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	)	NOTICE OF PROPOSED
Rules of Appellate Procedure	)	RULEMAKING

The Supreme Court and Court of Appeals propose to adopt permanent amendments to the following Oregon Rules of Appellate Procedure and appendices:

1.15; 1.30; 1.35; 1.45; 2.15; 3.30; 3.33; 3.40; 4.15; 4.20 (rewritten); 4.22; 4.64 (rewritten); 5.05; 5.10 (deleted); 5.20; 5.55; 5.92; 5.95; 6.15; 7.10; 7.25; 7.55; 8.15; 8.47 (new rule); 9.05; 9.17; 11.05; 11.25; 12.20; 13.05; 15.05; 16.05; 16.20; 16.25; 16.45; 16.60, and Appendices 3.33-1; 3.35; 4.15-1; and 4.15-2.

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, 2019.

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. (Red shows only in electronic versions.)

Anyone may submit comments on the proposed amendments. Comments must be submitted by Wednesday, August 15, 2018, to:

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Rule 1.15
TERMINOLOGY

(1) Headings in these rules do not in any manner affect the scope, meaning, or intent of the rules.

(2) Singular and plural shall each include the other, where appropriate.

(3) In these rules, unless expressly qualified or the context or subject matter otherwise requires:

(a) "Administrator" means the Appellate Court Administrator or, as appropriate, the Appellate Court Administrator's designee.[1]

(b) "Agreed narrative statement" means the parties' stipulated account of proceedings in lieu of a transcript or audio record.

(c) "Appeal" includes judicial review.

(d) "Appearing jointly" refers to two or more parties who together file single documents.

(e) "Appellant" means a party who files a notice of appeal or petition for judicial review.

(f) "Appellate court" means the Supreme Court, Court of Appeals, or both, as appropriate.

(g) "Appellate judgment" shall have the meaning set out in ORAP 14.05(1)(a).

(h) "Audio record" means the record of oral proceedings before a trial court or agency made by electronic means and stored or reproduced on audiotape or compact disc.

(i) "Business day" means Monday through Friday excluding legal holidays.

(j) "Cassette" means the cartridge containing the audio or video recording.

(k) (i) "Conventional filing" means the delivery of a paper document to the Administrator for filing via the United States Postal Service, commercial delivery service, or personal delivery.

(ii) "Conventional service" means the delivery of a copy of a document on another person via the United States Postal Service, commercial delivery service, or personal delivery.

(lk) "Cross-appellant" means a party, already a party to an appeal, who files an appeal against another party to the case.

(ml) "Cross-respondent" means a party who is adverse to a cross-appellant.

(nm) "Decision" shall have the meaning set forth in ORAP 14.05(1)(b).

(on) "Domestic relations case" includes but is not necessarily limited to these kinds of cases: dissolution of marriage, dissolution of domestic partnership, filiation, paternity, child support enforcement, child custody, modification of judgment of dissolution of marriage or domestic partnership, and adoption.

(po) "Judgment" means any judgment document or order that is appealable under ORS 19.205, ORS chapter 138, or other provision of law.

(qp) "Legal advisor" means an attorney in a criminal case assisting a defendant who has waived counsel, as provided in ORS 138.504(2).

(rq) "Notice of appeal" includes a petition for judicial review and a notice of cross-appeal.

(sr) "Optical disk" means compact disk (CD), digital versatile disk (DVD), or comparable medium approved by the Administrator for use in filing an electronic version of a transcript or other part of the trial court or state agency record.[2]

(ts) "Original" in reference to any thing to be served or filed shall mean the thing signed by the appropriate attorney or party and submitted for filing.

(ut) "Out-of-state attorney" means an attorney admitted to the practice of law in another jurisdiction, but not in Oregon, who appears by brief or argues the cause under ORAP 6.10(4) or ORAP 8.10(4).

(vu) "Petitioner" means a party who files a petition.

(wv) "Respondent" means the party adverse to an appellant or a petitioner.

(xw) "Transcript" means a typewritten, printed, or electronic transcription of oral proceedings before a trial court or agency.

(yx) "Trial court" means the court or agency from which an appeal or judicial review is taken.

(zy) "Video record" means the audio and visual record of proceedings before a trial court or agency made by electronic means and stored or reproduced on videotape or compact disc.

[1] *See* ORS 8.120 regarding duties of the State Court Administrator to act as court administrator for the Supreme Court and Court of Appeals, and authority of the State Court Administrator to delegate powers, by written designation, to officers and employees of the Oregon Judicial Department. Effective May 1, 2008, the State Court Administrator delegated, by written designation, to the Appellate Court Administrator the duties to act as court administrator for the Supreme Court and Court of Appeals.

~~[2] The appellate courts anticipate that rules and procedures related to the electronic transmission of transcripts may change between publication dates of the Oregon Rules of Appellate Procedure. For current rules and procedures, consult Appellate eFiling.~~

Rule 1.30
LITIGANT CONTACT INFORMATION

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

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

~~[1] *See also* ORAP 1.35(1)(b) concerning the requirement that a party with contact information that is shielded from public disclosure provide the appellate courts with alternative contact information that may be made available for public inspection.~~

Rule 1.35
FILING AND SERVICE

(1) Filing

(a) Filing Defined: Delivery, Receipt, and Acceptance

(i) A person intending to file a document in the appellate court must cause the document to be delivered to the Appellate Court Administrator.

