SETTLEMENT CONFERENCE PROGRAM
IN THE SUPREME COURT

(1) Cases Subject

(a) The procedures in this rule apply only to cases filed in the Supreme Court. The court shall determine which pending cases or category of cases, if any, may be included in the Appellate Settlement Conference Program (program).

(b) Cases shall be screened and settlement conferences held in the manner prescribed by ORAP 15.05, unless otherwise stated in this rule.

(2) Abeyance of Case

(a) On assignment of a case to the program, the Chief Justice or his designee shall inform the program director and/or parties whether any abeyance of the case will occur pending the settlement conference.

(b) The court may reactivate a case held in abeyance at any time:

(i) At the request of the program director pursuant to the request of a party or on the director's own motion, or

(ii) On the motion of a party showing good cause for reactivating the case. In addition to serving a copy of the motion on all parties to the case, a party

filing a motion to reactivate shall serve a copy of the motion on the program director, or

(iii) On the court's own motion.

16. FILING AND SERVICE BY ELECTRONIC MEANS

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 16.05
DEFINITIONS

(1) "Document" means a brief, petition, notice, motion, response, application, affidavit or declaration, or any other writing that, by law, may be filed with an appellate court, including any exhibit or attachment referred to in that writing

(2) "Electronic filing" or "eFiling" means the process whereby a user of the eFiling system transmits a document directly from the user's computer to the electronic filing system to file that document with the appellate court.

(3) "Electronic filing system" or "eFiling system" means the system provided by the Oregon Judicial Department for a party to electronically submit a document for filing in the appellate courts via the internet. The system may be accessed at the Judicial Department's website.[1]

(4) "Electronic payment system" means the system provided by the Oregon Judicial Department for paying filing fees and associated charges electronically in the appellate court.

(5) An "eFiler" means a person registered with the eFiling system who submits a document for electronic filing with the appellate court.

(6) "Electronic service" or "eService" means the process for a user of the eFiling system to accomplish service via the electronic mail function of the appellate court eFiling system.

(7) "Hyperlink" means a navigational link in the electronic version of a document to another section of the same document or to another electronic document accessible via the internet.

(8) "Initiating document" means any document that initiates a case, including but not limited to a notice of appeal; a petition for review;[2] 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.

(9) "PDF" means Portable Document Format, an electronic file format.

(10) "Username" means the identifying term assigned to an eFiler by the court, used to access the appellate court eFiling system.

---

[1] <https://courts.oregon.gov/services/online/Pages/appellate-efile.aspx>

[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 1.35(1)(b)(i). 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.

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.

---

[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] 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.

---

[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 16.20
FILING FEES AND eFILING CHARGES

(1) The appellate courts may impose a transaction charge for using the eFiling system, as prescribed by order of the Chief Justice.

(2) An eFiler shall pay any required filing fees or eFiling charges at the time of the electronic filing, by using the electronic payment system, unless otherwise directed by the court. Charges for electronic filing may be recovered in the manner provided by ORAP 13.05.

(3) If an eFiler seeks to waive or defer filing fees, the eFiler shall apply for a waiver or deferral of filing fees by eFiling an application to waive or defer filing fees at the time of filing a document electronically.

Rule 16.25
ELECTRONIC FILING AND ELECTRONIC FILING DEADLINES

(1) Except as provided in subsection (4), the filing deadline for any document filed electronically is 11:59:59 p.m. in the time zone in which the court is located on the date by which the document must be filed.

(2) The submission of a document electronically by the eFiler and acceptance of the document by the court accomplishes electronic filing. When accepted for filing, the electronic document constitutes the court's official record of the document.

(3) (a) The court considers a document received when the eFiling system receives the document. The eFiling system will send an email that includes the date and time of receipt to the eFiler's email address, and to any other email address provided by the eFiler, to confirm that the eFiling system received the document.

(b) When the court accepts the document for filing, the eFiling system will affix to the document the time of day, the day of the month, the month, and the year that the eFiling system received the document. The date and time of filing entered in the register relate back to the date and time that the eFiling system received the document. The eFiling system will send an email that includes the date and time of acceptance to the eFiler's email address and to any other email address provided by the eFiler. If the document was electronically served by the eFiling system pursuant to ORAP 16.45,[1] the

date of service will also relate back to the date that the eFiling system received the document.

(4) (a) As used in this subsection, "temporary unavailability" means the eFiling system is temporarily unavailable or an error in the transmission of the document or other technical problem prevents the eFiling system from receiving the document. A "temporary unavailability" does not include a problem with the eFiler's equipment or software, or other problem within the eFiler's control.

(b) When a party is unable to use the eFiling system because of a temporary unavailability, the party may file and serve the document as provided in subparagraph (i) or (ii) of this paragraph.

(i) The party may conventionally file and serve the document. If the party conventionally files and serves the document by the end of the next business day following the cessation of the temporary unavailability, together with satisfactory proof of the temporary unavailability, the filing and service date relates back to the date the party attempted to eFile the document.

(ii) Upon cessation of the temporary unavailability, the party may use the eFiling system to file and, except as provided in ORAP 16.45(3), serve the document. If the party files and serves the document using the eFiling system by 11:59:59 p.m. of the next business day following the cessation of the temporary unavailability and submits satisfactory proof of the temporary unavailability, the filing and service date relates back to the date the party attempted to eFile the document.

(c) Paragraph (b) of this subsection does not apply to extend any jurisdictional time period imposed by statute, including those related to the filing and service of a notice of appeal, a petition for judicial review, or any other initiating document. A party's circumstances may require the party to conventionally file and serve an initiating document within the time period imposed by statute.

(d) "Satisfactory proof of the temporary unavailability" means a written description of the temporary unavailability, together with any supporting documentation, satisfactory to the court.

(5) Documents Conventionally Filed: The court may digitize, scan, or otherwise reproduce a document that is filed conventionally into an electronic record, document, or image. The court subsequently may destroy a conventionally filed document in accordance with the protocols established by the State Court Administrator under ORS 8.125(11).

---

[1] As provided in ORAP 16.45(3), the eFiling system cannot electronically serve some documents.

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.

---

[1] ORS 19.260 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.

Rule 16.40
ELECTRONIC SIGNATURES

(1) The username and password required to submit a document to the eFiling system constitute the signature of the eFiler for purposes of these rules and for any other purpose for which a signature is required.

(2) (a) In addition to information required by statute or rule to be included in the document, an electronically filed document must include a signature block that includes the printed name of the eFiler and an indication that the printed name is intended to substitute for the eFiler's signature. The attorney's bar number and an indication of the party that the attorney represents must appear as part of or in addition to the signature block.

