

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) NOTICE OF PROPOSED
of Amendments to the Oregon) RULEMAKING
Rules of Appellate Procedure)

The Supreme Court and Court of Appeals propose to:

- (1) Adopt amendments to the following Oregon Rules of Appellate Procedure: ORAP 1.35, 2.05, 2.25, 3.10, 3.33, 3.35, 4.22, 5.05, 5.85, 6.05, 6.15, 7.10, 7.30, 7.45, 8.12, 9.05, 9.10, 10.15, 11.05, 11.10, 11.30, 11.35, 12.10, 13.05, 14.10, 15.05.
- (2) Adopt the following new Oregon Rule of Appellate Procedure and appendices: ORAP 8.55, Appendix 5.05-2, Appendix 6.05.

Except as otherwise provided below, amended rules and appendices are shown with material to be deleted in ~~strikeout~~ print and material to be added in **bold** print. Proposed new rules and appendices are denoted with the title and text of the new rule in **bold** print.

By temporary amendment, the courts previously adopted or amended the following rules and appendix: ORAP 5.40, 5.45, 7.15, 7.55, 8.15, 9.05, 9.17, 10.25, 12.08, 12.09, 13.05, 16.03, 16.05, 16.10, 16.15, 16.20, 16.25, 16.30, 16.35, 16.40, 16.45, 16.50, 16.55, 16.60, Appendix 12.08. The courts propose to make those temporary amendments permanent. The text added by temporary amendment is denoted in **bold** print. In some cases, the courts propose to amend those temporary amendments before making them permanent. Those proposed new amendments are shown with material to be deleted in ~~strikeout~~ print and material to be added in underlined print.

Interested persons shall have until the close of business on July 26, 2010, to submit written comments on the proposed rule changes. Comments shall be submitted to:

Hon. Thomas A. Balmer
Chair, Oregon Rules of Appellate Procedure Committee
Supreme Court Building
1163 State Street
Salem, Oregon 97301

Rule 1.35
FILING AND SERVICE

* * * * *

(2) Service Generally

(a) (i) **Except as provided in clause (2)(a)(ii) of this rule, a** copy of any thing delivered for filing under these rules must also be served by the party or attorney delivering it to the other parties to the cause.¹

(ii) **Except as provided in subclause (A) of this clause, when a party files a motion to waive or defer court fees and costs under ORS 21.682² or a motion for transcript at state expense in a civil case under ORS 21.695 and the motion is supported by documentation of financial eligibility containing protected personal information as described in ORAP 8.50(1), the party is required to serve the motion, but not the documentation of financial eligibility, on other parties to the cause.**

(A) **An adverse party may request a copy of the documentation of financial eligibility from the filing party in order to challenge the documentation; the filing party must then provide a copy of the documentation of financial eligibility to the adverse party but may redact protected personal information as described in ORAP 8.50(1).**

(B) **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.**

* * * * *

(e) **If an attorney for a party files a change of address with the Oregon State Bar or with the court, or a party appearing *pro se* notifies the court of a change of address in writing or otherwise, the**

attorney or party must inform all other parties to the cause of the change of address within seven calendar days.

* * * * *

(4) **Except for filings subject to ORS 19.260(1) and (3),** wWith respect to a person confined in an institution of confinement who files and serves a thing in the appellate court, the thing shall be deemed filed in the appellate court and served on another person when the original of the thing and the appropriate number of copies are delivered, in a form suitable for mailing, to the person or place designated by the institution for handling outgoing mail.

