IN THE SUPREME COURT
OF THE STATE OF OREGON

IN THE COURT OF APPEALS
OF THE STATE OF OREGON

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

The Supreme Court and Court of Appeals propose to adopt permanent amendments to the Oregon Rules of Appellate Procedure and appendices. The public is invited to submit comments on those proposals.

The rules to be amended are:

2.05; 3.05; 3.30; 5.05; 5.45; 5.95; 7.05; 8.45; 9.05; 9.10; 10.15; 11.15; 11.35; 11.40; 12.07; 12.20; 13.05; 13.10; 14.05; Appendix 7.10-3.

The following table groups the rules being amended with a brief summary of the reason for those amendments:

RULES AMENDED	***SUMMARY***
ORAP 2.05(10)(a)	Requiring service on non-appearing parties
ORAP 3.05(1)	Removing automatic designation of transcripts and exhibits as part of record
ORAP 3.30(2)	Clarifying party responsible to file motion to extend time to prepare transcript
ORAP 5.05(3)(d)	Deleting requirement that brief cover page show date and month of filing

ORAP 5.45	Addressing if/when brief sections re: preservation of error or standard of review may be combined (***alternative proposals submitted***: primary proposal would allow those sections to be combined in some circumstances; alternate proposal would prohibit combining those sections in all circumstances)
ORAP 5.95(2), 9.05(3)(b), 9.10(3), 11.15(5), 13.05(6)(a)	Change service requirements from two copies to one
ORAP 7.05(1)(d), Appendix 7.10-3	Changing terminology from "opposing counsel" to "opposing party"
ORAP 8.45	Amending duty to notify court of possible mootness
ORAP 10.15(6)(c)	Modifying reply brief schedule for certain cases involving juveniles
ORAP 11.35, 11.40	Making prior temporary amendments to reapportionment review permanent with additional changes
ORAP 12.07	For certain expedited appeals, clarifying schedule for reply briefs and briefs with cross-appeals
ORAP 12.20	Clarifying party designations in certified question cases
ORAP 13.10(2), 14.05(3)(b)	Extending time to petition for attorney fees

NOTE: Two separate proposals are presented to amend ORAP 5.45: a primary one, followed by an alternate proposal should the appellate courts reject the first. Both are included below.

The proposed amendments have been drafted by the ORAP Committee, which was created by the Chief Justice of the Supreme Court and the Chief Judge of the Court of Appeals. The committee's draft proposals are now being published for public comment. After the committee has reviewed the public comments, the committee will prepare final proposals that will be submitted to the appellate courts for their consideration. Those amendments adopted by the courts will become effective January 1, 2023.

The proposed amendments to the rules and appendices are shown below. Lines with

changes have a mark in the left margin. Deleted material is shown in red ~~strikeout~~ print; added material is shown in red double-underlined print. (Colors will show only in electronic versions of this document, which can be downloaded at <https://www.courts.oregon.gov/courts/appellate/rules/Pages/orap.aspx>.)

Anyone may submit comments on the proposed amendments. ***Comments must be submitted by Monday, July 18, 2022***, to:

ORAP.committee@ojd.state.or.us

Rule 2.05
CONTENTS OF NOTICE OF APPEAL

The notice of appeal shall be served and filed within the time allowed by ORS 19.255, ORS 138.071, or other applicable statute. Only the original need be filed. The notice of appeal shall be substantially in the form illustrated in Appendix 2.05 and shall contain:

(1) The complete title of the case as it appeared in the trial court, naming all parties completely, including their designations in the trial court (*e.g.*, plaintiff, defendant, cross-plaintiff, intervenor), and designating the parties to the appeal, as appropriate (*e.g.*, appellant, respondent, cross-appellant, cross-respondent). The title also shall include the trial court case number or numbers.

(2) The heading "Notice of Appeal" or "Notice of Cross-Appeal," as appropriate.

(3) A statement that an appeal is taken from the judgment or some specified part of the judgment,[1] the name of the court and county from which the appeal is taken, and the name of the trial judge or judges who signed the judgment being appealed.

(4) A designation of the adverse parties on appeal.

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

(6) A designation of those parts of the proceedings to be transcribed[2] and exhibits[3] to be included in the record in addition to the trial court file. If the record includes an audio or video recording played in the trial court, the designation of record should identify the date of the hearing at which the recording was played and, if the appellant wants the transcript to include a transcript of the recording, a statement to that effect.

(7) A plain and concise statement of the points on which the appellant intends to rely; but if the appellant has designated for inclusion in the record all of the testimony and all of the instructions given and requested, no statement of points is necessary.

(8) If more than 30 days has elapsed after the date the judgment was entered, a statement as to why the appeal is nevertheless timely.

(9) If appellate jurisdiction is not free from doubt, citation to statute or case law to support jurisdiction.

(10) Proof of service, specifying the date of service.

(a) In a civil case, the notice of appeal shall contain proof of service on all other parties who appeared in the trial court and on all parties identified in the notice of appeal as adverse parties.

(b) In any civil case in which the adverse party is a governmental unit and an attorney did not appear, either in writing or in person, on behalf of the governmental unit in the proceedings giving rise to the judgment or order being appealed (for instance, in

the prosecution of a violation, a contempt proceeding, or a civil commitment proceeding);

(i) The notice of appeal shall contain proof of service on the attorney for the governmental unit (for instance, the city attorney as to a municipality, the district attorney as to a county or the state); and

(ii) If the governmental unit is the state or a county, the notice of appeal shall also contain proof of service on the Attorney General.[4]

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

(i) The defendant, in an appeal by the state. The notice of appeal in such an appeal also shall contain proof of service of a copy of the notice of appeal on the Office of Public Defense Services when the defendant was represented by court-appointed counsel.[5]

(ii) The district attorney, in an appeal by the defendant. The notice of appeal in such an appeal also shall contain proof of service of a copy of the notice of appeal on the Attorney General.[6]

(d) In a juvenile dependency case, including a case involving the termination of parental rights, the notice of appeal shall contain proof of service on the Office of Public Defense Services when a parent was represented by court-appointed counsel.[7]

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

(i) The trial court administrator; and

(ii) The transcript coordinator, if any part of the record of oral proceedings in the trial court has been designated as part of the record on appeal.[8]

(11) A certificate of filing, specifying the date the notice of appeal was filed with the Administrator.

(12) A copy of the judgment, decree or order appealed from and of any other orders pertinent to appellate jurisdiction.

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[1] *See* ORAP 2.10 regarding filing separate notices of appeal when there are multiple judgments entered in a case, including multiple judgments in consolidated cases.

[2] *See* ORAP 3.33 regarding the appellant's responsibility to make financial arrangements with either the court reporter or the transcript coordinator for preparation of a transcript of oral proceedings.

[3] *See* ORAP 3.25 regarding making arrangements for transmitting exhibits to the appellate court for use on appeal. *See also* Uniform Trial Court Rule (UTCR) 6.120(2) and (3) regarding

retrieval of exhibits by trial court administrators for use on appeal.

[4] Service of the notice of appeal on the Attorney General is for the purpose of facilitating the appeal and is not jurisdictional. *See* footnote 2 to ORAP 1.35 for the service address of the Attorney General.

[5] Service of the notice of appeal on the Office of Public Defense Services is for the purpose of facilitating the appeal and is not jurisdictional. The service address of the Office of Public Defense Services is 1175 Court Street, NE, Salem, Oregon 97301-4030.

[6] *See* footnote 4 to subparagraph (10)(b)(ii) of this rule.