Example: *s/Attorney Name*
Attorney Name
Oregon State Bar No. _____
Attorney for _____.

(b) The Administrator is authorized to provide notice on the Judicial Department's website[1] that eFilers may not include signature blocks generated by certain programs that are incompatible with the appellate electronic court systems.

(3) When a document is filed electronically in which an opposing party joins, that all such parties join in the document must be shown either by:

(a) submitting a scanned document containing the signatures of all parties joining in the document;

(b) including a recitation in the document that all such parties consent or stipulate to the document; or

(c) identifying in the document the signatures that are required and submitting each such party's written confirmation no later than three business days after the court's acceptance of the electronic filing.

(4) A party electronically filing a document, such as a declaration, that must be signed by a person other than the eFiler, shall include a scanned image of the signature page showing the person's signature.

---

[1] <https://www.courts.oregon.gov/services/online/pages/appellate-efile.aspx>

Rule 16.45
ELECTRONIC SERVICE

(1) Registration as an eFiler with the eFiling system constitutes consent to receive service via the electronic mail function of the eFiling system.

(2) (a) Except as provided in subsection (3), a party eFiling a document with the appellate court may accomplish service of that document on any other party's attorney, if that attorney is a registered eFiler, by using the eService function of the eFiling system. The eFiling system will generate an email to the attorney being eServed that includes a link to the document that was eFiled. To access the eFiled document, the attorney who has been eServed must log in to the eFiling system.

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

(3) A party eFiling a document must accomplish service via the conventional manner, as provided by ORAP 1.35 and other applicable rules and statutes, if:

(a) The document to be served:

(i) initiates a case in the Court of Appeals;

(ii) initiates a case in the Supreme Court under that court's original jurisdiction;

(iii) is a first motion for extension of time to file a petition for review in the Supreme Court; or

(iv) if no motion for extension of time has been filed, is a petition for review in the Supreme Court;

(b) The party to be served is self-represented; or

(c) The attorney to be served is not a member of the Oregon State Bar or has obtained a waiver to the mandatory eFiling requirement under ORAP 16.60.

(4) All eFiled documents must be accompanied by a proof of service under ORAP 1.35(2)(e). The proof of service must certify service on all parties regardless of the means by which service was accomplished, including eService. The proof of service must state that service was accomplished at the person's email address as recorded on the date of service in the eFiling system, and need not include that person's email address or mailing address.

(5) If an eFiled document is not eServed by the eFiling system because of an error in the transmission of the document or other technical problem experienced by the eFiler, the court may, upon satisfactory proof, permit the service date of the document to relate back to the date that the eFiler first attempted to eServe the document. A party must show satisfactory proof by

filing and serving an accompanying letter explaining the circumstances, together with any supporting documentation.

Rule 16.50
HYPERLINKS AND BOOKMARKS IN eFILED BRIEFS

(1) An eFiled document may contain one or more hyperlinks to other parts of the same document or hyperlinks to a location outside of the document that contains a source document for a citation.

(a) When a party eFiles a brief or other memorandum that is accompanied by excerpts of record or attachments, the party is encouraged to hyperlink citations to the relevant portions of the excerpts or attachments.

(b) The functioning of a hyperlink reference is not guaranteed. The appellate courts neither endorse nor accept responsibility for any product, organization, or content at any hyperlinked site.

(c) A hyperlink to cited authority does not replace standard citation format. The complete citation must be included within the text of the document. Neither a hyperlink, nor any site to which it refers, shall be considered part of the record. A hyperlink is simply a convenient mechanism for accessing material cited in an eFiled document.

(2) When a party eFiles a brief, the party is encouraged to electronically bookmark the sections of the brief, excerpt of record, and any appendix using PDF document creation software. The caption of a bookmark should be concise. The sections of the brief that should be bookmarked include the discussion on each assignment of error or question presented on review, or the response to any assignment of error or presented question. The sections of the excerpt of record or appendix that should be bookmarked include the judgment, order, or opinion under review and any separate findings or determinations that are part of that disposition.

_____

See Appendix 16.50 (example of electronic view of bookmarks).

Rule 16.55
RETENTION OF DOCUMENTS BY eFILERS AND CERTIFICATION OF ORIGINAL SIGNATURES

(1) Unless the court orders otherwise, if an eFiler electronically files an image of a document that contains the original signature of a person other than the eFiler, the eFiler must retain the document in the eFiler's possession in its original paper form for no less than 30 days.

(2) When an eFiler electronically files a document described in subsection (1) of this rule, the eFiler certifies by filing that, to the best of the eFiler's knowledge and after appropriate

inquiry, the signature purporting to be that of the signer is in fact that of the signer.

Rule 16.60
MANDATORY ELECTRONIC FILING

(1) An active member of the Oregon State Bar must file a document using the eFiling system, except:

(a) When a document must or may be conventionally filed under ORAP 16.30, or

(b) When the eFiling system is temporarily unavailable as provided in ORAP 16.25.

(2) An active member of the Oregon State Bar required under subsection (1) of this rule to file a document using the eFiling system may obtain a waiver of the requirement as follows:

(a) The member must file one of the following:

(i) a request for waiver in all cases before the Court of Appeals, or the Supreme Court, or both, for a specific period of time; or

(ii) a motion in an existing case for waiver in that specific case.

(b) A request or motion must include an explanation describing good cause for the waiver. The request or motion may be filed conventionally.

(c) The Administrator is authorized to approve or deny a request filed under subparagraph (a)(i) of this subsection. If the court or the Administrator approves a request under that subsection, the person must

(i) file a copy of the court's or the Administrator's approval in each case subject to the waiver; and

(ii) include the words "Exempt from eFiling per Waiver Approved [DATE]" in the caption of all documents conventionally filed during the duration of the waiver.

(d) If the court grants a motion filed under subparagraph (a)(ii) of this subsection, the person must include the words "Exempt from eFiling per Waiver Granted [DATE]" in the caption of all documents conventionally filed in the case.

(3) The Administrator is authorized to suspend subsection (1) of this rule when the Administrator becomes aware of a temporary unavailability as defined in ORAP 16.25(4)(a) and,

in the Administrator's judgment, the temporary unavailability is likely to prevent electronic filing for a substantial period of time under the circumstances.

(a) If the Administrator suspends subsection (1) of this rule, then the Administrator will strive to provide 24-hour advance notice of the suspension to registered eFilers via email and to the public via notice on the Oregon Judicial Department's website. If circumstances make it impractical to provide 24 hours' notice, the Administrator will provide as much advance notice as is practical under the circumstances.

(b) If the Administrator suspends subsection (1) of this rule under this subsection, then an active member of the Oregon State Bar may file the document as provided in ORAP 16.25(4).