¹ * * * *

² *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).*

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, shall be substantially in the form illustrated in Appendix 2.05, and shall contain:

* * * * *

(5) The names of the parties and the names, bar numbers, mailing addresses, and telephone numbers, **and e-mail addresses** of the attorneys for the respective parties, identifying the party or parties that each attorney represents, and the names, mailing addresses, and telephone numbers of parties appearing *pro se*.²

NOTE: Similar changes requiring attorney e-mail addresses will be made to the following rules and appendices:

4.15(1)
5.05(4)(b)
6.25(2)(b)(iii)
7.10(1)
11.05(2)(b)

11.35(2)(a)
12.10(3)(c)(ii)
App 2.05
App 4.15-1
App 4.15-2
App 5.05
App 7.10-3
App 9.05

* * * * *

(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. ~~and, for those civil cases in which the district attorney appeared (e.g., contempt proceedings), proof of service of a copy of the notice of appeal on the Attorney General.~~⁵

(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 mental commitment proceeding), 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). If the governmental unit is the state or a county, the notice of appeal shall also contain proof of service on the Attorney General.⁵

(c) In a criminal case, the notice of appeal shall contain proof of service on:

* * * * *

(e) **(d)** In all cases, in addition to the foregoing requirements, the notice of appeal shall contain proof of service on:

* * * * *

² See also ORAP 1.35(1)(b) concerning the requirement that parties with contact information that is shielded from public disclosure provide the appellate courts with alternative contact information that may be made available for public inspection.

⁵ Service of the notice of appeal on the Attorney General is for the purpose of facilitating the appeal and is not jurisdictional. See footnote 1 to ORAP 1.35 for the service address of the Attorney General.

Rule 2.25

**PARTIES TO APPEALS; CASE TITLES;
CHANGES TO CASE TITLES BY ADMINISTRATOR**

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(4) (a) ~~On motion of a party or on its own motion, the court may modify the case title as it will appear in the published decision for the purpose of protecting the identities of juveniles or for other good cause. A party's motion must be filed no later than when the party's brief is filed.~~ **In an adoption, juvenile court, or mental 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.

² See ORS 7.211 (adoption cases); ORS 419A.255 and ORS 419A.256 (juvenile court cases, including termination of parental rights cases); ORS 426.160 and ORS 427.293 (mental commitment cases).

³ See [joint Supreme Court and Court of Appeals statement of policy regarding case titles] published on the Judicial Department's website at [URL] for a nonexclusive list of factors that the court may consider in determining whether a party has shown compelling reasons 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.

When the court orders modification of the version of the court's opinion as published on the Judicial Department's website, parties

should be aware that appellate court opinions also are published in the softbound *Oregon Advance Sheets* and thereafter in the hardback *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 private legal research entities. The court has no control over whether those legal research entities will honor the court's post-publication modification of an opinion.

Regarding requests by persons in all cases, including adoption, juvenile court, and mental commitment, whose names may appear in published opinions but who are not parties to cases, such as victims and witnesses, see [joint Supreme Court and Court of Appeals statement of policy regarding case titles] published on the Judicial Department's website at [URL].

Rule 3.10
DUTIES OF TRIAL COURT ADMINISTRATOR
REGARDING JUDGMENTS AND ORDERS
ENTERED AFTER NOTICE OF APPEAL

* * * * *

(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.

* * * * *

Rule 3.33
PERSONS RESPONSIBLE FOR PREPARING TRANSCRIPT

* * * * *

(2) * * *

(c) ~~When the Office of Public Defense Services has authorized preparation of a transcript at state expense¹ and the transcript coordinator has received a copy of the authorization, the transcript coordinator shall forward the authorization to the court reporter(s) or transcriptionist(s) responsible for preparation of all or part of the transcript. 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~~

* * * * *

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

* * * * *

(b) Serve and file² the transcript within the time provided in ORS 19.370 and, if the transcript is not served and filed within that time, to move for an extension of time. **In a criminal case, the state's copy of the transcript shall be served on the Attorney General.**³

* * * * *

¹ See ORS 138.500(3).

² * * *

³ See footnote 1 to ORAP 1.35 for the service address of the Attorney General.