[7] *See* footnote 5 to subparagraph (10)(c)(i) of this rule.

[8] *See* ORAP 1.35(2)(e).

See ORS 19.240(3) and ORS 19.250; *see also* ORAP 8.20 regarding bankruptcy. In a criminal case, if a defendant appeals a judgment of conviction based only on a plea of guilty or no contest, see ORS 138.085.

See Appendix 2.05 for a form of notice of appeal.

Rule 3.05
TRIAL COURT RECORD ON APPEAL;
SUPPLEMENTING THE RECORD

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

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

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

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

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

(3) The appellate court, on motion of a party or on its own motion, may order that any thing in the record in the trial court whether or not designated as part of the record in the notice

of appeal, be transmitted to it or that parts of the oral proceedings be copied or transcribed, certified and transmitted to it.[1]

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

Rule 3.30
EXTENSION OF TIME FOR PREPARATION OF TRANSCRIPT

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

(2) A request for an extension of time to prepare a transcript may be filed by:

(a) a party responsible for causing the transcript to be prepared,

(b) the transcriber or court reporter (in audio and video record cases) responsible for preparing a transcript if the party responsible for causing the transcript to be prepared has made payment arrangements, or

(c) the transcript coordinator if the transcript coordinator has not assigned a transcriber.

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

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

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

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

(6) Any party may file an objection to a court reporter's or transcriber's request for an extension of time within 14 days after the request is filed. The objection must be served on all

other parties, the court reporter or transcriber, and the trial court administrator. An objection received after the court has granted the request will be treated as a motion for reconsideration of the ruling. On reconsideration, if the court modifies the extension of time, the court reporter or transcriber and the parties will be notified; otherwise, the objection will be noted and placed in the file.

See generally ORS 19.395.

Rule 5.05
SPECIFICATIONS FOR BRIEFS

(1) (a) Except as provided in paragraph (1)(c) of this subsection, an opening, answering, combined, or reply brief must comply with the word-count limitation in paragraph (1)(b) of this subsection.[1] Headings, footnotes, and quoted material count toward the word-count limitation. The front cover, index of contents and appendices, index of authorities referred to, excerpt of record, appendices, certificate of service, any other certificates, and the signature block do not count toward the word-count limitation.

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

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

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

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

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

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

(ii) In the Court of Appeals:

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

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

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

(D) A combined cross-respondent's answering brief and

appellant's reply brief may not exceed 10,000 words, with the reply brief part of the combined brief limited to 3,300 words.

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

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

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

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

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

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

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

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

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

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

conform to these requirements:

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

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

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

(b) Legibility and Readability Requirements

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

(ii) Briefs must be prepared using proportionally spaced type. The style must be Arial, Times New Roman, or Century Schoolbook. The size may not be smaller than 14 point for both the text of the brief and footnotes. Reducing or condensing the typeface in a manner that would increase the number of words in a brief is not permitted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

See Appendix 5.05-1.

ORAP 5.45 -- PRIMARY PROPOSAL

Rule 5.45
ASSIGNMENTS OF ERROR AND ARGUMENT

(1) Assignments of error are required in all opening briefs of appellants and cross-appellants. No matter claimed as error will be considered on appeal unless the claim of error was

preserved in the lower court and is assigned as error in the opening brief in accordance with this rule, provided that the appellate court may, in its discretion, consider a plain error.[1]

(2) Each assignment of error must be separately stated under a numbered heading. The arrangement and form of assignments of error, together with reference to pages of the record, should conform to the illustrations in Appendix 5.45.

(3) Each assignment of error must identify precisely the legal, procedural, factual, or other ruling that is being challenged.

(4) (a) Each assignment of error must demonstrate that the question or issue presented by the assignment of error timely and properly was raised and preserved in the lower court. The court may decline to consider any assignment of error that requires the court to search the record to find the error or to determine if the error properly was raised and preserved. Under the subheading "Preservation of Error":

(i) Each assignment of error, as appropriate, must specify the stage in the proceedings when the question or issue presented by the assignment of error was raised in the lower court, the method or manner of raising it, and the way in which it was resolved or passed on by the lower court.

(ii) Each assignment of error must set out pertinent quotations of the record where the question or issue was raised and the challenged ruling was made, together with reference to the pages of the transcript or other parts of the record quoted or to the excerpt of record if the material quoted is set out in the excerpt of record. When the parts of the record relied on under this clause are lengthy, they must be included in the excerpt of record instead of the body of the brief.

(iii) If an assignment of error challenges an evidentiary ruling, the assignment of error must quote or summarize the evidence that appellant believes was erroneously admitted or excluded. If an assignment of error challenges the exclusion of evidence, appellant also must identify in the record where the trial court excluded the evidence and where the offer of proof was made; if an assignment of error challenges the admission of evidence, appellant also must identify where in the record the evidence was admitted.

(iv) Preservation statements for multiple assignments of error may not be combined under one subheading unless (a) the subheading expressly identifies that the preservation statement applies to multiple assignments of error, and (b) the first statement under the subheading certifies that all of the questions or issues were raised and resolved contemporaneously.

(b) Where a party has requested that the court review a claimed error as plain error, the party must identify the precise error, specify the state of the proceedings when the error was made, and set forth pertinent quotations of the record where the challenged error was made.

(5) Under the subheading "Standard of Review," each assignment of error must

identify the applicable standard or standards of review, supported by citation to the statute, case law, or other legal authority for each standard of review.[2] Standards of review for multiple assignments of error may not be combined under one subheading unless (a) the subheading expressly identifies that the standard of review applies to multiple assignments of error, and (b) the first statement under the subheading certifies that the standard of review is identical for those assignments of error.

(6) Each assignment of error must be followed by the argument. If several assignments of error present essentially the same legal question, the argument in support of them may be combined so far as practicable.

(7) The court may decline to exercise its discretion to consider plain error absent a request explaining the reasons that the court should consider the error.[3]

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[1] For an error to be plain error, it must be an error of law, obvious and not reasonably in dispute, and apparent on the record without requiring the court to choose among competing inferences; in determining whether to exercise its discretion to consider an error that qualifies as a plain error, the court takes into account a non-exclusive list of factors, including the interests of the parties, the nature of the case, the gravity of the error, and the ends of justice in the particular case. *See State v. Vanornum*, 354 Or 614, 629-30, 317 P3d 889 (2013).

[2] Standards of review include but are not limited to *de novo* review and substantial evidence for factual issues, errors of law and abuse of discretion for legal issues, and special statutory standards of review such as those found in the Administrative Procedures Act, ORS 183.400(4), and ORS 183.482(7) and (8). *See also* ORS 19.415(1), which provides that, generally, "upon an appeal in an action or proceeding, without regard to whether the action or proceeding was triable to the court or a jury," the court's review "shall be as provided in section 3, Article VII (Amended) of the Oregon Constitution"; ORS 19.415(3)(b) regarding discretion of the Court of Appeals to try the cause *de novo* or make one or more factual findings anew on appeal in some equitable proceedings; *see also* ORAP 5.40(8) concerning appellant's request for the court to exercise *de novo* review and providing a list of nonexclusive items Court of Appeals may consider in deciding whether to exercise its discretion.

[3] *See State v. Ardizzone*, 270 Or App 666, 673, 349 P3d 597, *rev den*, 358 Or 145 (2015) (declining to review for plain error absent a request from the appellant).