(4) If a filer submits a document for conventional filing in contravention of subsection (1) of this rule and the filer has not obtained a waiver pursuant to subsection (2) of this rule, nor is the electronic system unavailable as described in subsection (3) of this rule, then the Administrator is authorized to take any of the following actions:

(a) Accept the document for filing and provide notice to the filer that the Administrator will reject future conventional submissions by the filer that are subject to subsection(1) of this rule.

(b) Refuse to accept the document for filing.

(c) Return the document to the filer as unfiled.

(d) Refer the filing to the court for consideration of sanctions under ORAP 1.20(2).

This page left blank intentionally.

APPENDICES

APPENDIX 2.05

Illustration for ORAP 2.05

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

_____,	)	
Plaintiff-Appellant,	)	
(or Plaintiff-Respondent)	)	_____ County Circuit
	)	Court No. _____
	)	
v.	)	
_____,	)	
Defendant-Respondent.	)	**NOTICE OF APPEAL**
(or Defendant-Appellant)	)	

1.

(Plaintiff/Defendant) hereby gives notice of appeal from the judgment entered in this case on [date of judgment] , signed by Judge _____ , in the _____ County Circuit Court.

2.

The parties to this appeal are:

Appellant(s)	Respondent(s)
_____	_____
_____	_____

3.

The name, bar number, address, telephone number, and email address of the attorney(s) for each party represented by an attorney is:

Name & Bar Number _____ Representing _____
Address _____ Telephone Number _____
Email Address _____

Name & Bar Number _____ Representing _____
Address _____ Telephone Number _____
Email Address _____

The name, address, and telephone number of each self-represented party is:

Name _____
Address_____ Telephone Number _____

Name _____
Address_____ Telephone Number _____

4.

Appellant designates the record in its entirety. Thus, in addition to the trial court file, appellant designates all exhibits, and the record of oral proceedings.

[or]

In addition to the trial court file, appellant designates only the following parts of the record: _____ all exhibits; _____the record of the following oral proceedings: _____; other: _____.

5.

[If the record includes an audio or video recording played in the trial court and the appellant wants the transcript to include a transcript of the recording:]

The record includes one or more audio or video recordings that were played in the trial court, and appellant wants the transcript to include a transcript of those recordings. The dates of each hearing at which such a recording was played are:

_____.

6.

[Only if less than the entire record is designated in paragraph 4:]

Appellant intends to rely on the following points:

_____.

7.

This appeal is timely and otherwise properly before the Court of Appeals because:

_____.

8.

Attached to this notice of appeal is a copy of the judgment being appealed. Also attached are copies of any other materials pertinent to determining appellate jurisdiction.

9.

[If filing two or more notices of appeal in cases that were consolidated in the trial court and the appellant would like the cases to be consolidated in the appellate court:]

Appellant requests that this case be consolidated in the appellate court with the appeal from _____County Circuit Court, case number _____, in which a notice of appeal was filed on _____.

10.

CERTIFICATE OF SERVICE

I certify that on [date], I served a true copy of this notice of appeal on:

_____ _____

_____ _____

_____ _____

[Opposing party(ies) or attorney for opposing party(ies)]

_____ _____

_____ _____

_____ _____

[trial court administrator] [transcript coordinator, if a transcript is designated as part of the record on appeal]

by [specify method of service]:

__ United States Postal Service, ordinary first class mail
__ United States Postal Service, certified or registered mail, return receipt requested
__ hand delivery
__ other (specify) _____

10.

CERTIFICATE OF FILING

I certify that on [date] , I filed the original of this notice of appeal with the Appellate

Court Administrator by [specify method of filing]:

__ United States Postal Service, ordinary first class mail
__ United States Postal Service, certified or registered mail, return receipt requested
__ hand delivery
__ other (specify) _____

_____
[Signature of appellant or attorney]

_____
[Typed or printed name of appellant
or attorney]

APPENDIX 2.25

Illustration for ORAP 2.25

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

In the Matter of the Estate of John Doe, Deceased.	)	
MARY DOE, RICHARD DOE and DAVID DOE, Plaintiffs-Respondents- Cross-Appellants,	)	_____ County Circuit Court No. _____
NANCY DOE, Plaintiff,	)	CA A _____
v.	)	
NATIONAL BANK OF OREGON, Trustee of the John Doe Trust, Defendant-Appellant- Cross-Respondent.	)	
RICHARD DOE, Cross-claim Plaintiff,	)	
v.	)	
MARY DOE, Cross-claim Defendant.	)	
NATIONAL BANK OF OREGON, Third-Party Plaintiff- Appellant,	)	
v.	)	
ACME LIFE INSURANCE CO., Third-Party Defendant- Respondent.	)	

APPENDIX 2.40

Illustration for ORAP 2.40

The trial court erred when, over objection, it categorized defendant as a criminal history category C offender.

The trial court erred when, over objection, it imposed a condition of probation that requires defendant to undergo drug evaluation and treatment.

The trial court erred when, over objection, it imposed a condition of probation that prohibits defendant from contacting defendant's children.

The trial court erred when, over objection, it imposed a disputed amount of restitution.

APPENDIX 3.30

Illustration for ORAP 3.30

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

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

REQUEST BY REPORTER OR TRANSCRIBER FOR TIME EXTENSION FOR PREPARATION OF TRANSCRIPT

1. I am responsible for preparing a transcript for _____ days of proceedings. A transcript of those proceedings will be approximately _____ pages. The transcript was ordered on __[date]__ .

2. I request an extension of time of _____ days, from _____ through _____, within which to prepare, serve, and file the transcript. This is the _____ request for a time extension and is sought because:

I have not received payment for the transcript and a satisfactory arrangement for payment has not been made. [or]

I have now received payment for the transcript [or] a satisfactory arrangement for payment has been made. [or]

[Other reason:] _____.

3. On order from me, and undelivered to date, are transcripts in the following cases: [Attach additional sheet(s) if necessary.]

Caption & Court	Date Ordered	Extension Allowed	Date Now Due	Est. No. Of Pages

4. I have served copies of this request on: [List names and complete addresses of all counsel, parties, and, when appropriate, the trial court judge(s)]

_____
Date

_____	_____	_____
Court Reporter or Transcriber	County	Telephone No.

APPENDIX 3.33-1

Illustration for ORAP 3.33(4)(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]

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.]