Rule 3.35
FORM OF TRANSCRIPT

* * * * *

(3) (a) **A court reporter or transcriptionist shall, at the time of filing of the transcript, provide the Administrator a copy of the transcript on compact disk in Portable Document Format (PDF) that allows text searching, and copying and pasting into another document. The copy submitted to the court on compact disk is for the court's internal use and is not in lieu of a written transcript.**

(b) ~~If a court reporter or transcriptionist prepares a transcript in a manner suitable for storage on computer diskette or compact disk, a~~At the request of a party and on payment of a fee of no more than \$5.00 per ~~diskette or~~ **compact disk**, the court reporter shall furnish **the party with** the transcript, or as much of the transcript as has been requested by the party, on ~~computer diskette or compact disk~~ in a format convenient for the court reporter or transcriptionist. A transcript furnished to a party **on compact disk** under this subsection is not in lieu of a written transcript.

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:

* * * * *

(6) If no motion to correct the record or correct or add to the transcript is filed, the record shall be deemed settled 15 days after it is filed, and the period for filing the petitioner's opening brief shall begin the next day.

Rule 5.05

SPECIFICATIONS FOR BRIEFS

(1) Briefs, including petitions for review or reconsideration in the Supreme Court, shall be reproduced by any duplicating process that makes a clear, legible, black image; the Administrator will not accept carbon copies, copies on slick paper, or copies darkened by the duplicating process.

(2) (a) ~~No opening, answering, or combined brief shall exceed 50 pages.¹ That limitation does not include the index, excerpt of record, or appendix.~~ **Except as provided in paragraph (2)(c) of this subsection, an opening, answering, combined, or reply brief shall comply with the word-count limitation in paragraph (2)(b) of this subsection.¹ Headings, footnotes, and quoted material count toward the word-count limitation. The index of contents and appendices, index of authorities referred to, excerpt of record, appendices, certificate of service, and any other certificates do not count toward the word-count limitation.**

(b) (i) In the Supreme Court, no opening, answering, or combined brief shall exceed 14,000 words and no reply brief shall exceed 4,000 words.

(ii) In the Court of Appeals, no opening, answering, or combined brief shall exceed

10,000 words and no reply brief shall exceed 3,300 words.

(c) When a party is unable to determine if a brief complies with the word-count limitation as provided in paragraph (2)(b) of this subsection, 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 is acceptable if it does not exceed 10 pages.

(d) An attorney or unrepresented party shall 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 (2)(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 an unrepresented party, does not have access to a word-processing system that provides a word count, the certificate shall indicate that the attorney, or unrepresented party, is unable to determine if the brief complies with the word-count limitation.

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

(b) (e) A party's excerpt of record or appendix or combined excerpt of record and appendix shall not exceed 50 pages.

(c) ~~No reply brief shall exceed 15 pages.~~

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

(3) (a) On motion of a party stating a specific reason for exceeding the prescribed limit, the court may permit the filing of a brief, an excerpt of record, an appendix, or a combined excerpt of record and appendix exceeding the page limits prescribed in subsection (2) of this rule or prescribed by order of the court. A party filing a motion under this subsection shall 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.

* * * * *

(4) All briefs shall conform to these requirements:

* * * * *

(f) Briefs shall be legible and capable of being read without difficulty. Briefs may be prepared 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 shall not exceed 10 characters per inch (cpi) for both the text of the brief and footnotes. If proportionally spaced type is used, the style shall be either Arial or Times New Roman and the size shall be not smaller than ~~13~~ 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. Briefs printed entirely or substantially in uppercase are not acceptable. All briefs shall be double-spaced with double space above and below each paragraph of quotation.

* * * * *

See Appendix 5.05-1.

**APPENDIX 5.05-2
Illustration for ORAP 5.05(2)(d)**

**[a certificate in the form below shall be attached
to each opening, answering,
combined, or reply brief;
this certificate shall immediately precede or
be on the same page as the certificate of service]**

**CERTIFICATE OF COMPLIANCE
WITH ORAP 5.05(2)(d)**

Brief length

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and (2) the word-count of this brief (as described in ORAP 5.05(2)(a)) is _____ words.