ORAP 5.45 -- ALTERNATE PROPOSAL (in event appellate courts reject primary proposal)

Rule 5.45
ASSIGNMENTS OF ERROR AND ARGUMENT

(1) Assignments of error are required in all opening briefs of appellants and cross-appellants. No matter claimed as error will be considered on appeal unless the claim of error was

preserved in the lower court and is assigned as error in the opening brief in accordance with this rule, provided that the appellate court may, in its discretion, consider a plain error.[1]

(2) Each assignment of error must be separately stated under a numbered heading. The arrangement and form of assignments of error, together with reference to pages of the record, should conform to the illustrations in Appendix 5.45.

(3) Each assignment of error must identify precisely the legal, procedural, factual, or other ruling that is being challenged.

(4) (a) Each assignment of error must demonstrate that the question or issue presented by the assignment of error timely and properly was raised and preserved in the lower court. The court may decline to consider any assignment of error that requires the court to search the record to find the error or to determine if the error properly was raised and preserved. Under the subheading "Preservation of Error":

(i) Each assignment of error, as appropriate, must specify the stage in the proceedings when the question or issue presented by the assignment of error was raised in the lower court, the method or manner of raising it, and the way in which it was resolved or passed on by the lower court.

(ii) Each assignment of error must set out pertinent quotations of the record where the question or issue was raised and the challenged ruling was made, together with reference to the pages of the transcript or other parts of the record quoted or to the excerpt of record if the material quoted is set out in the excerpt of record. When the parts of the record relied on under this clause are lengthy, they must be included in the excerpt of record instead of the body of the brief.

(iii) If an assignment of error challenges an evidentiary ruling, the assignment of error must quote or summarize the evidence that appellant believes was erroneously admitted or excluded. If an assignment of error challenges the exclusion of evidence, appellant also must identify in the record where the trial court excluded the evidence and where the offer of proof was made; if an assignment of error challenges the admission of evidence, appellant also must identify where in the record the evidence was admitted.

(b) Where a party has requested that the court review a claimed error as plain error, the party must identify the precise error, specify the state of the proceedings when the error was made, and set forth pertinent quotations of the record where the challenged error was made.

(5) Under the subheading "Standard of Review," each assignment of error must identify the applicable standard or standards of review, supported by citation to the statute, case law, or other legal authority for each standard of review.[2]

(6) Each assignment of error must be followed by the argument. If several assignments of error present essentially the same legal question, the argument in support of them may be combined so far as practicable. Where argument is combined, each assignment of error

must still contain its own "Preservation of Error" and "Standard of Review" sections, as shown in Appendix 5.45. Only the argument may be combined.

(7) The court may decline to exercise its discretion to consider plain error absent a request explaining the reasons that the court should consider the error.[3]

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[1] For an error to be plain error, it must be an error of law, obvious and not reasonably in dispute, and apparent on the record without requiring the court to choose among competing inferences; in determining whether to exercise its discretion to consider an error that qualifies as a plain error, the court takes into account a non-exclusive list of factors, including the interests of the parties, the nature of the case, the gravity of the error, and the ends of justice in the particular case. *See State v. Vanornum*, 354 Or 614, 629-30, 317 P3d 889 (2013).

[2] Standards of review include but are not limited to *de novo* review and substantial evidence for factual issues, errors of law and abuse of discretion for legal issues, and special statutory standards of review such as those found in the Administrative Procedures Act, ORS 183.400(4), and ORS 183.482(7) and (8). *See also* ORS 19.415(1), which provides that, generally, "upon an appeal in an action or proceeding, without regard to whether the action or proceeding was triable to the court or a jury," the court's review "shall be as provided in section 3, Article VII (Amended) of the Oregon Constitution"; ORS 19.415(3)(b) regarding discretion of the Court of Appeals to try the cause *de novo* or make one or more factual findings anew on appeal in some equitable proceedings; *see also* ORAP 5.40(8) concerning appellant's request for the court to exercise *de novo* review and providing a list of nonexclusive items Court of Appeals may consider in deciding whether to exercise its discretion.

[3] *See State v. Ardizzone*, 270 Or App 666, 673, 349 P3d 597, *rev den*, 358 Or 145 (2015) (declining to review for plain error absent a request from the appellant).

Rule 5.95
BRIEFS CONTAINING CONFIDENTIAL MATERIAL

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

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

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

citation or a description of the court order under which confidentiality is claimed.*

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

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

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

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

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

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

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

* *See* Appendix 5.95.

Rule 7.05
MOTIONS IN GENERAL

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

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

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

(d) Other than a first motion for an extension of time of 28 days or less to file a brief, before filing a motion, the moving party must make a good faith effort to confer with the other party(ies) to determine whether the other party(ies) ~~a motion must contain a statement whether opposing counsel~~ object~~s~~ to, concur~~s~~ in, or ha~~ves~~ no position regarding the motion. The moving party must state the position(s) in the motion. In the event of an objection, the moving party must state in the motion ~~If opposing counsel objects to the motion, the motion must include a statement~~ whether the objecting party ~~opposing counsel~~ intends to file a response to the motion. If the moving party is unable to obtain the position(s) of the other party(ies), ~~has not been able to learn opposing counsel's position on the motion,~~ then the motion must so state.

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

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

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

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

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

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

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

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

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

Rule 8.45
~~DUTY TO SERVE NOTICE OR~~
~~FILE MOTION ON OCCURRENCE OF EVENT~~
~~RENDERING APPEAL MOOT~~
DUTY TO GIVE NOTICE WHEN FACTS RENDER APPEAL MOOT

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

(1) When an appellant becomes aware of facts that render an appeal moot,[1] except as to facts the disclosure of which is barred by the attorney-client privilege, the appellant must provide notice of the facts to the court.[2]

(a) If the appellant filing the notice believes that the appeal should not be dismissed, the notice must include the appellant's argument against dismissal.[3]

(b) Any other party may, within 14 days after the filing of a notice, file a response arguing that the appeal should or should not be dismissed. An appellant may, within seven days after the filing of a response, file a reply.

(c) If the notice does not include an argument against dismissal and no party files a response arguing against dismissal, the court may treat the notice as an unopposed motion to dismiss the appeal.

(2) When an appellant believes that the appeal is moot based on privileged facts, that party may move to dismiss the appeal as moot, but need not reveal the privileged facts.

(3) When a respondent becomes aware of facts that render an appeal moot, the respondent must either move to dismiss or provide notice of the facts with argument against dismissal to the court. Any other party may, within 14 days after the filing of the motion or notice, file a response arguing that the appeal should or should not be dismissed. A respondent may, within seven days after the filing of a response, file a reply.

(4) (a) If a party becomes aware of nonprivileged facts that may render an appeal moot and has reason to believe that the other party or parties are unaware of those facts, the party must promptly inform the other party or parties of those facts.

(b) If no notice is given under this subsection and the court later dismisses the appeal as moot based on those facts, the court, on motion of an aggrieved party, may award costs and attorney fees incurred by the aggrieved party after notice should have been given of the facts that may have rendered the appeal moot, payable by the party who had knowledge of those facts.

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

[2] An appeal is generally considered moot if the court's decision would have no practical effect on the rights of the parties, including no legally cognizable collateral consequences of the ruling challenged on appeal. *See, e.g.*, *Dept. of Human Services v. P.D.*, 368 Or 627, 496 P3d 1029 (2021); *Garges v. Premo* , 362 Or 797, 421 P3d 345 (2018); *State v. K.J.B.*, 362 Or 777, 416 P3d 291 (2018); *Dept. of Human Services v. A.B.*, 362 Or 412, 412 P3d 1169 (2018).