_____.

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)(c)

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]

These parts of the transcript designated as part of the record for this appeal:

_____.

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

APPENDIX 3.35

Illustration for ORAP 3.35(2)(b)

File Naming Conventions for Electronic Transcripts

Transcripts, Nonconfidential Case:

[Appellate Case Number]_transcript-[year-month-day, of proceeding-am/pm if appropriate] [volume number, if applicable]_pp[starting page number-ending page number] [court reporter or transcriber last, first name]

Example: CA123456_transcript-2002-02-15-am_vII_pp205-410_johnsonerin

If the transcript spans several dates, then the date span should be indicated, such as:

SC012345_transcript-2002-02-15to2002-02-20_johnsonerin

Transcripts, Confidential Cases (juvenile, adoption, civil commitment):

[Appellate Case Number]_transcript-confidentialcase-[year-month-day, of proceeding-am/pm if appropriate]_[court reporter or transcriber last, first name]

Example: CA123456_transcript-confidentialcase-2002-02-15-am_vX_pp1000-1205_johnsonerin

APPENDIX 4.15-1

Illustration for ORAP 4.15
(Other than Workers' Compensation Case)

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

[The title should be set up, to the extent possible, as it was before the agency, showing the parties with their appropriate appellate designations]	)	[Agency Name]
	)	No. _____
	)	CA A _____

PETITION FOR JUDICIAL REVIEW

Petitioner seeks judicial review of the final order of the _____ in case number _____, dated _____.

The parties to the judicial review proceeding before the Court of Appeals are:

Petitioner(s) Respondent(s)

_____

_____

The name, bar number, address, telephone number, and email address of the attorney(s) for each party represented by an attorney is:

Name & Bar Number _____ Representing _____
Address _____ Telephone Number _____
Email Address _____

Name & Bar Number _____ Representing _____
Address _____ Telephone Number _____
Email Address _____

The name, address, and telephone number of each self-represented party is:

Name _____
Address_____ Telephone Number _____
Email address _____

□ For self-represented parties: Please check here if you consent to receiving notices from the appellate court by email.

□ For self-represented parties: Please check here if you consent to receiving the agency record by Secure File Transmission Protocol (SFTP).

A. Attached to this petition is a copy of the order, rule or ruling for which judicial review is sought. If a copy of the order, rule or ruling is not attached, the nature of the order for which review is sought is _____.

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

[or]

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

[or]

Petitioner is adversely affected or aggrieved by the order as set forth in an affidavit attached to this petition.

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

[or]

Petitioner is willing to stipulate that the agency record may be shortened and designates these parts of the record to be included in the record:_____.

DATED this _____ day of _____, _____.

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

CERTIFICATE OF SERVICE

I certify that on __[date]__ , I served a true copy of this petition for judicial review on:

_____ _____

_____ _____

_____ _____
[State agency and address] Attorney General of the State of Oregon
Office of the Solicitor General
_____ 400 Justice Building
1162 Court Street NE

_____ Salem, Oregon 97301-4096

[Other party(ies) or attorney for other party(ies)]

by [specify method of service]:

__ United States Postal Service, ordinary first class mail
__ United States Postal Service, certified or registered mail, return receipt requested
__ hand delivery
__ other (specify) _____

CERTIFICATE OF FILING

I certify that on __[date]__, I filed the original of this petition for judicial review with the Appellate Court Administrator by [specify method of filing]:

__ United States Postal Service, ordinary first class mail
__ United States Postal Service, certified or registered mail, return receipt requested
__ hand delivery
__ other (specify) _____

_____
[Signature of petitioner or attorney]

_____
[Typed or printed name of petitioner
or attorney]

APPENDIX 4.15-2

Illustration for ORAP 4.15
(Workers' Compensation Case)

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of the Compensation of _____, Claimant. _____, Petitioner, v. _____, Respondent.	))))))))))	WCB Case No._____ CA A_____

PETITION FOR JUDICIAL REVIEW
OF ORDER OF THE WORKERS' COMPENSATION BOARD

Petitioner seeks judicial review of the Workers' Compensation Board Order on Review dated _____.

The parties to the judicial review proceeding before the Court of Appeals are:

Petitioner(s) Respondent(s)

_____

_____

The name, bar number, address, telephone number, and email address of the attorney(s) for each party represented by an attorney is:

Name & Bar Number _____ Representing _____
Address _____ Telephone Number _____
Email Address _____

Name & Bar Number _____ Representing _____
Address _____ Telephone Number _____
Email Address _____

The name, address, and telephone number of each self-represented party is:

Name _____

Address_____ Telephone Number _____
Email address _____

□ For self-represented parties: Please check here if you consent to receiving notices from the appellate court by email.

□ For self-represented parties: Please check here if you consent to receiving the agency record by Secure File Transmission Protocol (SFTP).

The relief sought and reason relief should be granted are:
_____

DATED this _____ day of _____, _____.

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

CERTIFICATE OF SERVICE

I certify that on __[date]__ , I served a true copy of this petition for judicial review on:

Workers' Compensation Board
_____
_____
[address]

_____ _____

_____ _____

_____ _____
[Other party(ies) or attorney for other party(ies)]

by [specify method of service]:
__ United States Postal Service, ordinary first class mail
__ United States Postal Service, certified or registered mail, return receipt requested
__ hand delivery
__ other (specify) _____

CERTIFICATE OF FILING

I certify that on __[date]__, I filed the original of this petition for judicial review with the

Appellate Court Administrator by [specify method of filing]:

__ United States Postal Service, ordinary first class mail
__ United States Postal Service, certified or registered mail, return receipt requested
__ hand delivery
__ other (specify) _____

_____
[Signature of petitioner or attorney]

_____
[Typed or printed name of petitioner
or attorney]

APPENDIX 5.05-1
Illustration for ORAP 5.05

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)	)	

APPELLANT'S OPENING BRIEF AND EXCERPT OF RECORD

Appeal from the judgment (order) of the Circuit Court for _____ County; Honorable _____, Judge.

_____
Attorney(s) for Appellant [if more than one appellant, identify which; include separate listing for each appellant represented by a different attorney]
[Mailing address, bar number, telephone number, and email address]

[or]

_____ [name of self-represented appellant; include separate listing for each self-represented appellant]
[Mailing address and telephone number]

_____
Attorney(s) for Respondent [if more than one respondent, identify which; include separate listing for each respondent represented by a different attorney]
[Mailing address, bar number, telephone number, and email address]

[or]

_____ [name of self-represented respondent; include separate listing for each self-represented respondent]
[Mailing address and telephone number]

_____
[Signature of attorney or unrepresented party]

_____
[Typed or printed name of attorney or unrepresented party]

APPENDIX 5.05-2
Illustration for ORAP 5.05(2)

COMBINED CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH AND TYPE SIZE REQUIREMENTS, AND CERTIFICATES OF FILING AND SERVICE

[Brief length]

I certify that this brief complies with the word-count limitation in ORAP 5.05**,** which word count is **_____.**

[or]

I certify that (1) I do not have access to a word-processing system that provides a word count; (2) this brief complies with the page limitation in ORAP 5.05 and the number of pages **of** this brief is **_____.**

[or]

The court granted a motion to exceed the length limit for this brief. The order granting that motion was dated [date] and permits a brief of up to [number of words /pages] . I certify that (1) this brief complies with that order and (2) the word count of this brief is _____ [OR] the number of pages in this brief is **_____.**

[Type size; exclude if brief is prepared using uniformly spaced type]

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes.