[OR]

I certify that (1) I do not have access to a word-processing system that provides a word count; (2) I am unable to determine if this brief complies with the word-count limitation as provided in ORAP 5.05(2)(b); (3) this brief complies with the page limitation in ORAP 5.05(2)(c); and (4) the number of pages in this brief is _____ pages.

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 as required by ORAP 5.05(4)(f).

[Signature of attorney or unrepresented party]

[Typed or printed name of attorney or unrepresented party]

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:

* * * * *

(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 or not 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.

~~(8)~~ (9) * * *

~~(9)~~ (10) * * *

~~(10)~~ (11) * * *

~~(11)~~ (12) * * *

* 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

* * * * *

(5) Under the subheading “Standard of Review,” each assignment of error shall 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

* * * * *

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.**

Rule 5.85
ADDITIONAL AUTHORITIES

* * * * *

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

* * * * *

(c) Shall be filed with the Administrator together with **eight** ~~nine~~ copies, if filed in the Supreme Court, and five copies, if filed in the Court of Appeals.*

* * * * *

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

Rule 6.05

**REQUEST FOR ORAL ARGUMENT;
SUBMISSION WITHOUT ARGUMENT**

(1) (a) ~~Unless the court otherwise directs, parties to any case, civil or criminal, may stipulate to submit the case on the briefs without oral argument. The court on its own motion may order a case submitted on briefs without oral argument.~~ **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 in the Court of Appeals 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. 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.**

(2) **Notwithstanding subsection (1) of this rule, in the Court of Appeals, if one party appears *pro se*, the case will be submitted without argument by any party. An attorney representing himself or herself is not considered to be appearing *pro se* for the purpose of this rule.**

Date _____

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

Rule 6.15
PROCEDURE AT ORAL ARGUMENT

(1) In all cases in the ~~Court of Appeals and Supreme Court, except as provided in subsection (2) of this rule:~~

(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 ~~the following~~ **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:

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

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

(iii) ~~mental commitment;~~

(iv) ~~domestic relations, juvenile, and adoption;~~

(v) ~~judicial review of administrative agency action;¹~~

(vi) ~~appeals from circuit court review of any agency action under the Administrative Procedures~~

Act (ORS chapter 183) or ORS 813.450(3) (relating to suspension of driver licenses); and

(vii) forcible entry and detainer.

* * * * *

Rule 7.10
PREPARATION, FILING,
AND SERVICE OF MOTIONS

* * * * *

(3) (a) A moving or responding party shall file with the Administrator the original motion or response with proof of service and the number of copies specified in paragraph (3)(b) of this rule.

(b) (i) Except as provided in subparagraph (3)(b)(iii) of this rule, **eight** ~~nine~~ copies of a motion or response shall be filed in the Supreme Court;

* * * * *

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

* * * * *

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 7.30
MOTIONS THAT TOLL TIME

(1) **Except as otherwise provided in subsection (2) of this rule or if** ~~Unless~~ 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 NON-TOLLING REQUESTED."

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. ~~whether the dismissal is the result of a negotiated settlement or compromise of the matter.~~

(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 7.55

COURT OF APPEALS
APPELLATE COMMISSIONER

(1) Except as otherwise provided in subsection (2) of this rule, the appellate commissioner for the Court of Appeals shall have 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 shall have 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 exception that 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. 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.

(b) 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.

(c) 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. The order may be viewed on the Oregon Judicial Department's website at: <http://www.publications.ojd.state.or.us/CJOrder0804.pdf>

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

* * * * *

(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.**

* * * * *

Rule 8.15
AMICUS CURIAE

* * * * *

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

* * * * *

(6) (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(8), 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.**

* * * * *

(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), ~~and (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.