[3] *See generally* ORS 14.175 (permitting a party to continue to prosecute, and the court to issue judgment in, certain actions notwithstanding that the specific act, policy, or practice giving rise to the action no longer has a practical effect on the party, so long as the party has standing and the challenged act is both capable of repetition (or the policy or practice continues in effect), and is likely to evade future judicial review).

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 Chief Judge or Motions Department on reconsideration of a ruling of the appellate commissioner under ORAP 7.55(4)(c) or an order of the appellate commissioner if it is designated a "summary determination," as specified in ORAP 7.55(4)(d). Except as provided in ORAP 7.55(4)(d), a decision of the appellate commissioner may be challenged only by a petition or motion for reconsideration in the Court of Appeals as provided by ORAP 6.25.

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

(a) Except as provided in ORS 19.235(3) and ORAP 2.35(4), any party seeking to obtain review of a decision of the Court of Appeals shall file a petition for

review in the Supreme Court within 35 days after the date of the decision of the Court of Appeals.[1]

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

(c) (i) If a timely petition for reconsideration of a decision of the Court of Appeals is filed under ORAP 6.25(2) by any party, the time for filing a petition for review concerning that decision for all parties shall not begin to run until the Court of Appeals issues its written disposition of the petition for reconsideration. If a party obtains an extension of time to file a petition for reconsideration and does not file a petition for reconsideration within the time allowed, the time for filing a petition for review shall begin to run on expiration of the extension of time.

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

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

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

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

(3) Form and Service of Petition for Review

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

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

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

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

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

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

(B) If by per curiam opinion, affirmance without opinion, or by order, the members of the court who decided the case.[2]

(v) Contain a notice whether, if review is allowed, the petitioner on review intends to file a brief on the merits or to rely on the petition for review and brief or briefs filed in the Court of Appeals.[3]

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

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

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

(4) Contents of Petition for Review

The petition shall contain in order:

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

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

(c) A statement of specific reasons why the legal question or questions presented on review have importance beyond the particular case and require decision by the Supreme Court.[4]

(d) If desired, and space permitting, a brief argument concerning the legal

question or questions presented on review.

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

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

[2] *See* Appendix 9.05.

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

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

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

Rule 9.10
RESPONSE TO PETITION FOR REVIEW

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

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

(3) A response shall be in the form of a brief prepared in conformity with ORAP 5.05 and ORAP 5.35. For purposes of ORAP 5.05, the response must not exceed 5,000 words or (if the certification under ORAP 5.05(2)(d) certifies that the preparer does not have access to a word-processing system that provides a word count) 15 pages. Any party filing a response shall file with the Administrator one original response, serve a copy ~~two copies~~ of the response on every other party to the review, and file proof of service.

Rule 10.15
JUVENILE DEPENDENCY AND ADOPTION CASES

(1) (a) Subsections (2) through (10) of this rule apply to an adoption case and a juvenile dependency case under ORS 419B.100, including but not limited to a case involving jurisdiction, disposition, permanency, or termination of parental rights, but excluding a support judgment under ORS 419B.400 to 419B.408.

(b) On motion of a party or on the court's own motion, the Court of Appeals may direct that a juvenile dependency case under ORS 419B.100, except a termination of parental rights case, be exempt from subsections (2) through (10) of this rule.

(2) The caption of the notice of appeal, notice of cross-appeal, motion, or any other thing filed either in the Court of Appeals or the Supreme Court shall prominently display the words "EXPEDITED JUVENILE DEPENDENCY CASE (NOT TPR)," "EXPEDITED TERMINATION OF PARENTAL RIGHTS CASE," "JUVENILE DEPENDENCY SUPPORT CASE (NOT EXPEDITED)," or "EXPEDITED ADOPTION CASE," as appropriate.[1]

(3) (a) In an adoption case or in a juvenile dependency case in which the appellant is proceeding without counsel or is represented by retained counsel, appellant shall make arrangements for preparation of the transcript within seven days after filing the notice of appeal.

(b) When the appellant is eligible for court-appointed counsel on appeal, the preparation of transcript at state expense is governed by the policies and procedures of the Office of Public Defense Services.[2]

(c) In a disposition proceeding pursuant to ORS 419B.325, a dispositional review proceeding pursuant to ORS 419B.449, a permanency proceeding pursuant to ORS 419B.470 to 419B.476, or a termination of parental rights proceeding, respecting the record in the trial court, the appellant may designate as part of the record on appeal only the transcripts of the proceedings giving rise to the judgment or order being appealed, the exhibits in the proceeding, and the list prepared by the trial court under ORS 419A.253(2) and all reports, materials, or documents identified on the list. A party may file a motion to supplement the record with additional material pursuant to ORS 19.365(4) and ORAP 3.05(3).

(4) (a) The court shall not extend the time for filing the transcript under ORAP 3.30 or for filing of an agreed narrative statement under ORAP 3.45 for more than 14 days.[3]

(b) Except on a showing of exceptional circumstances, the court shall not grant an extension of time to request correction of the transcript.[4]

(5) The trial court administrator shall file the trial court record within 14 days after the date of the State Court Administrator's request for the record.

(6) (a) Appellant's opening brief and excerpt of record shall be served and filed within 28 days after the events specified in ORAP 5.80(1)(a) to (f).

(b) Respondent's answering brief shall be served and filed within 28 days after the filing of the appellant's opening brief.

(c) A reply brief, if any, shall be served and filed within 21 days after the filing of the respondent's answering brief and no later than 7 days before the date set for

oral argument or submission to the court.~~Any reply brief must be filed within 7 days after the filing of the respondent's answering brief.~~

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

(7) The court will set the case for oral argument within 63 days after the filing of the opening brief.

(8) Notwithstanding ORAP 7.30, a motion made before oral argument shall not toll the time for transmission of the record, filing of briefs, or hearing argument.

(9) The Supreme Court shall not grant an extension or extensions of time totaling more than 21 days to file a petition for review.

(10) (a) Notwithstanding any provision to the contrary in ORAP 14.05(3):

(i) The Administrator forthwith shall issue the appellate judgment based on a decision of the Court of Appeals on expiration of the 35-day period to file a petition for review, unless there is pending in the case a motion or petition for reconsideration on the merits, or a petition for review on the merits, or a party has been granted an extension of time to file a motion or petition for reconsideration on the merits or a petition for review on the merits. If any party has filed a petition for review on the merits and the Supreme Court denies review, the Administrator forthwith shall issue the appellate judgment.

(ii) The Administrator shall issue the appellate judgment based on a decision of the Supreme Court on the merits as soon as practicable after the decision is rendered and without regard to the opportunity of any party to file a petition for reconsideration.

(b) If an appellate judgment has been issued on an expedited basis under paragraph (a) of this subsection, the Administrator may recall the appellate judgment or issue an amended appellate judgment as justice may require for the purpose of making effective a decision of the Supreme Court or the Court of Appeals made after issuance of the appellate judgment, including but not necessarily limited to a decision on costs on appeal or review.

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[1] *See* Appendix 10.15.

[2] *See* ORS 419A.211(3).

[3] *See* ORS 19.370(2); ORS 19.395.

[4] *See* ORS 19.370(5).