[Filing]

I certify that I filed this brief with the Appellate Court Administrator on this date.

[Service]

[When the case party or participant is being eServed using the appellate courts' eFiling system]

I certify that service of a copy of this brief will be accomplished on the following participant(s) in this case, who is a registered user of the appellate courts' eFiling system, by the appellate courts' eFiling system at the participant's email address as recorded this date in the appellate eFiling system:

[*List name of each party or participant who is being eServed*]

[When the case party or participant is not being eServed using the appellate courts' eFiling system]

I certify that I have this date served each participant in this case who is not being served by the appellate courts' eFiling system by [specific method] at the following address:

[*List name and address of each party or participant who is not being eServed*]

DATED:

_____
[Signature of attorney or unrepresented party]

_____
[Typed or printed name of attorney or unrepresented party]

APPENDIX 5.45
Illustration for ORAP 5.45
Model Complete Assignment of Error (Ill. 1);
Other Partial Assignments of Error (Ill. 2-6)

(Model Complete Assignment of Error)
Illustration 1

FIRST ASSIGNMENT OF ERROR

The trial court erred in declining to give defendant's requested menacing instruction on the ground that menacing is not a lesser included offense of robbery in the first and second degrees.

A. Preservation of Error

At the close of the evidence, defendant submitted a requested instruction on menacing. (ER-___.) By way of memorandum in support of the requested instruction, defendant argued to the trial court that menacing is necessarily included in the statutory definition of robbery in the first degree (the crime with which defendant was charged) and that the record contained evidence from which a jury could find defendant guilty of the lesser charge and not guilty of the greater charge. (ER-___.) The trial court declined to give the instruction, stating:

> "I'm not going to give the requested instruction on menacing. Menacing is not expressly included in the charging instrument and, in my view, is not a statutorily lesser-included offense of the crime of robbery because it does not share all of the same elements as robbery. The prosecutor could have charged defendant with menacing, but didn't. And without a match on the elements of the two offenses, a lesser-included instruction isn't proper."

(Tr 142.)

B. Standard of Review

The court reviews the trial court's decision either to give or to decline to give a requested jury instruction pursuant to a combination of standards of review. Regarding review of the record to support such an instruction, the court "review[s] the evidence in the light most favorable to the establishment of facts that would require those instructions." *State v. Boyce*, 120 Or App 299, 302, 852 P2d 276 (1993). Whether the language of the statute defining the lesser offense is necessarily included in the greater offense is a pure question of law, one that the court decides without any particular deference to its resolution below. *See State v. Cunningham*, 320 Or 47, 57, 880 P2d 431 (1994), *cert den*, 514 US 1005 (1995); *State v. Moses*, 165 Or App 317, 319, 997 P2d 251, *rev den*, 331 Or 334 (2000).

ARGUMENT

(Other Partial Forms for Assignments of Error)

Illustration 2

The court erred in denying (or allowing) the following motion:
[Show that the error was preserved, including setting forth verbatim the motion and the ruling of the court.]

Illustration 3

The court on examination of witness _____ erred in sustaining (or failing to sustain) objection to the following question:

[Show that the error was preserved, including setting forth verbatim the question, the objection made, the answer given, if any, offer of proof, if any, and the ruling of the court.]

Illustration 4

The court erred in denying (or sustaining) the motion for dismissal or directed verdict:

[Show that the error was preserved, including setting forth verbatim the motion and the ruling of the court.]

Illustration 5

The court erred in giving the following instruction:
[Show that the error was preserved, including setting forth verbatim the instruction (or citing to the excerpt of record, if the instruction is set forth verbatim in the excerpt of record), and the exception made to the instruction.]

Illustration 6

The court erred in granting plaintiff's motion for summary judgment based on its holding that ORS _____ (or Oregon Laws _[year]_ , chapter ___, section ___) is unconstitutional (or constitutional):

[Show that the error was preserved, including setting forth verbatim the statutory provision and the manner in which constitutionality was challenged.]

APPENDIX 5.50

Illustration for ORAP 5.50
EXCERPT OF RECORD

In civil cases, the excerpt of record properly might contain:

(1) When a claim or defense is an issue on appeal, the specific parts of the complaint, petition, answer or other pleading that are essential to consideration of the issue on appeal; otherwise, as much of the complaint, petition, answer or other pleading as is essential to frame the issue on appeal;

(2) When an issue on appeal is based on the grant or denial of a written motion, the motion, the response to the motion, those specific parts of any affidavits, exhibits or similar attachments submitted in support of or in opposition to the motion that are essential to consideration of the issue on appeal, and the written order ruling on the motion;

(3) Any opinion, findings of fact or conclusions of law relating to an issue on appeal;

(4) When an issue on appeal is based on a ruling, order, finding of fact or conclusion of law that was delivered orally, that specific part of the transcript containing the ruling, order, finding of fact, or conclusion, together with any discussion of the matter by the judge, counsel or a party;

(5) When an issue on appeal is based on a challenge to the admission or exclusion of evidence, the specific part of the transcript containing any discussion involving the evidence by the court, counsel, or a party, and any offer of proof, ruling or order, and objection;

(6) When an issue on appeal is based on a written exhibit, including an affidavit, the specific part of the exhibit essential to consideration of an issue on appeal;

(7) When an issue on appeal is based on a jury instruction given or refused, the jury instruction and the specific part of the transcript containing any discussion of the jury instruction by the court, counsel or a party, and any ruling and objection;

(8) When an issue on appeal is based on the verdict, the written verdict, if any, or, if the verdict was rendered orally, the specific part of the transcript containing the verdict.