Rule 8.55
**CRIMINAL CONVICTION SET ASIDES;
DELIQUENCY 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 web site to avoid use of the party's name in the case title and body of the opinion.*

* A party who has the benefit of an expungement order or an order setting aside a conviction should be aware that appellate court decisions also are published in the softbound *Oregon Advance Sheets* and thereafter in the hardback *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 private legal research entities. The court has no control over whether those legal research entities will honor the court's post-publication modification of an opinion.

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

(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.

* * * * *

(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.** If the Administrator has issued the appellate judgment based on the Court of Appeals' disposition of a case, within a reasonable time thereafter, a party may move to reinstate the appeal for the purpose of seeking review. The party shall file in the Supreme Court a motion requesting relief from default, to reinstate the appeal, to recall the appellate judgment, and to establish a new due date for the petition for review.

* * * * *

(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, ~~except that the petition shall not exceed 15 pages in length, 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:

* * * * *

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

Rule 9.10
RESPONSE TO PETITION FOR REVIEW

* * * * *

(3) A response shall **be in the form of a brief prepared in conformity with** ~~conform to~~ ORAP 5.05, ~~except that the response shall not exceed 15 pages in length, 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 response, marked as the original, and 12 copies, 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

* * * * *

(5) Any party filing a brief on the merits on review, including any intervenor and any person who has been granted permission to appear *amicus curiae*, shall submit a copy of the brief on the merits on review in electronic form in addition to complying with the filing and service requirements in subsection (4).¹ **A party who electronically files a brief using the appellate courts' eFiling system, pursuant to chapter 16 of these rules, is exempt from the requirements of this section.** A person confined in a state institution and not represented by counsel who is filing a brief on the merits is exempt from the requirements of this subsection. Any party who lacks the technological capability to comply with this subsection may file a motion to be relieved from the requirements of this subsection at the same time that the party files its brief on the merits on review.

* * * * *

1 * * *

Rule 10.15
JUVENILE DEPENDENCY AND ADOPTION CASES

* * * * *

(3) (a) ~~Within seven days after filing the notice of appeal or appointment of counsel on appeal, whichever is later, appellant shall make arrangements for preparation of the transcript. If appellant is indigent, appellant shall make arrangements for preparation of the transcript by causing an order for preparation of the transcript at state expense to be served on the transcript coordinator.~~ **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) ~~In an adoption case, within seven days after filing the notice of appeal, appellant shall make arrangements for preparation of the transcript.~~ **When the appellant is represented by 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**

* * * * *

(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

* * * * *

² See ORS 419A.211(3).

³ See ORS 19.370(2); ORS 19.395.

⁴ See ORS 19.370(5).

Rule 10.25
EXPEDITED APPEAL OF CERTAIN PRETRIAL
ORDERS IN CRIMINAL CASES

(1) **When a defendant is charged with a felony and is in custody pending an** ~~On~~ appeal by the state under ORS 138.060~~(2)~~**(1)(a) or (c)** from an order made before trial in a criminal case dismissing or setting aside the accusatory instrument or suppressing evidence:

* * * * *

Rule 11.05
MANDAMUS:
INITIATING A MANDAMUS PROCEEDING

* * * * *

(4) (a) * * *

* * * * *

(d) The original and **eight** ~~nine~~ copies of the petition and accompanying documents shall be filed with the Administrator. If the excerpt of record is more than 50 pages, relator need file only two copies of the excerpt of record.

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 and **eight** ~~nine~~ copies of the 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.**

* * * * *

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.

Rule 11.30
BALLOT TITLE REVIEW

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

* * * * *

(5) (a) * * *

* * * * *

(c) The original and **eight** ~~nine~~ copies of the petition shall be filed. The petition shall be accompanied by the filing fee required for an original proceeding in the Supreme Court.

(6) The respondent or respondents shall be allowed five business days after the filing of the petition, unless a shorter time is ordered by the court, to file an answering memorandum. Any answering memorandum shall be in the form prescribed by ORAP 7.10 for answers to motions and shall 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 original and **eight** ~~nine~~ copies of the answering memorandum shall be filed, with proof of service on counsel for the petitioner.