Rule 11.15
MANDAMUS:
BRIEFS AND ORAL ARGUMENT

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

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

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

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

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

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

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

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

Rule 11.35
REAPPORTIONMENT REVIEW: STATE SENATORS AND REPRESENTATIVES

The practice and procedure for Supreme Court review of a reapportionment of Senators and Representatives serving in the Oregon Legislative Assembly ~~under Article IV, section 6, of the Oregon Constitution, for the reapportionment year 2021,[1]~~ shall be as follows:

(1) Any qualified elector of the state seeking review of a reapportionment enacted by the Legislative Assembly ~~in 2021~~ shall file a petition with the Administrator no later than August 1 of the year in which the Legislative Assembly enacts the reapportionment.[1] ~~October 25, 2021.~~

(2) The petition shall contain:

(a) A title page containing a caption identifying the person seeking review of the reapportionment as the petitioner and the Legislative Assembly as the respondent;

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

(c) A prayer for specific relief; and

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

(3) The petition shall include one or more attachments ~~an attachment~~ setting out such part of the reapportionment as is necessary for a determination of both the question presented ~~and~~ as well as the relief sought, including any proposed alternative reapportionment.[2] ~~.~~

(4) The petition shall include proof of service on the Secretary of the Senate, the Chief Clerk of the House of Representatives, the Secretary of State, and the Attorney General.~~2~~[3] The petition shall be accompanied by the filing fee prescribed in ORS 21.010(5).

(5) The petitioner shall file an opening brief in support ~~in support~~ on the same date that the petitioner files the petition. The brief shall include proof of service on the Secretary of the Senate, the Chief Clerk of the House of Representatives, the Secretary of State, and the Attorney General.

(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 ~~November 8, 2021, file with the Administrator~~ an answering brief and, if not exempt from payment of filing fees, pay the respondent's first appearance fee prescribed in ORS 21.010(5). Any party who files an answering brief shall be identified as a "respondent."

(b) The respondent shall serve the answering brief on the petitioner and also on the individuals described in subsections (4) and (5). If the answering brief responds to a petition filed by more than one petitioner, service of the brief is required on only one of the following:

(i) The attorney for the petitioner whose name is first identified in the caption as a petitioner, or that petitioner if not represented; or

(ii) If one attorney represents all petitioners, that attorney.

(7) Reply briefs are discouraged, but, if a petitioner chooses to file a reply brief, the brief shall be filed no later than five business days after the respondent's answering brief is due. The petitioner shall serve any reply brief on the respondent and also on any individual described

in subsection (4) and (5) who is not a respondent.

(8) *Amicus curiae* appearances are discouraged, but, if a person applies for leave to file an *amicus curiae* brief, the person shall file the application, accompanied by the brief tendered for filing, no later than the date that the respondent's answering brief is due. ~~November 8, 2021.~~ The following provisions of ORAP 8.15 apply to *amicus curiae* filings under this rule: ORAP 8.15(1), (2), (3), (5)(a)(iii), (6), (7), and (8), except that the provisions of ORAP 8.15(8) regarding time to appear and prescribing due dates do not apply.

~~(8) Reply briefs are discouraged, but, if a petitioner chooses to file a reply brief, the brief shall be filed no later than November 15, 2021. The petitioner shall serve any reply brief on the respondent and also on any individual described in subsection (4) who is not a respondent.~~

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

(10) The following requirements apply to any petition, brief, or other document required or permitted to be filed under this rule:

(a) All documents shall contain the litigant contact information required by ORAP 1.30, including, whether the filing party is represented or not, an email address at which the party can be served filings by others pursuant to ORCP 9 G and can receive notices and other communications from the court.

(b) All documents shall be filed by 5:00 p.m. Pacific Time (PT) on the deadline day, using one of the following filing methods and no other method:

(i) An attorney required to eFile a document pursuant to ORAP 16.60 shall submit it for eFiling by 5:00 p.m. PT on the deadline day, notwithstanding ORAP 16.25(1);

(ii) A party not required to eFile a document under ORAP 16.60, including a self-represented party, may physically deliver it by 5:00 p.m. PT to the Appellate Court Administrator, Appellate Court Records Section, 2850 Broadway St. NE, Salem, Oregon 97303-6500; or

(iii) A self-represented party may email a document by 5:00 p.m. PT to appealsclerk@ojd.state.or.us, with the following subject line: "Case Filing under ORAP 11.35(10)(b)," notwithstanding ORAP 1.35(1)(a) and ORAP 1.32(1)(b) and (c). Any document that is filed by email shall comply, to the extent practicable, with the format requirements set out in ORAP 16.15. A party who files a document by email under this subsection shall comply with any subsequent instruction regarding payment of an applicable filing fee and shall respond to and ~~or~~ comply with any other inquiry or direction sent from the Administrator or the Administrator's designee.

(c) Any document rejected based on a filing deficiency shall be corrected and refiled by ~~6:00~~ 7:00 p.m. (PT) on the deadline day.

(d) Any document that is filed shall be served on the other parties, and on any other person required in this rule, on the same day the document is filed and, if filed on the deadline day, by 5:00 p.m. PT. The serving party shall use ~~, using~~ one of the following service methods and no other method:

(i) If applicable, electronic service pursuant to ORAP 16.45;

(ii) Email service pursuant to ORCP 9 G; or

(iii) Hand delivery.

(e) Any document that is filed shall include proof of service, describing the person or persons served, the date of service, and the method of service as required by subsection (10)(d).

(11) The court may invite oral argument from any petitioner or respondent. ~~If so, ORAP 6.10 governs who will be allowed to argue.~~

(12) A petition for reconsideration may be filed for only the purpose of correcting a misstatement or inaccuracy. Any such petition is due within one ~~1~~ judicial day after issuance of a decision. The Administrator shall not accept for filing, and the court will not consider, any petition tendered for filing after a reapportionment has become operative under Article IV, section 6, of the Oregon Constitution., ~~and *State ex rel Representative Tina Kotek v. Shemia Fagan*, 367 Or 803, 484 P3d 1058 (2021).~~

(13) ~~Supreme Court~~ The court's review of a reapportionment made by the Secretary of State under Article IV, section 6, subsection (3), of the Oregon Constitution shall be the same as for a reapportionment enacted by the Legislative Assembly, and all other provisions of this rule accordingly apply, except that:

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

(b) The petition and opening brief shall be filed no later than September ~~November~~ 15 of the year of reapportionment.~~, 2021;~~

~~(c) The answering brief shall be filed no later than November 29, 2021;~~

~~(d) Amicus curiae applications and accompanying briefs, although discouraged, are due no later than November 29, 2021; and~~

~~(e) Reply briefs, although discouraged, are due no later than December 6, 2021.~~

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[1] If the deadline for filing a petition is a Saturday or Sunday, the Oregon Constitution may

prohibit extending the deadline to the next business day. *See Hartung v. Bradbury*, 332 Or 570, 595 n 23, 33 P3d 972 (2001).~~*See State ex rel Representative Tina Kotek v. Shemia Fagan*, 367 Or 803, 484 P3d 1058 (2021) (adopting revised schedule under Article I, section 6, of the Oregon Constitution, for the reapportionment year 2021).~~

[2] For example, if the petition is challenging only a particular district (or districts) and contends that its boundaries should be drawn differently, then the attachment or attachments must set out both the part of the reapportionment that enacted the district and a proposed map or description of how the district's boundaries should be drawn differently. If, however, the petition is challenging the entire reapportionment, but not proposing any particular redrawing of district boundaries, then the attachment must set out the entire reapportionment that the legislature enacted, but not any alternative boundaries.