APPENDIX 5.95
Illustration for ORAP 5.95

1. *Sample Brief Caption for Brief Containing Confidential Material*

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,	)	_____ County
Plaintiff-Respondent,	)	Circuit Court No. _____
	)	
v.	)	CA A_____
	)	
JOHN DOE,	)	
Defendant-Appellant.	)	

CONFIDENTIAL BRIEF UNDER ORS 137.077

[or]

CONFIDENTIAL BRIEF UNDER
TRIAL COURT ORDER DATED JANUARY 1, 1999

APPELLANT'S OPENING BRIEF AND EXCERPT OF RECORD

2. *Sample Brief Caption for Brief With Confidential Material Redacted*

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,	)	_____ County
Plaintiff-Respondent,	)	Circuit Court No. _____
	)	
v.	)	CA A_____
	)	
JOHN DOE,	)	
Defendant-Appellant.	)	

REDACTED BRIEF UNDER ORS 137.077

[or]

REDACTED BRIEF UNDER
TRIAL COURT ORDER
DATED JANUARY 1, 1999

APPELLANT'S OPENING BRIEF AND EXCERPT OF RECORD

APPENDIX 6.05
Illustration for ORAP 6.05

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

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

REQUEST FOR ORAL ARGUMENT

To the Calendar Clerk for the Court of Appeals:

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

Date _____

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

APPENDIX 7.10-1
List of Commonly Used Motion Titles for
ORAP 7.10(1)(b) and (c)[1]

Motion Titles (Motions Other Than Motions for Extension of Time–ORAP 7.10(1)(b))

Motion–Allow Oral Argument
Motion–Amend Brief
Motion–Amend Designation of Record
Motion–Appear *Amicus Curiae*
Motion–Appoint Counsel
Motion–Appoint Counsel and for State-Paid Transcript
Motion–Appoint Legal Advisor
Motion–Appoint Special Master
Motion–Assign to Settlement Conference Program
Motion–Authorize Service
Motion–Consolidate Cases
Motion–Correct/Amend Record
Motion–Default Order
Motion–Determine Jurisdiction
Motion–Dismiss - Appellant/Petitioner
Motion–Dismiss - Non-Appellant/Non-Petitioner
Motion–Dismiss - Settlement
Motion–Dismiss - Stipulated
Motion–Disqualify Judge/Justice
Motion–Excerpt of Record Preparation
Motion–File Additional Authorities
Motion–File Additional Evidence
Motion–File Extended Brief/Excerpt/Appendix
Motion–File Extended Petition for Review
Motion–File Extended Memorandum of Additional Authorities
Motion–File Late Appeal
Motion–File Late Brief
Motion–File Late Transcript
Motion–File Reply Brief
Motion–File Supplemental Brief
Motion–Hold In Abeyance
Motion–Hold In Abeyance - Bankruptcy
Motion–Inspect Sealed/Confidential Material
Motion–Intervene
Motion–Issue Appellate Judgment - Stipulated
Motion–Law Student Appearance
Motion–Leave to File Petition for Review
Motion–Modify Case Title
Motion–Other
Motion–Out of State Counsel

Motion–Postpone Oral Argument
Motion–Prepare Jury Selection Transcript
Motion–Present Oral Argument
Motion–Reactivate Case
Motion–Reactivate Case from Settlement Conference Program
Motion–Reactivate Petition for Review
Motion–Recall Appellate Judgment
Motion–Reconsider Order
Motion–Redact Previously Filed Document, ORAP 8.50(2)(b)
Motion–Reinstate Case
Motion–Release Transcript
Motion–Relief from Default
Motion–Remand Agency - Other
Motion–Remand Agency - Take Additional Evidence
Motion–Remand Non-Agency
Motion–Remove Court Appointed Counsel and Proceed as a Self-Represented Party
Motion–Replace Filed Document with Redacted Document
Motion–Request Appointment of Masters in JFC Proceeding
Motion–Request Assignment of Judge in Class Action
Motion–Request Record/Exhibits
Motion–Restraining Order
Motion–Review of PDSC Payment Decision
Motion–Review Under ORAP 8.40
Motion–Sanctions
Motion–Seal Case/Make Case Confidential
Motion–Seal Materials/Make Materials Confidential
Motion–Settle Transcript
Motion–Sever Cases
Motion–Show Cause
Motion–State Paid Transcript
Motion–Stay Enforcement of Appellate Judgment
Motion–Stay Issuance of Appellate Judgment
Motion–Stay Previous Judgment/Order
Motion–Stay Trial Court Proceedings
Motion–Strike
Motion–Submit on Briefs
Motion–Submit on Record
Motion–Substitute Appointed Counsel
Motion–Substitute Party
Motion–Substitute Retained Counsel
Motion–Summary Affirmance
Motion–Summary Determination of Appealability
Motion–Supplement Record
Motion–Suspend Judge/Lawyer Pending Disability/Disciplinary Proceeding
Motion–Take Judicial Notice
Motion–Transmission of Part of Record Not Designated

Motion–Vacate and Remand - Joint
Motion–Waive Court Rules
Motion–Waive Transcript
Motion–Waive/Defer Filing Fee
Motion–Waive/Defer Settlement Conference Program Fee
Motion–Withdraw as Court Appointed Counsel
Motion–Withdraw as Retained Counsel
Motion–Withdraw Filing

Motions for Extension of Time (MOET) Titles–ORAP 7.10(1)(c)

MOET–Correct Brief
MOET–Extend Time in Settlement Conference Program
MOET–File Agency Record
MOET–File Agreed Narrative Statement
MOET–File *Amicus* Brief
MOET–File Answer
MOET–File Answer to Petition for Attorney Fees
MOET–File Answering Brief
MOET–File Answering on Cross-Assignment of Error Brief
MOET–File Brief on Merits - Petitioner
MOET–File Brief on Merits - Respondent
MOET–File Combined Answering and Cross-Assignment of Error Brief
MOET–File Combined Reply and Answering on Cross-Appeal/Petition Brief
MOET–File Combined Reply and Answering on Cross-Assignment of Error Brief
MOET–File Cost Bill
MOET–File Cross-Answering Brief
MOET–File Cross-Opening Brief
MOET–File Cross-Reply Brief
MOET–File Intervenor's Brief
MOET–File Motion for Leave to File a Reply Brief
MOET–File Motion for Leave to File an Extended Brief
MOET–File Motion for Sanctions
MOET–File Motion to Correct Agency Record
MOET–File Motion to Correct Transcript
MOET–File Motion to Reconsider Order
MOET–File Objection to Cost Bill
MOET–File Opening Brief
MOET–File Petition for Attorney Fees
MOET–File Petition for Reconsideration
MOET–File Petition for Review
MOET–File Reply
MOET–File Reply Brief
MOET–File Reply on Cross-Assignment of Error Brief
MOET–File Reply to Answer to Petition for Attorney Fees
MOET–File Reply to Objection for Cost Bill
MOET–File Response to Motion

MOET–File Response to Order to Show Cause
MOET–File Response to Status Request
MOET–File Revised Order on Reconsideration
MOET–File Supplemental Brief
MOET–File Transcript
MOET–Indefinite - File Petition for Review
MOET–Other
MOET–Pay Filing Fee
MOET–Provide Copy of Judgment/Order Being Appealed
MOET–Provide Service of Document