(ii) Delivery may be made as follows and otherwise as provided under subsection (2) of this rule:

(A) Unless an exception applies under ORAP 16.30 or ORAP

16.60(2), an active member of the Oregon State Bar must deliver any document for filing using the appellate courts' eFiling system.[1]

(B) Any other person must file any document in conventional form, by delivering the document to the Appellate Court Administrator, Appellate Court Records Section, 1163 State Street, Salem, Oregon 97301-2563.

(iii) The Administrator or the Administrator's designee must endorse upon any document delivered for filing the day and month, and the year the Administrator received the document.

(iv) Filing is complete when the Administrator has accepted the document. Except as otherwise provided by law or these rules, when the Administrator has accepted a document for filing, the filing date relates back to the date the Administrator received the document for filing.

(v) A correction to a previously filed document must be made by filing the entire corrected or amended document with the court. The caption of a corrected or amended document must prominently display the word "CORRECTED" or "AMENDED," as applicable.

(b) Manner of Filing

(i) ~~As used in this rule, "case initiating~~"Initiating document" means ~~a~~any document that initiates a ~~new~~ case ~~in an appellate court~~, including but not ~~necessarily~~ limited to a notice of appeal; a petition for judicial review; a petition for a writ of mandamus, habeas corpus~~,~~ or ~~mandamus~~quo warranto; and ~~any other~~a recommendation for discipline from the Oregon State Bar or the Commission on Judicial Fitness and Disability. "Initiating document" does not include a petition ~~invoking the original jurisdiction~~for review under ORAP 9.05 or a motion for extension of ~~the appellate court.~~ time to file a petition for review under ORAP 9.05.

(ii) Using Appellate Courts' eFiling System

Delivery for filing using the eFiling system is subject to Chapter 16 of these rules.

(iii) Using United States Postal Service or Commercial Delivery Service

(A) A person may deliver ~~a case~~an initiating document for filing via the U.S. Postal Service, and delivery is complete on the date of mailing if mailed or dispatched for delivery in accordance with ORS 19.260(1)(a). If the Administrator receives the ~~case~~ initiating document

within the time prescribed by law, the person need not submit proof of the date of mailing. If the Administrator does not receive the document within the time prescribed law and the person must rely on the date of mailing as the date of delivery, the person must file with the Administrator acceptable proof from the U.S. Postal Service of the date of mailing. Acceptable proof from the U.S. Postal Service of the date of mailing must be a receipt for certified or registered mail or other class of service for delivery within three calendar days, with the mail number on the envelope or on the item being mailed, and the date of mailing either stamped by the U.S. Postal Service on the receipt or shown by a U.S. Postal Service postage validated imprint on the envelope received by the Administrator or the U.S. Postal Service's online tracking system.

(B) A person may deliver ~~a case~~an initiating document for filing via commercial delivery service, and the delivery is complete on the date of dispatch for delivery by the delivery service if dispatched for delivery in accordance with ORS 19.260(1)(a). If the Administrator receives the ~~case~~ initiating document within the time prescribed by law, the person need not submit proof of the date of delivery for dispatch. If the Administrator does not receive the document within the time prescribed by law and if the person must rely on the date of delivery for dispatch, the person must file with the Administrator proof from the commercial delivery service of the date of delivery for dispatch, which may include the commercial delivery service's online tracking service.

(C) A person involuntarily confined in a state or local government facility may deliver ~~a case~~an initiating document for filing via the U.S. Postal Service and the date of filing relates back to the date of delivery for mailing if the person complies with ORS 19.260(3). If the person relies on the date of delivery for mailing, the person must certify the date of delivery to the person or place designated by the facility for handling outgoing mail.

(D) Filing of any other document required to be filed within a prescribed time, including any brief, petition for attorney fees, statement of costs and disbursements, motion, or petition for review, is complete if mailed via the U.S. Postal Service or dispatched via commercial delivery service on or before the due date if the class of mail or delivery is calculated to result in the Administrator receiving the document within three calendar days.

(iv) Conventional Filing Not Using U.S. Postal Service or Commercial Delivery Service

If a person does not deliver a document for filing via the eFiling system, the U.S. Postal Service, or commercial delivery service as

provided in this paragraph, then the document is not deemed filed until the document is actually received by the Administrator.

(v) Delivery by email is not permitted unless specifically authorized elsewhere in these rules.

(2) Service

(a) (i) Except as provided in clause (2)(a)(ii) of this subsection, a party filing a document with the court must serve a true copy of the document on each other party or attorney for a party to the case.[2]

(ii) A party filing a motion for waiver or deferral of court fees and costs under ORS 21.682 need not serve on any other party to the case a copy of the motion or any accompanying documentation of financial eligibility.[3] After the court has ruled on the motion, if another party to the case requests a copy of the motion or documentation of financial eligibility for the purpose of challenging the court's ruling, the filing party must comply with the request but may redact protected personal information as described in ORAP 8.50(1). As used in this clause, "documentation of financial eligibility" means a document showing eligibility for a government benefit based on financial need or an affidavit or declaration showing the income, assets, and financial obligations of a party and the party's household.