* * * * *

(9) The petitioner or petitioners shall be allowed 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 shall be in the form prescribed by ORAP 7.10 for answers to motions and shall not be longer than five pages. The original and **eight** ~~nine~~ copies of the reply memorandum shall be filed, with proof of service on counsel for the respondent.

* * * * *

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:

* * * * *

(4) The petitioner shall file with the Administrator the original petition and **eight** ~~nine~~ copies, together 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 21.040.

* * * * *

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

* * * * *

* * * * *

² See ORAP 1.35(1)(a) for the filing address of the Administrator. See footnote 1 to ORAP 1.35 for the service address of the Attorney General.

ORAP 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 ~~section 14 of Senate Bill 233 (2009)~~ 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”; ORS _____,” and identify the statute authorizing the interlocutory appeal;

(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) ~~section 14(6) of Senate Bill 233 (2009)~~.

(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) ~~section 14(4) of Senate Bill 233 (2009)~~;

(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 an original and eight ~~nine~~ copies of the notice of interlocutory appeal with the Administrator. If the excerpts of the record include more than 50 pages, the appellant need file only two copies of the excerpts of the record.

(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 16.35.

(5) 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) ~~sections 14(6) & (7) of Senate Bill 233 (2009)~~.

(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 an original and eight ~~nine~~ copies of a 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.

**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.)	
)	
_____)	NOTICE OF
Defendant)	INTERLOCUTORY
)	APPEAL UNDER
)	<u>ORS 147.537</u>
_____)	
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 names, bar numbers, addresses, and telephone numbers of the parties [or their attorneys if

they are represented by attorneys] are:

Name & Bar Number _____ Representing _____
Address _____ Telephone Number _____
Name & Bar Number _____ Representing _____
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) ~~section 14(4) of Senate Bill 233 (2009)~~.

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) section 14(6) of Senate Bill 233 (2009) 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 at this address:

**Appellate Court Administrator
Appellate Court Records Section
1163 State Street
Salem, Oregon 97301-2563**

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) _____**

[Signature of appellant or attorney]

[Typed or printed name of appellant or attorney]

ORAP 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 ~~section 15 of Senate Bill 233 (2009)~~ shall comply substantially with ORAP 9.05(3)(a)(i)-(iii) & (vii) and ORAP 9.05(4), except:

(a) The petition must be entitled **“PETITION FOR REVIEW UNDER ORS 147.539”; ORS _____”** and identify the statute authorizing the petition for review;

(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 147.539. ~~sections 14(6) and 15 of Senate Bill 233 (2009)~~.

(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 147.539; ~~sections 14(4) and 15 of Senate Bill 233 (2009)~~;

(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 an original and eight nine copies of the petition for review with the Administrator. If the excerpts of the record include more than 50 pages, the petitioner need file only two copies of the excerpts of the record.

(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 16.35.

(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) & (7) and ORS 147.539. sections 14(6) & (7) and 15 of Senate Bill 233 (2009).

(7) The respondent may, but need not, file a response to a petition for review filed under this rule. The respondent may file an original response and eight nine copies 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.

Rule 12.10
AUTOMATIC REVIEW IN
DEATH SENTENCE CASES

* * * * *

(6) (a) * * *

* * * * *

(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.**

* * * * *

Rule 13.05
COSTS AND DISBURSEMENTS

* * * * *

(5) (a) * * *

(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 and eight copies in the Supreme Court. **Only the original objection or reply shall be filed,** ~~or the original and five copies in the Court of Appeals.~~

(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 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 document recovery charges in connection with electronically filing any document, the party is entitled to recover any such charge so incurred.**

~~(b)~~(c) * * *

~~(e)~~(d) * * *

~~(d)~~(e) * * *

~~(e)~~(f) * * *

~~(f)~~(g) * * *

* * * * *

Rule 14.10
STAY PENDING ACTION BY THE
SUPREME COURT OF THE UNITED STATES

(1) A party may file a ~~With respect to 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 an~~ action on an appeal or petition for a writ of certiorari **with** to 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.**

~~(1)~~**(2)** The motion shall be addressed to and acted upon by:

(a) ~~the Court of Appeals when the decision of the Court of Appeals decides a case, including when the Oregon Supreme Court has denied review~~ **of a Court of Appeals decision;** except as provided in subsection (2) of this rule.