~~[2]~~[3] Delivery to the listed officials should be made to the addresses, or email addresses, listed on the court's website, [to be added].~~as follows:~~

~~(1) Secretary of the Oregon Senate, 900 Court Street NE, Salem, Oregon, or Lori.l.brocker@oregonlegislature.gov;~~

~~(2) Chief Clerk of the Oregon House of Representatives, 900 Court Street NE, Salem, Oregon, or Tim.sekerak@oregonlegislature.gov;~~

~~(3) Oregon Secretary of State, 900 Court Street NE, Capitol Room 136, Salem, Oregon, or LegalService.sos@oregon.gov; and~~

~~(4) Oregon Attorney General, 1162 Court St NE, Salem, Oregon, or AppellateService@doj.state.or.us~~

Rule 11.40
REAPPORTIONMENT REVIEW: CONGRESSIONAL DISTRICTS

The practice and procedure for a direct appeal to the Supreme Court concerning reapportionment of the state into congressional districts under ORS 188.125~~, as amended by Oregon Laws 2021, chapter 419, for the reapportionment year 2021,~~ shall be as follows:

(1) Notice of appeal

(a) A notice of appeal filed under ORS 188.125(9)(b), ~~(c) or (10)(b), as amended by Oregon Laws 2021, chapter 419,~~ challenging a decision of the special judicial panel appointed pursuant to ORS 188.125(6) and (7) that dismissed a petition under ORS 188.125(9)(a), ~~as amended by Oregon Laws 2021, chapter 419,~~ shall be filed with the Administrator no later than September 15 of the year in which the Legislative Assembly enacts the reapportionment.~~November 29, 2021.~~

(b) A notice of appeal filed under ORS 188.125(10)(b), challenging a decision

of the special judicial panel appointed pursuant to ORS 188.125(6) and (7) under ORS 188.125(10)(a), other than dismissal under ORS 188.125(9)(a), shall be filed with the Administrator no later than October 15 of the year in which the Legislative Assembly enacts the reapportionment.

(c) The notice of appeal shall:

(i) ~~c~~Comply, to the extent practicable, with ORAP 2.05, ORAP 2.10, and ORAP 2.25; and~~.~~

~~(2) The notice of appeal shall~~

(ii) ~~b~~Be accompanied by the filing fee prescribed in ORS 21.010(5).

(~~2~~3) The appellant in an appeal under either subsection (1)(a) or (b) shall file an opening brief in support on the same date that the appellant files the notice of appeal. ~~no later than December 8, 2021.~~ The ~~appellate~~ brief shall attach an excerpt of record that includes:

(a) Such part of the reapportionment as is necessary for a determination of the question presented and the relief sought; and

(b) Any other part of the record necessary for a determination of the question presented and the relief sought, including any proposed alternative reapportionment.[1]~~.~~

(~~3~~4) The respondent in an appeal under either subsection (1)(a) or (b) shall file an answering brief no later than five judicial days after the opening brief is filed.~~December 17, 2021.~~

(4) Reply briefs are discouraged, but, if an appellant in an appeal under either subsection (1)(a) or (b) chooses to file a reply brief, the brief shall be filed no later than two judicial days after the answering brief is filed.

(5) *Amicus curiae* appearances are discouraged, but, if a person applies for leave to file an *amicus curiae* brief, the person shall file the application, accompanied by the brief tendered for filing, no later than the date that the respondent's answering brief is due. ~~December 17, 2021.~~ The following provisions of ORAP 8.15 apply to *amicus curiae* filings under this rule: ORAP 8.15(1), (2), (3), (5)(a)(iii), (6), (7), and (8), except that the provisions of ORAP 8.15(8) regarding time to appear and prescribing due dates do not apply.

(6) ~~Reply briefs are discouraged, but, if an appellant chooses to file a reply brief, the brief shall be filed no later than December 20, 2021.~~

~~(7)~~ Any brief in support of or in opposition to a notice of appeal, ~~petition,~~ to the extent practicable, shall be filed in the same form as a brief on appeal in a civil action under these rules.

(~~7~~8) The following requirements apply to any notice of appeal, ~~petition,~~ brief, or other document required or permitted to be filed under this rule:

(a) All documents shall contain the litigant contact information required by ORAP 1.30, including, whether the filing party is represented or not, an email address at which the party can be served filings by others pursuant to ORCP 9 G and can receive notices and other communications from the court.

(b) All documents shall be filed by 5:00 p.m. Pacific Time (PT) on the deadline day, using one of the following filing methods and no other method:

(i) An attorney required to eFile a document pursuant to ORAP 16.60 shall submit it for eFiling by 5:00 p.m. PT on the deadline day, notwithstanding ORAP 16.25(1);

(ii) A party not required to eFile a document under ORAP 16.60, including a self-represented party, may physically deliver it by 5:00 p.m. PT to the Appellate Court Administrator, Appellate Court Records Section, 2850 Broadway St NE, Salem, Oregon 97303-6500; or

(iii) A self-represented party may email a document by 5:00 p.m. PT to appealsclerk@ojd.state.or.us, with the following subject line: "Case Filing under ORAP 11.40(7)(b)," ~~11.40(8)(b),"~~ notwithstanding ORAP 1.35(1)(a) and ORAP 1.32(1)(b) and (c). Any document that is filed by email shall comply, to the extent practicable, with the format requirements set out in ORAP 16.15. A party who files a document by email under this subsection shall comply with any subsequent instruction regarding payment of an applicable filing fee and shall respond to and ~~or~~ comply with any other inquiry or direction sent from the Administrator or the Administrator's designee.

(c) Any document rejected based on a filing deficiency shall be corrected and refiled by 7:00 ~~6:00~~ p.m. PT on the deadline day. ~~(PT).~~

(d) Any document that is filed shall be served on the ~~all~~ other parties, and on any other person required in this rule, ~~to the appeal,~~ on the same day the document is filed and, if filed on the deadline day, by 5:00 p.m. Pacific Time (PT). The serving party shall use~~, using~~ one of the following service methods and no other method:

(i) If applicable, electronic service pursuant to ORAP 16.45;

(ii) Email service pursuant to ORCP 9 G; or

(iii) Hand delivery.

(e) Any document that is filed shall include proof of service, describing the person or persons served, the date of service, and the method of service as required by subsection (7)(d)~~(8)(d)~~.

(8~~9~~) The court may invite oral argument from any appellant or respondent. ~~If so, ORAP 6.10 governs who will be allowed to argue.~~

(9~~10~~) A petition for reconsideration may be filed for only the purpose of correcting a misstatement or inaccuracy. Any such petition is due within 1 judicial day after issuance of a decision. The Administrator shall not accept for filing, and the court will not consider, any petition tendered for filing after a reapportionment has become operative under ORS 188.125(14).~~Or Laws 2021, chapter 419.~~

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[1] For example, if the notice of appeal is challenging a decision of the special judicial panel concerning only a particular district (or districts) and contends that its boundaries should be drawn differently, then the excerpt of record must set out both the part of the reapportionment that enacted or adopted the district, and a proposed map or description of how the district's boundaries should be drawn differently. If, however, the notice of appeal is challenging a decision of the special judicial panel as to the entire reapportionment, but not proposing any particular redrawing of district boundaries, then the excerpt of record must set out the entire reapportionment that the legislature enacted or the panel adopted, but not any alternative boundaries.

Rule 12.07
EXPEDITED APPEAL OF CERTAIN
PRETRIAL ORDERS IN CRIMINAL CASES

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

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

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

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

(d) Appellant's reply brief, if any, shall be due 14 days after respondent's answering brief is served and filed.

(e) If respondent has filed a cross-appeal, respondent's opening brief on cross-appeal is due when appellant's opening brief is due, and appellant's answering brief on cross appeal is due when respondent's answering brief is due. Any reply brief on cross appeal is due when appellant's reply brief is due.