(b) Except as otherwise provided by law,[4] a party may serve a document on another person as provided in ORCP 9 or by commercial delivery service.

(i) If a party serves a copy of a document by the U.S. Postal Service or commercial delivery service, the class of service must be calculated to result in the person receiving the document within three calendar days.

(ii) Electronic service via the eFiling system is permitted only on attorneys who are authorized users of the eFiling system and only as provided in ORAP 16.45. ~~A person may not serve a case initiating document via the eFiling system, as set out in ORAP 16.45(3)(a).~~

(iii) Service by e-mail or facsimile communication is permitted only as ~~on an attorney as, and in the manner,~~ provided in ~~by~~ ORCP 9 F or G.

(c) Each service copy must include a certificate showing the date that the party delivered the document for filing.

(d) Any document filed with the Administrator must contain either an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service, and the names and addresses of the persons served, certified by the person who made service, except that:

(i) If a person was served by the appellate courts eFiling system, the certificate must state that service was accomplished at the person's email address as recorded on the date of service in the appellate eFiling system, and need not include the person's email address or mailing address.

(ii) If a person was served by email or by facsimile communication, the proof of service must state the email address or telephone number used to serve the person, as applicable, and need not include the person's mailing address.

(e) Service on Trial Court Administrators and Transcript Coordinators

(i) When a copy of a notice of appeal is required to be served on the trial court administrator, service is sufficient if it is mailed or delivered to the person serving in the capacity of trial court administrator for the county in which the judgment or appealable order is entered.

(ii) When a copy of a notice of appeal is required to be served on the transcript coordinator, service is sufficient if it is mailed or delivered to the office of the trial court administrator, addressed to "transcript coordinator."

(iii) An authorized user of the trial court electronic filing system may serve a copy of the notice of appeal on the trial court administrator and the transcript coordinator by using the "Courtesy Copies" e-mail function of that system. ~~, to send separate courtesy copies to the trial court administrator and to the transcript coordinator.~~ The e-mail address for each judicial district's trial court administrator and transcript coordinator are available on the judicial district's website.

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[1] At this time, only an active member of the Oregon State Bar may become an authorized user of the appellate courts' eFiling system. Therefore, self-represented litigants and attorneys who are not active members of the Oregon State Bar may not file a document with the appellate court using the eFiling System.

[2] Whenever these rules authorize or require service of a copy of any document on the Attorney General, the copy must be served at this address: Attorney General of the State of Oregon, Office of the Solicitor General, 400 Justice Building, 1162 Court Street, NE, Salem, Oregon 97301-4096.

[3] *See* Chief Justice Order No. 07-056 (order adopted pursuant to ORS 21.682(4) prescribing standards and practices for waiver or deferral of court fees and costs).

[4] *See, e.g.*, ORS 183.482(2), relating to cases arising under the Administrative Procedures Act and ORS 197.850(4), relating to judicial review of Land Use Board of Appeals orders, each of which requires service of petitions for judicial review by registered or certified mail.

Rule 1.45
FORM REQUIREMENTS

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

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

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

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

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

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

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

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

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

[1] See ORS 7.250.

Rule 2.15
FILING FEES IN CIVIL CASES

(1) This rule:

(a) does not apply to appeals or petitions for judicial review in criminal,

habeas corpus, post-conviction relief, juvenile court, civil commitment of persons with mental illness (as defined in ORS 426.005) or persons with an intellectual disability (as defined in ORS 427.005), Psychiatric Security Review Board, and State Board of Parole cases;[1]

(b) does apply to appeals and petitions for judicial review in all other civil proceedings.[2]

(2) One filing fee is required for each appellant appearing separately or for two or more appellants appearing jointly. When two or more notices of appeal are filed under ORAP 2.10(1), a filing fee is required for each notice of appeal. When a notice of appeal has been filed and a notice of appeal subsequently is filed in circumstances resulting in the creation of a new appellate court case,[3] the appellant is required to pay a filing fee at the time of the subsequent notice of appeal.

(3) Except as provided in subsection (4) of this rule, a respondent's appearance fee is required for each respondent appearing separately or for two or more respondents appearing jointly. When a notice of appeal has been filed and a notice of appeal subsequently is filed in circumstances resulting in the creation of a new appellate court case, the respondent shall pay an appearance fee at the time of the appearance in the subsequent appeal.

(4) (a) If two or more respondents appearing jointly submit a single brief or other first appearance, only one appearance fee is required.

(b) If a respondent concurs in a brief but does not join in submitting it, no appearance fee is required from the concurring respondent but the concurring respondent is deemed to have waived appearance and oral argument.

(c) After a brief is filed, if a stipulation is filed allowing a second respondent to join in the brief, the second respondent is deemed to have appeared, and an appearance fee is required from that party.

(5) If a party fails to pay the appearance fee, the court will not consider any thing filed by that party, and that party will not be allowed to argue the appeal.