~~(2)~~ **(b)** ~~The motion shall be addressed to and acted upon by the Oregon Supreme Court~~ **in all other instances.** ~~when the decision of that court decides a case, including when the Supreme Court has allowed the petition and vacated and remanded for further proceedings.~~

(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.**

¹See ORS 19.270(6)(b) and (c).

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); Sup Ct Rule 13 (addressing certiorari deadlines specifically).

Rule 15.05
APPELLATE SETTLEMENT
CONFERENCE PROGRAM

* * * * *

(4) Abeyance of Appeal

* * * * *

(c) The ~~Chief Judge~~ **program director** 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 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.

* * * * *

(7) Appellate Settlement Conference Program Fees

* * * * *

(b) * * *

* * * * *

(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**.

(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 mediation fee prescribed in paragraph (a) of this subsection.

* * * * *

16. FILING 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) “Conventional filing” means the filing of a paper document with an Oregon appellate court in accordance with the Oregon Rules of Appellate Procedure.

(2) “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

(3) “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.

(4) “Electronic filing system” or “eFiling system” means the system provided by the Oregon Judicial Department for the electronic filing of a document in the appellate courts via the internet. The system may be accessed at *www.ojd.state.or.us/onlineservices/eFile*.

(5) “Electronic payment system” means the system provided by the Oregon Judicial Department for paying

filing fees and associated charges electronically in the appellate court.

(6) An “eFiler” means a person registered with the eFiling system who submits a document for electronic filing with the appellate court.

(7) “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.

(8) “Hyperlink” means a reference or a navigation element in an electronic document to another section of the same document or to another electronic document that may be located on the Internet.

(9) “Initiating document” means any document that initiates a case, including but not limited to a notice of appeal; a petition for review; 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.

(10) “PDF” means Portable Document Format, an electronic file format.

(11) “Username” means the identifying term assigned to an eFiler by the court, used to access the appellate court eFiling system.

**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 <http://www.ojd.state.or.us/onlineservices/eFile>. 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 www.ojd.state.or.us/courts/onlineservices/eFile/electronicFilingFAQs.htm;

(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 appellate courts and the Oregon State Bar of changes in the eFiler's e-mail address.

(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.

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) that is

compatible with the eFiling system requirements.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.

¹ See www.ojd.state.or.us/courts/onlineservices/eFile/electronicFilingFAQs.htm for more information about the technical requirements of eFiling.

² See ORAP 1.20.

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) 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

(3) 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.

(4) 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.

(5) If the court rejects an eFiled document, the court may, upon request, refund any fees paid.

¹ A link to a chart outlining the number of printed copies required for each eFiled document is available at <http://www.ojd.state.or.us/onlineservices/eFile>.

Rule 16.25 ELECTRONIC FILING

(1) **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 record of the document.

(a) The court considers a document received when the eFiling system receives the document. The eFiling system 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) 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.

(c) 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

(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 See ORAP 16.20(4).

Rule 16.30

SPECIAL FILING AND SUBMISSION REQUIREMENTS

(1) An eFiler shall file conventionally any oversized demonstrative exhibit or oversized part of an appendix or excerpt of record within three business days of eFiling. An eFiler may note, in the "comments" section of the eFiling screen, that an oversized appendix or excerpt of record will be filed conventionally.

(2) 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.

Rule 16.35

ELECTRONIC FILING DEADLINES

(1) Electronic filing is permitted at all times, except when the eFiling system is temporarily unavailable.¹

(2) 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.