(2) On a petition for review of a decision of the Court of Appeals in an appeal under ORS 138.045(1)(a) or (d) from a pretrial order dismissing or setting aside the accusatory

instrument or suppressing evidence, when a defendant is charged with a felony and is in custody:

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

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

(3) In all cases subject to this rule:

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

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

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

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

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

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

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

(3) (a) The case title and party roles shall be the same as those designated by the certifying court.

(b) In deciding whether to accept a certified question, the Supreme Court will not consider written argument from the parties or hold argument unless it specifically directs otherwise.

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

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

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

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

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

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

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

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

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

sealed copy of the court's decision to the certifying court terminates the Supreme Court case.

Rule 13.05
COSTS AND DISBURSEMENTS

(1) As used in this rule, "costs" includes costs and disbursements. "Allowance" of costs refers to the determination by the court that a party is entitled to claim costs. "Award" of costs is the determination by the court of the amount that a party who has been allowed costs is entitled to recover.[1]

(2) The court will designate a prevailing party and determine whether the prevailing party is allowed costs at the time that the court issues its decision.

(3) When an allowance of costs is dependent on identification of a party as a prevailing party, the appellant or petitioner (or cross-appellant or cross-petitioner, as appropriate) is the prevailing party only if the court reverses or substantially modifies the judgment or order from which the appeal or judicial review was taken. Otherwise, the respondent (or cross-respondent, as appropriate) is the prevailing party.

(4) When a party prevails on appeal or on review and the case is remanded for further proceedings in which the party who ultimately will prevail remains to be determined, the court may allow costs to abide the outcome of the case. If the court allows costs to abide the outcome of the case, the prevailing party shall claim its costs within the time and in the manner prescribed in this rule. The appellate court may determine the amount of costs under this subsection, and may condition the actual award of costs on the ultimate outcome of the case. In that circumstance, the award of costs shall not be included in the appellate judgment, but shall be awarded by the court or tribunal on remand in favor of the prevailing party on appeal or review, if that party also prevails on remand, and shall be awarded against the party designated on appeal or review as the party liable for costs.

(5) (a) A party seeking to recover costs shall file a statement of costs and disbursements within 21 days after the date of the decision. The filing of a petition for review or a petition for reconsideration does not suspend the time for filing the statement of costs and disbursements.

(b) A party must file the original statement of costs and disbursements, accompanied by proof of service showing that a copy of the statement was served on every other party to the appeal.

(c) A party objecting to a statement of costs and disbursements shall file objections within 14 days after the date of service of the statement. A reply, if any, shall be filed within 14 days after the date of service of the objections. The original objection or reply shall be filed with proof of service.

(6) (a) (i) Except as provided in paragraph (ii) of this subsection, whether a brief is printed or reproduced by other methods, the party allowed costs is entitled to recover

10 cents per page for the number of briefs required to be filed or actually filed, whichever is less, plus one copy ~~two copies~~ for each party served and one copy ~~two copies~~ for each party on whose behalf the brief was filed.

(ii) If a party filed a brief using the eFiling system, the party allowed costs is entitled to recover the amount of the transaction charge and any document recovery charge* incurred by that party for electronically filing the brief, as provided in subsection (b) of this section. The party allowed costs is not entitled to recover for the service copy of any brief served on a party via the eFiling system, but is entitled to recover for one copy ~~two copies~~ for each party served conventionally.

(b) If the party who has been allowed costs has incurred transaction charges or any document recovery charges* in connection with electronically filing any document, the party is entitled to recover any such charge so incurred.

(c) If the prevailing party who has been allowed costs has paid for copies of audio or video tapes in lieu of a transcript or incident to preparing a transcript, the party is entitled to recover any such charge so incurred.

(d) (i) For the purposes of awarding the prevailing party fee under ORS 20.190(1)(a), an appeal to the Court of Appeals and review by the Supreme Court shall be considered as one continuous appeal process and only one prevailing party fee per party, or parties appearing jointly, shall be awarded.

(ii) The prevailing party fee will be awarded only to a party who has appeared on the appeal or review.

(iii) A prevailing party is not entitled to claim more than one prevailing party fee, nor may the court award more than one prevailing party fee against a nonprevailing party, regardless of the number of parties in the action.[2]

(e) If a prevailing party who has been allowed costs timely files a statement of costs and disbursements and no objections are filed, the court will award costs in the amount claimed, except when the entity from whom costs are sought is not a party to the proceeding or when the court is without authority to award particular costs claimed.

(f) If a prevailing party who has been allowed costs untimely files a statement of costs and disbursements, that party is entitled to recover the party's filing or first appearance fee and the prevailing party fee under ORS 20.190(1).

(g) If a prevailing party who has been allowed costs does not file a statement of costs and disbursements, the court shall award that party's filing or first appearance fee and the prevailing party fee under ORS 20.190(1) as part of the appellate judgment.

(7) Parties liable for payment of costs and disbursements shall be jointly liable.

[1] *See generally* ORS 20.310 to 20.330 concerning costs and disbursements on appeal and in cases of original jurisdiction.

[*] Document recovery charges were charges collected to offset the cost incurred by the courts in making the necessary number of printed copies of documents eFiled before February 8, 2016, under the authority of a prior version of ORAP 16.20(2). *See, e.g.*, ORAP 16.20(2) (2017).

[2] *See* ORS 20.190(4).

Rule 13.10
PETITION FOR ATTORNEY FEES

(1) This rule governs the procedure for petitioning for attorney fees in all cases except the recovery of compensation and expenses of court-appointed counsel payable from the Public Defense Services Account.[1]

(2) A petition for attorney fees shall be served and filed within 28 ~~21~~ days after the date of decision. The filing of a petition for review or a petition for reconsideration does not suspend the time for filing the petition for attorney fees.

(3) When a party prevails on appeal or on review and the case is remanded for further proceedings in which the party who ultimately will prevail remains to be determined, the appellate court may condition the actual award of attorney fees on the ultimate outcome of the case. In that circumstance, an award of attorney fees shall not be included in the appellate judgment, but shall be awarded by the court or tribunal on remand in favor of the prevailing party on appeal or review, if that party also prevails on remand, and shall be awarded against the party designated on appeal or review as the party liable for attorney fees. The failure of a party on appeal or on review to petition for an award of attorney fees under this subsection is not a waiver of that party's right later to petition on remand for fees incurred on appeal and review if that party ultimately prevails on remand.

(4) When the Supreme Court denies a petition for review, a petition for attorney fees for preparing a response to the petition for review **may** be filed in the Supreme Court.

(5) (a) A petition shall state the total amount of attorney fees claimed and the authority relied on for claiming the fees. The petition shall be supported by a statement of facts showing the total amount of attorney time involved, the amount of time devoted to each task, the reasonableness of the amount of time claimed, the hourly rate at which time is claimed, and the reasonableness of the hourly rate.

(b) If a petition requests attorney fees pursuant to a statute, the petition shall address any factors, including, as relevant, those factors identified in ORS 20.075(1) and (2) or ORS 20.105(1), that the court may consider in determining whether and to what extent to award attorney fees.[2]

(6) Objections to a petition shall be served and filed within 14 days after the date the petition is filed. A reply, if any, shall be served and filed within 14 days after the date of service

of the objections.