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

[2] *See generally* ORS 21.010(1)~~, ORS 21.480(3)~~. *See* ORS 21.010(3) regarding filing fees in an appeal from an appeal to a circuit court from a justice or municipal court involving a state violation or infraction or involving violation of a city charter or ordinance. *See* ORS 21.010(4) regarding filing fees in contempt cases.

[3] For example, appeals taken from judgments entered under ORCP 67 B at significantly different times.

Rule 3.30
EXTENSION OF TIME FOR PREPARATION OF TRANSCRIPT

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

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

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

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

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

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

See generally ORS 19.395. ~~*See also* ORS 19.370(2), which provides that the transcript shall be filed with the trial court administrator within 30 days after the filing of the notice of appeal.~~

Rule 3.33
PREPARATION, SERVICE, AND FILING OF TRANSCRIPT

(1) On being served with a copy of a notice of appeal, the transcript coordinator shall examine the notice of appeal and determine:

(a) Whether the party has designated a record of oral proceedings as part of the record on appeal;

(b) Whether preparation of a transcript of the designated proceedings is required by law or these rules;

(c) Whether the proceedings were reported by a court reporter or recorded by audio or video recording equipment, or both; and

(d) Whether the party has designated an audio or video recording played in the court as part of the record on appeal and, if so, whether the party has requested preparation of a transcript of the recording.

(2) (a) When a party has designated as part of the record on appeal a transcript of oral proceedings reported by:

(i) A court reporter, the transcript coordinator shall forward a copy of the notice of appeal to the court reporter or reporters who reported the proceedings designated as part of the record on appeal and inform the reporter(s) of the due date of the transcript.

(ii) Audio or video recording, the transcript coordinator shall identify one or more qualified transcribers, forward a copy of the notice of appeal to the transcriber(s) along with a certified copy of the audio or video tape recording, and inform the transcriber(s) of the due date of the transcript.

(b) Except as provided in paragraph (c) of this subsection, the party shall make financial arrangements with the court reporter(s) or transcriber(s) for preparation of the transcript.

(c) When the appellant is eligible for court-appointed counsel on appeal, authorization for the preparation of the transcript at state expense is governed by the policies and procedures of the Office of Public Defense Services.[1]

(d) If the transcript coordinator has not forwarded the notice of appeal to the court reporter(s) or has not forwarded the notice of appeal and a certified copy of the audio or video tape recording to a transcriber before the transcript due date, the transcript coordinator shall notify the appellate court of that fact.

(3) After making arrangements with the court reporter(s) or transcriber(s) as provided in subsection (2) of this rule, the transcript coordinator shall notify the appellate court and the parties to the appeal of the name, address, telephone number, and e-mail address of each court reporter or transcriber, or both, as appropriate, who will be preparing all or a part of the transcript.

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

(a) Cause the transcript to be prepared in conformity with ORAP 3.35.

(b) Include in the transcript a transcript of any audio or video recording played in the trial court, if the designation of record in a notice of appeal requests a transcript of the recording.

(i) If the court reporter who reported a proceeding did not make a verbatim record of the audio part of any recording played in the proceeding or if the recording is not audible from the audio or video record provided the transcript coordinator, the court reporter or transcriber must request the transcript coordinator to provide a copy of the recording in an appropriate format. Upon receipt of the court reporter's or transcriber's request, the transcript coordinator must request, and the party that offered the audio or video recording as evidence must provide, a copy of the recording in an appropriate format. "Appropriate format" means a format that a reasonable transcriber using equipment customary in the industry can use to prepare a transcript of the recording.

(ii) If the party offering the recording as evidence is unable to make a copy of the recording in an appropriate format, with the consent of the adverse party, the party offering the recording may prepare a transcript of the recording in the format required by ORAP 3.35. The adverse party must not unreasonably withhold consent.

(c) Serve a copy of the transcript on each party required by ORS 19.370 and file with the Administrator and serve on each party, the trial court administrator, and the transcript coordinator a certificate of preparation and service of transcript[2] within the time provided in ORS 19.370. The certificate of preparation and service of the transcript must list the dates of all proceedings transcribed, the volume numbers of the transcript(s), and the page numbers specific to each transcript. In a criminal case, the state's copy of the transcript shall be served on the Attorney General.[3] If the transcript is not served and the certificate is not served and filed within that time, the court reporter or transcriber shall move for an extension of time.

(d) Upon notice from the Administrator of the settlement of the transcript, file with the Administrator an electronic version of the transcript in the form required by ORAP 3.35(2) and, at the same time, file with the Administrator and serve on each party a certificate of filing of transcript.[4] The certificate of filing must be a separate document and may not be included as part of the electronic version of the transcript. Filing an electronic version of the transcript with the Administrator is in lieu of filing a paper transcript and shall be in the form provided in ORAP 3.35(2).

(5) (a) The court reporter or transcriber shall serve the appellant and the respondent each with a copy of the transcript as follows:

(i) If a party is represented by an attorney, unless the attorney has made other arrangements with the court reporter or transcriber, the court reporter or transcriber shall serve the transcript in electronic form on the attorney at the e-mail address identified in the notice of appeal as required by ORAP 2.05(5). If a party is not represented by an attorney, unless the party has made other arrangements with the court reporter or transcriber, the court reporter or transcriber shall serve a paper copy of the transcript on the party. In addition to or in lieu of service by e-mail or by paper copy, an attorney or party may make arrangements with the court reporter or transcriber to provide a copy of the transcript to that attorney or party on an optical disk or USB drive, or in other comparable medium.

