

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

In the Matter of the Adoption of) Chief Justice Order 14-024
Amendments to the Oregon Rules of) Chief Judge Order 14-05
Appellate Procedure)

**ORDER ADOPTING
TEMPORARY AMENDMENTS**

Pursuant to ORAP 1.10(2), the Supreme Court and Court of Appeals may, from time to time, adopt temporary rules and temporary amendments to the Oregon Rules of Appellate Procedure. The Supreme Court and Court of Appeals by this order:

- Delete ORAP 16.35;
- Adopt amendments affecting the following Oregon Rules of Appellate Procedure: 5.70, 5.80, 9.10, 11.35, 12.08, 12.09, 12.25, 16.15, 16.20, 16.25, 16.30, and 16.40;
- Adopt additional amendments to the following Oregon Rules of Appellate Procedure that pertain to the number of copies required with a conventional filing: 5.10, 5.85, 5.95, 9.17, 11.15, and 12.20; and
- Adopt updated charts for the Supreme Court and Court of Appeals that set out the number of copies for which a document recovery charge is assessed under ORAP 16.20(2), for various eFiled documents.¹

The deleted rule is set out below in [~~brackets, italics, and strikeout~~]. All amendments are set out below with additions in **braces, boldface, and underscored**, and deletions in [~~brackets, italics, and strikeout~~].

The deletion of ORAP 16.35 and the amendments adopted by this order are effective on June 1, 2014, and, pursuant to Chief Justice Order 13-067/Chief Judge Order 13-14, shall expire on December 31, 2014, if not previously adopted as permanent amendments.

The updated eFiling document recovery charge charts for both courts are effective on July 1, 2014.

¹ The updated charts are available, as of the effective date for the charts as set out in this order, at <http://tinyurl.com/eFileFAQpage> (<<http://courts.oregon.gov/OJD/OnlineServices/eFile/electronicFilingFAQs.page?>>>).

Rule 5.10
NUMBER OF COPIES OF BRIEFS; PROOF OF SERVICE

(1) Any party filing a brief on appeal or on judicial review in the Court of Appeals shall file with the Administrator* one brief, marked as the original, and five copies, except as provided in paragraphs (1)(a) and (1)(b) of this rule. ~~[Any party who filed a brief or briefs in the Court of Appeals shall file seven additional copies of the brief or briefs within 14 days after the date of notice from the Administrator that the Supreme Court has allowed a petition for review in the case.]~~

* * * * *

(2) Any party filing a brief on appeal, judicial review, or other proceeding originally heard in the Supreme Court shall file with the Administrator one brief, marked as the original ~~and seven copies~~].

* * * * *

(Footnote omitted from subsection (2) for purposes of this order.)

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

~~[See ORAP 9.05(3)(b) regarding the number of copies of a petition for review, ORAP 9.10(3) regarding the number of copies of a response to a petition for review and ORAP 9.25(2) regarding the number of copies of a petition for reconsideration of a Supreme Court decision.]~~

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.

* * * * *

(3) (a) * * *

(b) A motion for leave to file a reply brief shall be submitted ~~without copies~~ within 14 days after the filing of the brief to which permission to reply is sought.
* * *

Rule 5.80
TIME FOR FILING BRIEFS

* * * * *

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. <i>See</i> 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	0	21			Date transcript has been deemed settled. ORS 19.370(7). [or] Date circuit court order settling transcript has been entered if a motion to correct has been filed. ORS 19.370(7). [or] Date notice of agreed narrative statement filed in circuit court. ORS 19.380. [or] Date notice of appeal filed if no transcript has been designated.
	49	49	21*	21*	{49} [21]*	21	
	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 Cross-Opening Brief	Reply Brief	Answering Brief to Cross-Assignment of Error	Petition for Review	Response to Petition for Review	Petitioner's Brief on the Merits	Respondent's Brief on the Merits	Petition for Reconsideration	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 set{t}led. ORAP 4.22.
Petition for Review Response Petitioner's Brief on the Merits Respondent's Brief on the Merits Petition for Reconsideration					35	14	28	28	14	Date of Court of Appeals decision. Date petition for review was filed. Date petition for review allowed by Supreme Court. Date petitioner's brief on the merits filed. Date of Supreme Court decision.
Bar Discipline Judicial Discipline and Disability Certified Questions of Law	28 28	28 28	14 0							Date of acknowledgment of receipt of record.
Mandamus Habeas Corpus Quo Warranto Energy Facility Siting Council{/Public Utility Commission} Reapportionment Review Legislative Secretary of State	28 14 8/1 9/15	28 14 10*	0 0 5*							Date that the case is at issue Date petition for review is filed. Legislative Assembly enacts reapportionment. Secretary of State adopts reapportionment.

