

# FORMAT OF THE OPENING BRIEF IN THE OREGON COURT OF APPEALS

The Oregon Court of Appeals has rules called the Oregon Rules of Appellate Procedure (or "ORAP"). Those rules contain format requirements for opening briefs. This summary outlines some of those requirements. For more information or to view any rule cited below, consult the ORAP online at <<http://tinyurl.com/ORAPpage>>.

## I. GENERAL REQUIREMENTS ORAP 5.05, 5.10, 5.15, 5.20; ORAP Appendix 5.05

**ORAP 5.05** includes instructions on the type and size of paper to use, page limits, margins, font (type) style and size, page numbers, binding, photocopying, etc.

**ORAP 5.10** explains how many copies of each brief you must file. Generally, in Court of Appeals cases, you must file one original (with an ink signature on the last page and a proof of service [see IX, below]) and 13 copies of each brief. If you are not represented by a lawyer and the court has determined that you are indigent (unable to pay), you must file the original and five copies.

**ORAP 5.15** explains how to refer to the different parties in the case when writing your brief.

**ORAP 5.20** explains how to refer to transcripts, exhibits, and other parts of the record from the trial court or agency. It also explains how to obtain a copy of the Oregon Appellate Courts Style Manual.

## II. FRONT AND BACK COVERS ORAP 5.05(4)(a), (b), (c)

**ORAP 5.05(4)(a)** describes the color and weight of paper you must use for brief covers, depending on your role in the appeal. Appellants' opening brief covers must be blue. Covers must be at least 65-pound weight. **ORAP 5.05(4)(c)** requires that covers be 8-1/2 by 11 inches in size.

**ORAP 5.05(4)(b)** describes the information you must include on the front cover of the brief and how to format that information. Be sure to indicate the month and year you are filing your brief in the lower right hand corner of the front cover.

### **III. INDEX**

### **ORAP 5.35**

**ORAP 5.35** requires the brief to begin with an index that includes

- (1) an index of the contents of the brief, including summaries of each assignment of error [see V, below];
- (2) an index of appendices, if any [see VII, below]; and
- (3) an index of all authorities referred to in the brief. The index of authorities must begin with cases (arranged alphabetically and including complete citations), and then proceed to constitutions, statutes, texts, treatises, and other authorities. Each item in the list of authorities is to be accompanied by a list of all the pages in the brief where that authority is cited.

### **IV. STATEMENT OF THE CASE**

### **ORAP 5.40**

The statement of the case is a brief explanation of the nature of the appeal, the course of the proceedings, and the disposition in the trial court or agency.

**ORAP 5.40** requires the following 12 items to be set forth in 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. [see IV.A, below]

"(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. [see ORS 19.415(3)(b) regarding cases subject to this provision]

"(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. [see IV.B, below]

"(10) In a dissolution proceeding or a proceeding involving modification of a dissolution decree, 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. [divorce cases only]

"(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."

**A. Summary of Argument**

**ORAP 5.40(7)**

The summary of argument is part of the statement of the case and is to be listed under a separate heading in that section. It should be a very short overview of your argument.

**B. Statement of Facts**

**ORAP 5.40(8)**

The statement of facts is also part of the statement of the case and is to be under a separate heading in that section. **ORAP 5.40(8)** requires the statement of facts to be a "concise summary, without argument, of all the facts of the case material to determination of the appeal." It also requires the statement of facts to include references to the source of each fact (*e.g.*, the page of the transcript where the

witness testified to the fact). *See also* **ORAP 5.20** (listing appropriate abbreviations for such references).

**V. ASSIGNMENTS OF ERROR** **ORAP 5.45; ORAP Appendix 5.45**

In the assignment(s) of error, you tell the Court of Appeals what you think the trial court or agency did wrong and explain why. You should carefully read the specific requirements of **ORAP 5.45**.

**A. Preservation of Error** **ORAP 5.45(1), (4)(a), (4)(b)**

Each assignment of error must precisely identify the legal, procedural, factual, or other ruling that you are challenging, including a reference to the place in the record where the ruling appears. Additionally, the assignment of error must show that the issue was properly raised below and was preserved (for example, if you are arguing that a piece of evidence should not have been admitted, you must show that you asked the trial court not to admit it) or that the issue is "error apparent on the record."

**B. Standard of Review** **ORAP 5.45(5)**

Each assignment of error must identify a standard of review. This is a statement of how deferential the Court of Appeals must be to the decision of the trial court or agency. This depends on the kind of ruling that was made. Identify the one standard of review that applies to the particular kind of ruling.

**C. Argument** **ORAP 5.45(6)**

Each assignment of error must include an argument explaining why you think the lower court or agency did something wrong. Careful attention should be paid to the organization of the argument.

**D. Conclusion**

After the argument section, it is common to include a conclusion, which should be no more than one or two paragraphs and which should briefly sum up the main arguments in your favor. The conclusion should also briefly state what you think the Court of Appeals should do (for example, reverse, order a new trial, etc.).

**E. Signature** **ORAP 5.05(4)(g)**

The last page of the brief must be signed by the person who wrote it. It must also indicate the name of the law firm(s), if any, representing the party.

## **VI. EXCERPT OF RECORD**

**ORAP 5.50; ORAP Appendix 5.50**

An excerpt of record should follow the assignments of error. **ORAP 5.50(1)**. The excerpt of record is to include copies of those documents (or portions of documents) from the record of the trial court or agency that are pertinent to the issues raised on appeal. **ORAP 5.50(2)**. Read **ORAP 5.50(2) to (4)** for guidance about what to include in the excerpt of record, and note that **ORAP 5.50(2)(b)** cautions against making the excerpt of record unnecessarily long. Copies of documents in the excerpt of record should be placed in chronological order. **ORAP 5.50(6)(b)**. The excerpt of record must begin with an index that describes each item and identifies where to find the item in the trial court or agency record. **ORAP 5.50(6)(b)**. *See also ORAP 5.20* (listing appropriate abbreviations for such reference to the trial court or agency record).

## **VII. APPENDIX**

**ORAP 5.52, 5.30**

You may, but are not required to, also include an appendix of materials that would be helpful to the court. **ORAP 5.52**. An appendix should not include any material that could be placed in the excerpt of record. Copies of statutes and rules are examples of material that you may elect to include in an appendix. **ORAP 5.30** explains when you might want to include a copy of a statute, rule, etc., as an appendix. Judges often read briefs away from the office; if you think that material is necessary to understand your brief, consider including it in an appendix.

## **VIII. CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH AND TYPE SIZE REQUIREMENTS**

**ORAP 5.05(2)(d);  
ORAP Appendix 5.05-2**

The original brief must include a certificate of compliance with brief length and type size requirements of ORAP 5.05(4)(f) (minimum 14 point for proportionally spaced type). You must also certify that the brief complies with the brief length requirements of ORAP 5.05(2), either by word count or, if you don't have access to a word-processing system that provides a word count, by page limit. You must sign the certificate; your signature attests that the brief in fact complies with those requirements. The certificate shall immediately precede or be on the same page as the proof of service.

## **IX. PROOF OF SERVICE**

**ORAP 5.10(3), (4)**

The original brief must include a proof of service. This is a statement that you mailed or delivered ("served") two copies of the brief to each other party. You must sign the proof of service; your signature attests that you did in fact serve the brief on the other parties. The proof of service must be the last page of the brief, and it may be printed on, or attached on the inside of, the back cover.