(ii) If two or more respondents not represented by attorneys must be served by paper copy as provided in clause (5)(a)(i) of this rule, the court reporter or transcriber shall provide one copy of the transcript to the trial court administrator for use by all such respondents. The copy of the transcript provided to the trial court administrator under this clause shall be in the medium (*e.g.*, paper or optical disk) requested by the trial court.

(b) If a party or attorney negotiates with a court reporter or transcriber to provide the transcript in a medium, other than paper or e-mail, provided by the court reporter or transcriber, the court reporter or transcriber may request payment of no more than $5.00 per optical disk, USB drive, or other comparable medium.

(c) A party may specify in the party's designation of record or other request for preparation of a transcript on appeal that the version of the transcript to be provided to that party be prepared by reducing the pages of the transcript in such a manner as to fit up to four pages of transcript onto a single 8-1/2 x 11 inch page or in the one page of transcript per one standard page format. If a party not responsible for arranging for preparation of a transcript is served with a transcript containing four reduced pages of transcript on one standard page, that party may arrange with the court reporter or transcriber, at the party's own expense, for preparation of a transcript in the one page of transcript per one standard page format.[5]

(6) The court reporter or transcriber may not charge for preparing more than one original transcript and may charge only at the rate for copying a transcript for any additional transcript that may be needed for an appeal or appeals:

(a) When two or more cases are heard simultaneously in the circuit court from which one or more appeals are taken, either as consolidated cases or otherwise; or

(b) When two or more cases not heard simultaneously in the circuit court are consolidated on appeal before the transcripts are prepared.

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[1] *See* ORS 138.500(3).

[2] *See* Appendix 3.33-1 for form of certificate of preparation and service of a transcript.

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

[4] *See* Appendix 3.33-2 for form of certificate of filing of a transcript.

[5] *See* ORAP 3.35(2)(d) regarding prohibition of the four pages of transcript per one standard page format in version of transcript filed with the court.

Rule 3.40
ADDITION TO OR CORRECTION OF TRANSCRIPT

(1) (a) When multiple parts of the oral record have been designated as part of the record on appeal or if more than one court reporter or transcriber is preparing the transcript, the transcript is not deemed prepared until the last part of the transcript due on appeal is prepared.

(b) A party desiring to correct or add to the transcript shall file a motion in the trial court within 15 days after either the date that the certificate of preparation of the transcript is filed with the Administrator or the date that any order holding the appeal in abeyance for the appellate settlement program expires.[1] The party must serve ~~mail~~ a copy of the motion on ~~to~~ the Administrator, ~~and~~ the transcript coordinator, and the court reporter or transcriber. An authorized user of the trial court electronic filing system may serve a copy of the motion on the transcript coordinator by using the "Courtesy Copies" e-mail function of that system. The e-mail address for each judicial district's transcript coordinator is available on the Oregon Judicial Department's website.~~When multiple parts of the oral record have been designated as part of the record on appeal or if more than one court reporter or transcriber is preparing the transcript, the transcript is not deemed filed until the last part of the transcript due on appeal is filed.~~

(c) The party must submit a proposed order relating to the motion to correct or add to the transcript that includes:

(i) If the motion is granted, a date by which the corrected or additional transcript must be prepared.

(ii) If the motion is denied, a statement that the transcript is settled.

(2) The Administrator will hold the appeal in abeyance pending the trial court's disposition of the motion and the occurrence of one of the events specified in paragraphs (5)(b) or (c) of this rule.

(3) After the filing of a timely motion to correct or add to the transcript, the trial court

shall have the authority to grant an extension of time for making the corrections or additions to the transcript.

(4) (a) If the trial court allows a motion to correct the transcript, after the filing of the corrected transcript, the appeal will remain in abeyance until the Administrator gives notice to the parties that the transcript has been settled as provided in paragraph (5)(b) of this rule.

(b) If the trial court allows a motion to add to the transcript, the appeal will remain in abeyance for a period of 15 days after the filing of the additional transcript. If a motion to correct the additional transcript is filed timely, the appeal will continue in abeyance pending disposition of the motion to correct and notice by the Administrator that the transcript has been settled as provided in paragraph (5)(b) of this rule.

(c) If the trial court denies the motion, the appeal will be reactivated as provided in paragraph (5)(c) of this rule.[2]

(5) (a) If no motion to correct or add to the transcript is filed, the transcript shall be deemed settled 15 days after the certificate of preparation of the transcript is served,[3] and the period for filing the appellant's opening brief shall begin the next day.

(b) If a motion to correct or add to the transcript is filed and granted, the period for filing the appellant's opening brief shall begin the day after the Administrator gives notice that the transcript has been settled.

(c) If a motion to correct or add to the transcript is filed and denied, the period for filing the appellant's opening brief shall begin the day after entry by the trial court administrator of the order settling the transcript.