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

Rule 5.85
ADDITIONAL AUTHORITIES

(1) * * *

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

* * * * *

(c) Shall be filed with the Administrator together with [~~seven copies, if filed in the Supreme Court, and~~] five copies, if filed in the Court of Appeals.

* * * * *

(Footnote omitted for purposes of this order.)

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, the party submitting the brief shall file two original briefs:

(a) One brief shall contain the material that is confidential or exempt from disclosure. * * *

(b) One brief shall have the material that is confidential or exempt from disclosure removed or marked out. * * *

(2) (a) If a brief described in subsection (1) of this rule is filed in the Court of Appeals, the party filing the brief shall file the original and five copies of the confidential brief and the original of the redacted brief.

(b) [~~If a brief described in subsection (1) of this rule is filed in the Supreme Court, the party filing the brief shall file the original and seven copies of the confidential brief and the original of the redacted brief.~~

(e)] 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.

* * * * *

(Footnotes omitted for purposes of this order.)

Rule 9.10
RESPONSE TO PETITION FOR REVIEW

(1) * * *

* * * * *

(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. [~~The cover of a response shall be orange.~~] 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. * * *

* * * * *

(5) The original [~~marked as such, and seven copies,~~] shall be filed with the Administrator, together with proof of service. Two copies of the brief shall be served on each party to the review.

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: * * *

* * * * *

(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 [~~without copies,~~] within seven days after the filing of the brief to which permission to reply is sought. * * *

* * * * *

(5) All briefs shall be prepared in substantial conformity with ORAP 5.35 through 5.50. An original brief [~~plus seven copies,~~] shall be filed with the Administrator with proof of

service showing that two copies were served on each party. [~~Parties shall also submit briefs in electronic form as outlined in ORAP 9.17(6).~~]

* * * * *

**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:

* * * * *

(9) Any brief in support of or in opposition to a petition, insofar as practicable, shall be filed in {the same} form [~~and in numbers of copies~~] as a brief on appeal in a civil action under these rules. [~~Parties shall also submit briefs in electronic form as outlined in ORAP 9.17(6).~~]

* * * * *

**Rule 12.08
INTERLOCUTORY APPEAL OF ORDER
CONCERNING CRIME VICTIM'S RIGHTS**

(1) * * *

* * * * *

(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.~~{2}~~^[3]5.

* * * * *

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

(1) * * *

* * * * *

(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.~~{2}~~^[3]5.

* * * * *

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:

* * * * *

(6) (a) Unless otherwise ordered by the Supreme Court, the certified question of law shall be briefed by the parties. * * *

* * * * *

(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~~[-and the original and seven copies of the brief must be filed. Parties shall also submit briefs in electronic form as outlined in ORAP 9.17(6)].~~

* * * * *

Rule 12.25
EXPEDITED JUDICIAL REVIEW OF ORDER{S} 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 **for 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.** ~~[469.403.]~~

(2) Within seven days after being served with a copy of the petition for judicial review, the Energy Facility Siting Council **for 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.

* * * * *

(4) Except as prescribed in ORS 469.403(6), (7), and (8), or ORS 758.017(5), (6), and (7), as appropriate, the court shall not grant a continuance or extension for transmitting the record or filing briefs as specified in this rule, or for the time set for oral argument.

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

Rule 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) for 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 ORAP 16.15(5). The PDF document shall allow text searching and shall allow copying and pasting text into another document. ~~{A document in PDF/A format does not comply with this rule.}~~

* * * * *

(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.

(a) * * *

(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~~[Sealed]~~ Attachment."

(Footnote omitted for purposes of this order.)

Rule 16.20
FILING FEES AND eFILING CHARGES

(1) * * *

(2) The appellate courts may collect a document recovery charge~~[to offset the cost incurred by the courts in making the necessary number of printed copies]~~. The document recovery charge shall be at the rate prescribed by Chief Justice Order, multiplied by the number of copies required for a particular document. The number of copies, if any, varies based on the type of document that is eFiled.¹

* * * * *

Rule 16.25
ELECTRONIC FILING {AND ELECTRONIC FILING DEADLINES}

(1) {A filer may use the eFiling system at any time, except when the system is temporarily unavailable.¹ 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) [Electronic Filing:]~~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}~~[shall transmit a]~~ receipt to the eFiler's e-mail address, and to any other e-mail 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 e-mail 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, the date of service will also relate back to the date that the eFiling system received the document.} ~~[To complete the electronic filing process, the document must be accepted by the court. The court shall notify the eFiler via the eFiler's e-mail address, and any other e-mail address provided by the eFiler, when the court accepts the eFiler's document.]~~