(7) A party to a proceeding under this rule may request findings regarding the facts and legal criteria that relate to any claim or objection concerning attorney fees. A party requesting findings must state in the caption of the petition, objection, or reply that the party is requesting findings pursuant to this rule.[3] A party's failure to request findings in a petition, objection, or reply in the form specified in this rule constitutes a waiver of any objection to the absence of findings to support the court's decision.

(8) The original of any petition, objections, or reply shall be filed with the Administrator together with proof of service on all other parties to the appeal, judicial review, or proceeding.

(9) In the absence of timely filed objections to a petition under this rule, the Supreme Court and the Court of Appeals, respectively, will allow attorney fees in the amount sought in the petition, except in cases in which:

(a) The entity from whom fees are sought was not a party to the proceeding; or

(b) The Supreme Court or the Court of Appeals is without authority to award fees.

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[1] This subsection does not create a substantive right to attorney fees, but merely prescribes the procedure for claiming and determining attorney fees under the circumstances described in this subsection.

[2] *See, e.g.*, *Tyler v. Hartford Insurance Group*, 307 Or 603, 771 P2d 274 (1989), and *Matizza v. Foste*r, 311 Or 1, 803 P2d 723 (1990), with respect to ORS 20.105(1), and *McCarthy v. Oregon Freeze Dry, Inc.*, 327 Or 84, 957 P2d 1200, *adh'd to on recons*, 327 Or 185, 957 P2d 1200 (1998), with respect to ORS 20.075.

[3] For example: "Appellant's Petition for Attorney Fees and Request for Findings Under ORAP 13.10(7)" or "Respondent's Objection to Petition for Attorney Fees and Request for Findings Under ORAP 13.10(7)."

See Appendix 13.10.

Rule 14.05
APPELLATE JUDGMENT

(1) As used in this rule,

(a) "Appellate judgment" means a decision of the Court of Appeals or Supreme Court together with a final order and the seal of the court.

(b) "Decision" means a designation of prevailing party and allowance of costs together with,

(i) In an appeal from circuit court or the Tax Court, or on judicial review of an agency proceeding, an order disposing of the appeal or judicial review or affirming without opinion; or with respect to a per curiam opinion or an opinion indicating the author, the title page of the opinion containing the court's disposition of the appeal or judicial review.

(ii) In a case of original jurisdiction in the appellate court, in addition to the documents specified in subparagraph (i) of this paragraph, an order denying, dismissing, or allowing without opinion the petition or other document invoking the court's jurisdiction. An order allowing a petition for an alternative writ of mandamus or writ of habeas corpus is not a decision within the meaning of this rule.

(c) "Designation of prevailing party and allowance of costs" means that part of a decision indicating, when relevant, which party prevailed before the appellate court, whether costs are allowed, and, if so, which party or parties are responsible for costs.

(d) "Final order" means that part of the appellate judgment ordering payment of costs or attorney fees in a sum certain by specified parties or directing entry of judgment in favor of the Judicial Department for unpaid appellate court filing fees, or both.

(2) The decision of the Supreme Court or Court of Appeals is effective:

(a) With respect to appeals from circuit court or the Tax Court, on the date that the Administrator sends a copy of the appellate judgment to the court below.

(b) With respect to judicial review of administrative agency proceedings, on the date that the Administrator sends a copy of the appellate judgment to the administrative agency.

(c) With respect to original jurisdiction proceedings, within the time or on the date specified in the court's decision or, if no time period or date is specified, on the date of entry of the appellate judgment. When the effective date is specified in the court's decision, the decision is effective on that date notwithstanding the date the appellate judgment issues.

(3) The Administrator shall prepare the appellate judgment, enter the appellate judgment in the register, send a copy of the appellate judgment with the court's seal affixed thereto to the court or administrative agency from which the appeal or judicial review was taken, and send a copy of the appellate judgment to each of the parties.

(a) With respect to a decision of the Court of Appeals, the Administrator will not issue the appellate judgment for a period of 35 days after the decision to allow time for a petition for review pursuant to ORS 2.520 and ORAP 9.05. If a petition for review

is filed, the appellate judgment will not issue until the petition is resolved.

(b) With respect to an order of the Supreme Court denying review or a decision of the Supreme Court, the Administrator will not issue the appellate judgment for a period of 28 ~~21~~ days after the order or decision to allow time for a petition for reconsideration under ORAP 9.25 or a petition for attorney fees or submission of a statement of costs and disbursements under ORAP 13.05 and ORAP 13.10.

(c) If one or more statements of costs and disbursements, petitions for attorney fees, or motions or petitions for reconsideration are filed, the Administrator will not issue the appellate judgment until all statements of costs and disbursements, petitions for attorney fees, or petitions for reconsideration are determined by order of the court.

(d) Notwithstanding paragraphs (a), (b), and (c) of this subsection, a party may request immediate issuance of the appellate judgment based on a showing that no party intends to file a petition for review, petition for attorney fees, or any other thing requiring a judicial ruling.

(4) (a) The money award part of an appellate judgment for costs, attorney fees, or both, in favor of a party other than the Judicial Department that has been entered in the judgment docket of a circuit court may be satisfied in the circuit court in the manner prescribed in ORS 18.225 to 18.238, or other applicable law.

(b) The money award part of an appellate judgment for an unpaid filing fee or other costs in favor of the Judicial Department shall be satisfied as follows. Upon presentation to the Administrator of sufficient evidence that the amount of the money judgment has been paid:

(i) The Administrator shall note the fact of payment in the appellate court case register; and

(ii) If requested by the party and upon payment of the certification fee, the Administrator shall issue a certificate showing the fact of satisfaction of the money award. As requested by the party, the Administrator shall issue a certificate to the party, to the court or administrative agency to which a copy of the appellate judgment was sent, or to both.

See generally ORS 19.450 regarding appellate judgments in appeals from circuit court and Tax Court. A party considering petitioning the United States Supreme Court for a writ of certiorari with respect to an Oregon appellate court decision should review carefully 28 USC § 2101(c) and the United States Supreme Court Rules, currently US Sup Ct Rule 13, to determine the event that triggers the running of the time period within which to file the petition. *See also International Brotherhood v. Oregon Steel Mills, Inc.*, 180 Or App 265, 44 P3d 600 (2002) (majority, concurring, and dissenting opinions).

APPENDIX 7.10-3

Illustration for ORAP 7.10(1)(c) and ORAP 7.25–Motions for Extension of Time

Illustration 1

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

_____,	)	
Plaintiff-Appellant,	)	
(or Plaintiff-Respondent)	)	_____ County Circuit
	)	Court No. _____
	)	
v.	)	
_____,	)	(SC or CA) _____
Defendant-Respondent.	)	
(or Defendant-Appellant)	)	

APPELLANT'S [RESPONDENT'S] MOET–
FILE OPENING [ANSWERING] BRIEF
(OR OTHER ITEM–SEE LIST OF
MOET TITLES IN APPENDIX 7.10-1)

Appellant (Respondent) moves this court for an extension of time of ____ days, from ___ through ____, within which to serve and file the appellant's opening (or respondent's answering) brief (or other item) in this case.

The Notice of Appeal in this case was filed on __[date]__ . The brief (or other item) is due on __[date]__. This is the first (or second or third) request for a time extension and one is now sought because [set out the reason].

[In a criminal case, indicate whether defendant is incarcerated or under what terms defendant has been released.]

_____ ~~Opposing counsel in this case~~ informs me that _____ ~~(counsel)~~ (has no objection to/concurs in/has no comment on) this request for extension of time and (does/does not) intend to file a response.

Date _____

_____
Attorney for Petitioner
[Sign and print/type name,
bar number, address,
telephone number, and email address]