See generally ORS 19.370(5) to (7).

[1] Under ORS 19.395, the appellate court, not the trial court, has the authority to extend the time in which to file a motion to correct or add to the transcript.

[2] *See* ORAP 8.40 regarding appellate court review of a trial court ruling affecting appeal, including an order disposing of a motion to correct or add to the transcript.

[3] Under ORS 19.395 and ORAP 3.30(1), the appellate court, not the trial court, has the authority to grant any extension of time for the filing of transcripts or other parts of the record.

See ~~*generally* ORS 19.370(5) to (7). *See also*~~ ORAP 3.10(1) regarding the trial court administrator's duty to transmit ~~send~~ to the Administrator a copy of the order settling the transcript.

Rule 4.15
FORM, CONTENT, AND SERVICE OF PETITION FOR JUDICIAL REVIEW

(1) A petition for judicial review shall be typewritten, double-spaced, and substantially in the form illustrated in Appendix 4.15-1 or Appendix 4.15-2 and must contain:

(a) The title as it was before the agency to the extent possible. The title shall include the names of the parties to the proceeding regardless of whether the title of the agency proceeding included the names of the parties. The title also shall include the agency if the agency is a party to the judicial review. The title must indicate the designations of the parties before the appellate court (*e.g.*, petitioner, respondent, cross-petitioner, cross-respondent). If a party from the agency proceeding is not named as a party before the appellate court, the title shall indicate the party's agency designation, if any, followed by "below."[1]

(b) A designation of the parties in the judicial review proceeding before the appellate court, including their positions in the appellate court proceeding (*e.g.*, petitioner, respondent).

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

(d) A self-represented party who consents to service of the agency record by optical disk[2] or SFTP as provided in ORAP 4.20 must so state in the petition for judicial review and provide the party's e-mail address in the petition.[3] At any time before the agency transmits the record to the court, a self-represented party who has consented to service of the agency record by electronic means may revoke that consent by notifying the court and the agency. A self-represented party who has provided the court and the state agency with an e-mail address under this paragraph must notify the court and the agency of a change of e-mail address.

(ed) A statement whether the petitioner is willing to stipulate that the agency record may be shortened. If the petitioner is willing to shorten the record, the petition shall designate the part of the record to be included in the record. Under ORS 183.482(4), the court may tax the cost of preparing the whole or any part of the record, including the transcript, against any party unreasonably refusing to stipulate to limit the record.

(2) Only the original need be filed. The petition shall be accompanied by a copy of the order, rule, or ruling for which judicial review is sought.

(3) The petition shall show proof of service on:

(a) the agency whose order, rule, or ruling is involved (unless the agency is the petitioner), even if the agency is not a party;

(b) the Attorney General, even if the agency is not a party.[42] In a workers'

compensation case, only if the State Accident Insurance Fund is a party to the case and is representing a state agency, the petition shall show proof of service on the Attorney General;

(c) all other parties of record in the proceeding; and

(d) any other person required by law to be served.[3~~5~~]

(4) The petition shall include a certificate of filing specifying the date the petition for judicial review was filed with the Administrator.

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

[2] *See* ORAP 1.15(3)(s) for a definition of "optical disk."

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

[4~~2~~] *See* footnote 2 to ORAP 1.35 for the service address of the Attorney General.

[5~~3~~] Nothing in ORAP 4.15(3) shall be construed to require service of briefs on an agency or the Attorney General. For requirements governing the service of briefs, *see* ORAP 5.05(5) ~~ORAP 5.10(3)~~ and ORAP 5.12.

See ORS 183.482 for additional requirements respecting the contents of a petition for judicial review and service requirements; ORS 656.298 (same for workers' compensation cases).

Rule 4.20
RECORD ON JUDICIAL REVIEW

(1) As used in this rule:

(a) "Agency" means any state agency whose decision is the subject of a petition for judicial review filed in the Supreme Court or Court of Appeals, or the Oregon State Bar or Board of Bar Examiners in a proceeding under ORAP 11.25.

(b) "Agency record" means the record before the state agency, including the agency file, exhibits offered and received (or the subject of an offer of proof), and the transcript of oral proceedings, or the shortened part of the record if the parties have so stipulated pursuant to ORS 183.482(4), regardless of whether the agency actually conducted a hearing.

(c) "Each party" may mean multiple parties if two or more parties are represented by the same attorney or law firm.

(d) "Electronic means" means optical disk[1] or Secure File Transfer Protocol, or other similar electronic medium if approved by the Administrator.

(e) "Instructions" means the instructions, located on the Oregon Judicial Department website, for filing and serving the agency record via Secure File Transfer Protocol by electronic means.[2]

(f) "SFTP" means Secure File Transfer Protocol.

(2) Transmitting Agency Record to Appellate Court. The agency may transmit the agency record to the Administrator conventionally in paper form, by optical disk, or by Secure File Transfer Protocol (SFTP), as provided in this rule.

(3) Service Generally

(a) On the same date the agency transmits the agency record to the Administrator, the agency must serve a copy of the record on each other party to the judicial review. The agency may serve the party conventionally in paper form, by optical disk, or by Secure File Transfer Protocol (SFTP), as provided in this subsection.