---

[1] The courts may modify this list of commonly used motion titles between publication dates of the Oregon Rules of Appellate Procedure. The updated list, if any, will be available on the Oregon Rules of Appellate Procedure page of the Judicial Department's website: <https://www.courts.oregon.gov/courts/appellate/rules/Pages/orap.aspx>

APPENDIX 7.10-2
Illustration for ORAP 7.10(1)(b)–Motions

Illustration 1

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

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

APPELLANT'S MOTION–REACTIVATE CASE
APPELLANT'S MOTION–OUT-OF-STATE COUNSEL

(single document containing a motion to reactivate the case and
a motion to allow the appearance of out-of-state counsel)

Illustration 2

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

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

RESPONDENT'S MOTION–RECONSIDER ORDER
RESPONDENT'S MOTION–SUMMARY AFFIRMANCE

(single document containing a motion to reconsider a previous order and
a motion for summary affirmance)

Illustration 3

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

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

RESPONDENT'S MOTION–STRIKE

(document contains single motion to strike appellant's opening or reply brief)

APPENDIX 7.10-3
Illustration for ORAP 7.10(1)(c) and ORAP 7.25–Motions for Extension of Time

Illustration 1

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

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

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

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

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

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

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

Date _____

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

Illustration 2

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

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

RESPONDENT'S MOTION–RELIEF FROM DEFAULT
RESPONDENT'S MOET–FILE ANSWERING BRIEF

(single document containing motion for relief from default
and motion for extension of time to file respondent's answering brief)

APPENDIX 9.05
Illustration for ORAP 9.05

[The case title of a petition for review is to appear as shown on the appellate decision in substantially the following form:]

IN THE SUPREME COURT
OF THE STATE OF OREGON

_____,	)	
Respondent,	)	
(or Petitioner) on Review,	)	_____ County Circuit
	)	Court No. _____
v.	)	
_____,	)	CA A_____
Petitioner	)	
(or Respondent) on Review.	)	

PETITION FOR REVIEW OF
[NAME OF PARTY]

Petition for review of the decision of the Court of Appeals on appeal from a judgment of the Circuit Court for _____ County, Honorable _____, Judge (or an order of [name of agency]).

Opinion Filed: [date]

[If the court decided the case by opinion indicating its author]

Author of Opinion: _____
Concurring Judge(s): _____
Dissenting Judge(s): _____

[or]
[If the court affirmed without opinion or
decided the case by per curiam opinion]

Before _____, Presiding Judge
_____
_____

_____
Attorney(s) for Petitioner on Review [if more than one petitioner on review, identify which; include separate listing for each petitioner on review represented by a different attorney]
[Mailing address, bar number, telephone number, and email address]

[or]

_____ [name of self-represented petitioner on review; include separate listing for each self-represented petitioner on review]
[Mailing address and telephone number]

_____
Attorney(s) for Respondent on Review [if more than one respondent on review, identify which; include separate listing for each respondent on review represented by a different attorney]
[Mailing address, bar number, telephone number, and email address]

[or]

_____ [name of self-represented respondent on review; include separate listing for each self-represented respondent on review]
[Mailing address and telephone number]

PETITIONER ON REVIEW
[INTENDS/DOES NOT INTEND]
TO FILE A BRIEF ON THE MERITS

APPENDIX 10.15

Illustration for ORAP 10.15

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

In the Matter of _____,	)	
a Minor Child	)	_____ County
	)	Circuit Court No._____
STATE ex rel DEPARTMENT OF	)	
HUMAN SERVICES,	)	CA A_____
Respondent (or Appellant),	)	
	)	
v.	)	
_____,	)	
Appellant (or Respondent).	)	

EXPEDITED TERMINATION OF PARENTAL RIGHTS CASE
NOTICE OF APPEAL

APPENDIX 11.05

Illustration for ORAP 11.05

Illustration 1a. Sample case title for a peremptory writ of mandamus proceeding challenging the action of a judge in a particular case (Chris Doe, Plaintiff, v. Out of State Business, Inc., Defendant).

IN THE SUPREME COURT OF THE
STATE OF OREGON

CHRIS DOE,	)	_____ County
Plaintiff-Adverse Party,	)	Circuit Court No. _____
	)	
v.	)	SC S_____
	)	
OUT OF STATE BUSINESS,	)	
INC.,	)	**PETITION FOR**
Defendant-Relator.	)	**PEREMPTORY**
	)	**WRIT OF MANDAMUS**

Illustration 1b. Sample case title for a motion in a mandamus proceeding challenging the action of a judge in a particular case.

IN THE SUPREME COURT OF THE
STATE OF OREGON

CHRIS DOE,	)	_____ County
Plaintiff-Adverse Party,	)	Circuit Court No. _____
	)	
v.	)	SC S_____
	)	
OUT OF STATE BUSINESS,	)	
INC.,	)	**MANDAMUS PROCEEDING**
Defendant-Relator.	)	
	)	**MOTION TO DISMISS**

Illustration 2. Sample case title for an alternative writ of mandamus proceeding against an administrative agency.

IN THE SUPREME COURT OF THE
STATE OF OREGON

STATE ex rel TERRY DOE,	)	____[Agency Name]_____
an elector of the State of Oregon,	)	
Plaintiff-Relator,	)	Case No. _____
	)	
v.	)	
	)	SC S_____
PAT ROE,	)	
Secretary of State of the State	)	
of Oregon,	)	**PETITION FOR**
Defendant.	)	**ALTERNATIVE**
	)	**WRIT OF MANDAMUS**

Illustration 3. Sample case title for an alternative writ of mandamus proceeding challenging an administrative action of a judge.

IN THE SUPREME COURT OF THE
STATE OF OREGON

STATE ex rel OREGON	)	
ADVOCATES FOR JURORS,	)	SC S_____
Plaintiff-Relator,	)	
	)	
v.	)	
	)	
KELLY BENCH,	)	**PETITION FOR**
Presiding Judge for _____	)	**ALTERNATIVE**
County Circuit Court,	)	**WRIT OF**
Defendant.	)	**MANDAMUS**

APPENDIX 12.08
Illustration for ORAP 12.08

IN THE SUPREME COURT OF THE
STATE OF OREGON

_____,	)	
State of Oregon,	)	
Plaintiff,	)	_____ County Circuit
	)	Court No. _____
v.	)	
_____,	)	
Defendant.	)	**NOTICE OF INTERLOCUTORY**
	)	**APPEAL UNDER ORS 147.537**
_____	)	
	)	
_____,	)	
Appellant(s),	)	
	)	
v.	)	
_____,	)	
Respondent(s).	)	

1.

Appellant hereby gives notice of interlocutory appeal from the order entered in this case on [date of judgment] , signed by Judge _____ , in the _____ County Circuit Court.