~~{(e) — If the court rejects a document submitted for filing via the eFiling system, the court shall notify the eFiler of the rejection via the eFiler's e-mail address, and any~~

other e-mail address provided by the eFiler, and the document shall not become part of the court's file. To complete the filing requirements after the court has rejected a document, the eFiler may conventionally file the document or may resubmit the document via the eFiling system and repay the applicable filing fee via the electronic payment system.^{1]}

{(4) If the eFiling system is temporarily unavailable due to a system malfunction or if an error in the transmission of the document or other technical problem prevents the eFiling system from receiving a document, the court may, upon satisfactory proof, permit the filing date of the document to relate back to the date that the eFiler first attempted to file the document electronically. A party must show satisfactory proof by filing and serving with the document as to which the party seeks relation back an accompanying letter explaining the circumstances, together with any supporting documentation. Problems with the eFiler's equipment, the eFiler's hardware or software, or other problems within the eFiler's control generally will not excuse an untimely filing.}

{5}[2]) 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 The eFiling system will be temporarily unavailable due to regularly scheduled maintenance and may be temporarily unavailable due to an eFiling system malfunction. The regularly scheduled maintenance hours are listed at <<http://tinyurl.com/eFileFAQpage>> (<<http://courts.oregon.gov/OJD/OnlineServices/eFile/electronicFilingFAQs.page?>>). See subsection (4) of this rule for seeking relief from an untimely filing due to an eFiling system malfunction.}

¹ See ORAP 16.20(4)]

Rule 16.30 SPECIAL FILING AND SUBMISSION REQUIREMENTS

(1) * * *

* * * * *

(3) For all [~~other~~] documents, 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.

{(4) An eFiled document may not contain an embedded audio or video file.}

[Rule 16.35
ELECTRONIC FILING DEADLINES

~~———— (1) ——— Electronic filing is permitted at all times.[‡] 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 court considers a document submitted for filing when the document is received by the eFiling system. The eFiling system will issue an electronic confirmation notice to the eFiler that includes the date and time of receipt.~~ 185 Chapter 16

~~———— (3) ——— If 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 electronic filing 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. If the document was electronically served by the eFiling system pursuant to ORAP 16.45, the date of service will also relate back to the date and time that the eFiling system received the document.~~

~~———— (4) ——— If the eFiling system is temporarily unavailable due to a system malfunction or if an error in the transmission of the document or other technical problem prevents the eFiling system from receiving a document, the court may, upon satisfactory proof, permit the filing date of the document to relate back to the date that the eFiler first attempted to file the document electronically. A party must show satisfactory proof by filing and serving with the document as to which the party seeks relation back an accompanying letter explaining the circumstances, together with any supporting documentation. Problems with the eFiler's equipment, the eFiler's hardware or software, or other problems within the eFiler's control generally will not excuse an untimely filing.~~

~~———— (5) ——— In the event that the court rejects a document submitted for filing via the eFiling system, the court will notify the eFiler, via the eFiler's e-mail address and any other e-mail address provided by the eFiler, of the basis for the rejection. The document shall not become part of the court's file. As provided in ORAP 16.25(1)(e), to complete the filing requirements after the court has rejected a document, the eFiler may file the document conventionally or may resubmit the document using the eFiling system and repay the applicable filing fee using the electronic payment system. Except as provided in ORAP 16.35(5), the date and time of the filing of any conventionally filed document do not relate back to the date and time of the attempted electronic filing of the original document.~~

[‡]~~The eFiling system will be temporarily unavailable due to regularly scheduled maintenance and may be temporarily unavailable due to an eFiling system malfunction. The regularly scheduled maintenance hours are listed at <<http://tinyurl.com/eFileFAQpage>> (<<http://courts.oregon.gov/OJD/OnlineServices/eFile/electronicFilingFAQs.page?>>). See subsection (4) of this rule for seeking relief from an untimely filing due to an eFiling system malfunction.]~~

**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 website¹ that eFilers may not include signature blocks generated by certain programs that are incompatible with the appellate electronic court systems.}

¹ <http://courts.oregon.gov/OJD/OnlineServices/eFile/Pages/index.aspx>

DATED this 15th day of May, 2014.



Thomas A. Balmer, Chief Justice

DATED this 15th day of May, 2014.



Rick T. Haselton, Chief Judge