(b) Service on Party Represented by Attorney. If the agency transmits the record to the Administrator by optical disk or SFTP, the agency must serve a copy of the record on any party represented by an attorney, including an out-of-state attorney admitted *pro hac vice*, by the same means unless the attorney has made arrangements with the agency for service by other means.

(c) Service on Self-Represented Party.

(i) The agency may serve the record on a self-represented party conventionally in paper form or by optical disk.

(ii) The agency may serve the record on a self-represented party by SFTP, if the party has stated the party's willingness to be served by SFTP as provided in ORAP 4.15(1)(d) or if the agency otherwise has obtained the party's consent to be served by SFTP.

(iii) If the agency serves a self-represented party by optical disk or SFTP, the agency must notify the party that, if the party is unable to access the record, the party must notify the agency within 14 days of receipt, with contact information for the agency.[3] If a party so notifies the agency, the agency must serve the record on the party conventionally in paper form within seven days.

(d) If the record includes one or more confidential documents* as defined in ORAP 3.07, the agency must serve the parties with a copy of the confidential document. If the record includes one or more sealed documents as defined in ORAP 3.07, the

agency must not serve a copy of the sealed document on the parties.

(e) The agency must accompany the record as transmitted to the court with proof of service of the record on each party, stating the manner in which each party was served.

(4) Preparation of the Record Generally

(a) (i) If a state agency has its own process for preparing the record, including any transcript, for use by the agency or tribunal and the form of the record substantially complies with this rule, the agency may submit the record in that form, subject to this rule.

(ii) As provided in ORS 656.298(6), the record on judicial review in a workers' compensation case includes the transcript prepared under ORS 656.295, all exhibits, and all decisions and orders entered during the hearing and review process.

(b) Agency file. The agency may prepare the agency file either with the first filed document on top (or in front) or the last filed document on top (or in front). If the agency is submitting the record in paper form, the pages of the agency file and the exhibits must be consecutively numbered at the bottom of each page.

(c) Exhibits.

(i) Except as provided in this paragraph, the agency must transmit all exhibits offered and received, including any exhibit that is the subject of an offer of proof. If the agency is transmitting the exhibits by electronic means, the agency must identify each disk or electronic file containing exhibits as provided in the Instructions.

(ii) Except as provided in clause (iii) of this paragraph, if the exhibits include any nondocumentary exhibit, the agency must conventionally transmit the exhibit.

(iii) If the exhibits include an audio or video recording on an optical disk, the agency must transmit the disk as part of the exhibits. If the exhibits include one or more audio or video tape recordings, unless a party objects, the agency may copy the recording to an optical disk and transmit the optical disk in lieu of the tape recording. A party may move the court to supplement the record on judicial review with a transcript of any audio or video recording, to be prepared at the party’s expense.

(d) Transcript. If the agency is submitting the record in paper form, the transcript must be prepared as provided in ORAP 3.35(1). If the agency is submitting the record by electronic means, the agency must comply with ORAP 3.35(2)(a), (b), and (d).

(e) Indexing. The record must be indexed. The index for the record must identify each document in the agency file, each volume of transcript, and each exhibit. If the agency is transmitting the record by electronic means, each document identified in an index must be electronically linked to the document. If the agency is transmitting the record by optical disk and the record requires more than one disk, the second and any subsequent disk must have a sub-index of the documents on that disk, with electronic links to each document on the disk.

(f) The agency must assemble the record in this order: The agency file, the parties' exhibits, and any transcript.

(g) If the agency is transmitting the record in paper form, the agency must securely fashion the index and record in a suitable cover or folder showing on the outside the case name and the agency name and case number. If the agency is transmitting the record by electronic means, the agency must submit the record as provided in the Instructions.

(5) Confidential and Sealed Documents

(a) If the record contains a confidential or sealed document* as defined in ORAP 3.07, the agency must place the document in an envelope (if the record is being transmitted conventionally) or in a separate electronic file as provided in the Instructions (if the record is transmitted by electronic means). If the record includes multiple confidential documents, the agency may place all confidential documents in the same envelope or electronic file. If the agency record includes multiple sealed documents, the agency must place each sealed document in a separate envelope or electronic file.

(b) An envelope containing a sealed or confidential document must indicate on the outside of the envelope the case name, the agency name and case number, and that it contains a sealed or confidential document. An electronic file containing a sealed or confidential document must be labelled as provided in the Instructions.

(c) If the agency is transmitting the record by optical disk, all confidential documents must be placed on a separate disk labelled as provided in the Instructions and each sealed document must be transmitted by a separate disk. If the agency is transmitting the record by SFTP, any sealed document must be transmitted by either optical disk or in paper form.

(6) Transmitting the Record in Paper Form. If agency transmits and serves the record in paper form, the record must have a suitable cover or folder bearing on the outside the title and agency number of the case and the name of the agency from which the review is taken. Whenever feasible, the agency must submit the original record. The agency's transmission and service of the record in paper form qualifies as transmission of the record within the meaning of ORS 183.482(4).

(7) Preparing and Transmitting the Record by Electronic Means.