(3) The court considers a document submitted for filing when the document is received by the eFiling

system. The eFiling system will issue a confirmation receipt to the eFiler that includes the date and time of receipt.

(4) 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 relates 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.

(5) If the eFiling system does not receive a document submitted electronically, 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 filing date of the document to relate back to the date that the eFiler first attempted to file the document electronically. 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.

(6) In the event that the court rejects a document submitted for filing via the eFiling system, the court shall 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)(c), 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 does not relate back to the date and time of the attempted electronic filing of the original document.

¹ The regularly scheduled maintenance hours are listed at www.ojd.state.or.us/onlineservices/eFile/electronicfilingFAQs.htm.

**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) 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, preceded by an electronic symbol intended to substitute for a signature (such as a scan of the eFiler's handwritten signature or "s") in the space where the signature would otherwise appear.

Example: *s/Attorney Name*
Attorney Name _____
Oregon State Bar No _____
Attorney for _____

(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 an affidavit or 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.

**Rule 16.45
ELECTRONIC SERVICE**

(1) Registration as an eFiler with the eFiling system constitutes consent, within the meaning of ORCP 9 G,¹ to receive service via the electronic mail function of the eFiling system.

(2) (a) A party electronically filing a document, other than an initiating document, with an appellate court may accomplish service of that document on any other party's attorney, if that attorney is a registered eFiler, by using the electronic service function of the eFiling system. The eFiling system will generate an e-mail to the attorney to be eServed that includes a link to the document that was electronically filed. To access the electronically filed document, the attorney who has been eServed must log in to the eFiling system.

(b) Notwithstanding ORCP 9 G, electronic service is effective under this rule when the eFiler has received a confirmation e-mail stating that the eFiled document has been received by the eFiling system.

(3) A party electronically filing a document with the court must accomplish service as to parties who do not qualify for eService under subsection (2)(a) of this rule via the conventional manner as provided by the applicable statutes and by the Oregon Rules of Appellate Procedure, which may include service via electronic mail as provided by ORCP 9 G. Parties who do not qualify for eService include parties represented by attorneys who are not registered eFilers and parties who are self-represented. Parties who electronically file initiating documents must accomplish service conventionally.

(4) All electronically filed documents must be accompanied by a proof of service under ORAP

1.35(2)(d). The proof of service must certify service on all parties regardless of the means by which service was accomplished, including eService.

(5)(4) If an eFiled document is not electronically served 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 serve the document electronically.

¹ See generally ORCP 9 G, cross-referenced in ORCP 9 B, made applicable to the appellate courts by ORS 19.500.

**Rule 16.50
HYPERLINKS**

(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. 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.

(2) 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.

**Rule 16.55
RETENTION OF DOCUMENTS BY EFILERS**

(1) Unless otherwise ordered by the court, any party who electronically files a document that contains the original signature of a person other than the eFiler shall retain the document in its original paper form for two years from the date of issuance of the appellate judgment for the case in which the document was filed.

(2) Upon reasonable notice, the eFiler must provide a printed copy of a document filed electronically for inspection by another party or by the court.

Rule 16.60

PROTECTED INFORMATION

(1) The filing and use of information contained in a document filed electronically or information accessed through the eFiling system shall be consistent with state and federal law.

(2) A party filing a document containing protected personal information may comply with ORAP 8.50 by eFiling the redacted version of a document and conventionally filing the unredacted version within three business days after the court's acceptance of the document.

(3) A party filing a brief containing confidential material must comply with ORAP 5.95 by eFiling the redacted version of the brief and conventionally filing the unredacted version within three business days after the court's acceptance of the document.

(4) Briefs in the following categories of cases shall be filed conventionally and shall not be eFiled: adoption, juvenile dependency (including termination of parental rights), juvenile delinquency, and commitment of mentally ill and mentally deficient persons.