2.

The parties to this appeal are:

Appellant(s)	Respondent(s)
_____	_____
_____	_____

3.

The name, bar number, address, telephone number, and email address of the attorney(s) for each party represented by an attorney is:

Name & Bar Number _____ Representing _____
Address _____ Telephone Number _____
Email Address _____

Name & Bar Number _____ Representing _____
Address _____ Telephone Number _____
Email Address _____

The name, address, and telephone number of each self-represented party is:

Name_____
Address_____ Telephone Number:_____

Name_____
Address_____ Telephone Number:_____

4.

Appellant designates only the following parts of the record, copies of which accompany this notice as excerpts of the record:
_____
_____.

5.

This appeal is timely and otherwise properly before the Supreme Court because:
_____.

6.

[In cases involving an audio record:]

Appellant hereby requests copies at appellant's expense of the audio record designated in paragraph 4 of this notice of appeal. Copies are to be served on the parties to the appeal listed in paragraph 3 of this notice of appeal.

7.

Attached to this notice of appeal is a copy of the order being appealed. Also attached is a memorandum of law as described in ORS 147.537(4).

8.

CERTIFICATE OF SERVICE

I certify that on [date] , I served a true copy of this notice of appeal on:

_____ _____
_____ _____
_____ _____

[Respondents as listed in ORS 147.537(6) or attorneys for respondents]

_____	_____
_____	_____
_____	_____
[trial court administrator]	[transcript coordinator, if a transcript is designated as part of the record on appeal]

by [specify method of service]:

__ United States Postal Service, ordinary first-class mail
__ United States Postal Service, certified or registered mail, return receipt requested
__ hand delivery
__ other (specify) _____

9.
CERTIFICATE OF FILING

I certify that on __[date]__, I filed the original of this notice of appeal with the Appellate Court Administrator by [specify method of filing]:

__ United States Postal Service, ordinary first-class mail
__ United States Postal Service, certified or registered mail, return receipt requested
__ hand delivery
__ other (specify) _____

_____
[Signature of appellant or attorney]

_____
[Typed or printed name of appellant or attorney]

APPENDIX 13.10
Illustration for ORAP 13.10

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

_____,	)	
Plaintiff-Appellant,	)	
(or Plaintiff-Respondent)	)	_____ County Circuit
	)	Court No. _____
	)	
v.	)	
_____,	)	(SC or CA) _____
Defendant-Respondent.	)	
(or Defendant-Appellant)	)	**PETITION FOR**
	)	**ATTORNEY FEES**

Appellant (Respondent) moves this court for an order allowing appellant (respondent) a reasonable sum as attorney fees in the amount of $_____.

This petition is based on [cite authority] and on the following facts.

[Set out facts showing the attorney time involved, the time devoted to each task, the reasonableness of the amount of time claimed, the hourly rate at which time is claimed, and the reasonableness of the hourly rate.]

[If the petition is based on a contractual provision, that provision should be set out verbatim in the petition.]

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

APPENDIX 16.05-1
INITIATING DOCUMENTS

Initiating Document - Application for Teacher's Admission to Practice
Initiating Document - Board of Bar Examiners Decision - Admission
Initiating Document - Board of Bar Examiners Decision - Contested Admission
Initiating Document - Certification Order for Certified Question
Initiating Document - Consent - Other
Initiating Document - Consent to Censure/Suspension/Removal
Initiating Document - Form B Resignation
Initiating Document - Judicial Fitness Commission Recommendation
Initiating Document - Notice of Appeal - Ballot Measure Constitutionality Review
Initiating Document - Notice of Appeal - State's Pretrial Appeal - Murder/Ag Murder
Initiating Document - Notice of Appeal - Tax
Initiating Document - Notice of Child Support Arrears
Initiating Document - Notice of Entry of Death Sentence
Initiating Document - Notice of Student Loan Default
Initiating Document - Order Accepting Certified Appeal
Initiating Document - Other
Initiating Document - Petition - Other
Initiating Document - Petition for Direct Review - Other
Initiating Document - Petition for Judicial Review - EFSC Rules Challenge
Initiating Document - Petition for Judicial Review - Energy Facility Siting Council
Initiating Document - Petition for Original Proceeding
Initiating Document - Petition for Review - Ballot Title
Initiating Document - Petition for Review - CA Decision
Initiating Document - Petition for Review - Explanatory Statement
Initiating Document - Petition for Review - Financial Impact Estimate
Initiating Document - Petition for Review - Judicial Fitness Commission Determination
Initiating Document - Petition for Writ - Habeas Corpus
Initiating Document - Petition for Writ - Mandamus
Initiating Document - Petition for Writ - Quo Warranto
Initiating Document - Recommendation - Reciprocal Discipline
Initiating Document - Recommendation on Reinstatement - Adverse
Initiating Document - Recommendation on Reinstatement - Favorable
Initiating Document - Request for Review - Disciplinary Board Decision
Initiating Document - Request for Review - Stipulation for Discipline
Initiating Document - Transfer Order - Public Body

APPENDIX 16.05-2
SUPPORTING DOCUMENTS

Challenged Judgment/Order/Ruling
Excerpt of Record
Memorandum of Law
Proof of Service
Proposed form of Writ of Mandamus

APPENDIX 16.05-3
ASSOCIATED DOCUMENTS

Application to Waive/Defer Filing Fee
Brief in Support of Reapportionment Review
Declaration for Waiver/Deferral of Filing Fee
Motion to Appoint Counsel
Motion to Appoint Counsel and for State-Paid Transcript
Motion to Consolidate Cases
Motion to File Late Appeal
Motion to Stay Previous Judgment/Order
Motion to Stay Trial Court Proceedings

APPENDIX 16.50
Illustration for Rule 16.50

In the Court of Appeals:

Statement of Case or Statement of Facts

Assignment of Error

In Opening Brief, abbreviate as AE 1, AE 2, etc.
In Answering/Response brief, abbreviate as AE 1 Response, AE 2 Response, etc.
Include concise description of the AE or response to AE.
Cross-assignments of error are abbreviated as CAE 1, CAE 2, etc.

Examples:

AE 2: Permanent disability finding is not supported by substantial evidence.

AE 2 Response: Finding supported by substantial evidence and reason.

CAE 1: Resident voided lease.

Judgment
Order (specify source: WCB, ALJ, ODFW, etc.)
Opinion

In the Supreme Court:

Facts and Proceedings
Question(s) Presented
Proposed Rules(s) of Law
Discussion
Judgment
Order (specify source: WCB, ALJ, ODFW, etc.)
Opinion (specify source: COA, Trial Panel, Special Master, etc.)