(a) If the agency transmits the record by electronic means, the agency must prepare the record as provided in the Instructions.

(b) The following qualifies as transmission of the record to the Administrator within the meaning of ORS 183.482(4):

(i) Delivery of the record in optical disk form to the Administrator for filing as provided in the Instructions; or

(ii) Uploading the agency record to the Judicial Department's SFTP site as provided in the Instructions, together with notification to the Administrator that the upload is complete, as provided in the Instructions.

(c) The following qualifies as service of the record on a party to the judicial review, as provided in subsection (3):

(i) Delivery of the record in conventional paper form to the party;

(ii) Delivery of the record in optical disk form to the party; or

(iii) Uploading the record to the Judicial Department's SFTP site as provided in the Instructions and providing notification to the other party that the upload is complete. The record will remain on the SFTP site for 21 days to allow a party being served by SFTP to retrieve the record and copy it to a suitable location on the party's computer.

(8) Transmitting and Serving Corrected or Additional Agency Record

(a) The agency's initial transmission of the record to the Administrator and service on the parties to a judicial review triggers the 15-day period under ORAP 4.22(1) to move to correct or add to the transcript or to correct the record other than the transcript.

(b) The record is deemed settled upon exhaustion of the opportunity to move to correct or add to the transcript or to correct the record other than the transcript and to obtain appellate court review of the agency's disposition of such a motion as provided in ORAP 4.22.

(c) If the agency or the court corrects or adds to any part of the record, the agency must transmit to the Administrator and serve on the parties the corrected or additional part of the record by one of the methods prescribed in this rule.

(d) The Administrator will notify the parties when the Administrator determines that the record is settled.

(9) Modified Record After Court Grants Leave to Present Additional Evidence

If the appellate court grants a party's motion under ORS 183.482(5) for leave to present additional evidence, following proceedings before the agency, the agency must transmit to the Administrator and serve on the parties any additional record by one of the methods prescribed in this rule.

(10) Disposition of Agency Record upon Issuance of Appellate Judgment

(a) If the agency transmitted the record to the Administrator in paper form, unless the court directs otherwise, when the Administrator issues the appellate judgment, the Administrator will return the record to the agency.

(b) If agency transmitted the record to the Administrator by electronic means, the Administrator issues the appellate judgment, the Administrator will not return the agency record to the agency. The Administrator will retain the electronic record for at least six months; thereafter, unless the court grants a party's request to retain the agency record longer, the Administrator may delete the record from computer storage.

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

[2] The Instructions are published at: [Insert URL for OJD website where the Instructions are located.]

[3] As provided in the SFTP Instructions, the agency will e-mail notice to any party being served with the record by SFTP when the record is ready to be downloaded. The Instructions describe how to access the SFTP website and download the record.

* "Document" as used here means a document in the agency file, an exhibit, or any part of the transcript of oral proceedings that the administrative law judge, agency, or court has ordered to be treated as confidential or sealed.

~~(1) The agency shall transmit to the appellate court the record, including a transcription of the proceedings or the stipulated part thereof if the parties have stipulated to shorten the record pursuant to ORS 183.482(4).~~

~~(2) The record shall be filed within the 30 days or such further time allowed by the court as provided in ORS 183.482(4) or other controlling statute. The record shall be accompanied by proof of service of copies of the record, except exhibits, on all other parties of record in the agency proceeding and on any other person required by law to be served.~~

~~(3) The record shall be prepared in the manner provided by ORAP 3.20(1) and transmitted in a suitable cover or folder bearing on the outside the title and agency number of the~~

~~case and the name of the agency from which the review is taken. Whenever feasible, the original record shall be transmitted. Notwithstanding ORAP 3.20(2), the agency may prepare the record either with the first filed document on top or the last filed document on top. Each document shall be separately indexed. Pages shall be consecutively numbered at the bottom of the page, commencing with the first page of the file if the first filed document is on top or with the bottom page of the file if the last filed document is on top. Notwithstanding ORAP 3.35(1)(b), any transcript of oral proceedings prepared for use by the administrative agency or tribunal and printed on only one side of each page is acceptable on judicial review.~~

~~(4) After the court has issued its appellate judgment,[1] the record will be returned to the agency unless the court otherwise directs.~~

~~(5) The record on judicial review in workers' compensation cases shall be prepared and filed in the manner prescribed in ORS 656.298(6) and this rule.~~

~~[1] *See* ORAP 14.05.~~

Rule 4.22
CORRECTING THE RECORD ON JUDICIAL REVIEW

Unless a statute prescribes a different procedure in particular cases, the record on direct judicial review of an agency order shall be corrected or added to as follows:

(1) Within 15 days after the agency files the record of agency proceedings, or such further time as may be allowed by the court, any party may file with the agency a motion:

(a) To correct any errors appearing in the transcript or to have additional parts of the proceedings transcribed, if the record includes a transcript.

(b) To correct the record, other than the transcript, by removing material appearing in the agency record as filed that was not made part of the record before the agency, or by adding material that was made part of the record before the agency but was omitted from the record as filed. This paragraph does not authorize supplementing the record on judicial review with evidence that never was part of the record before the agency.[1]

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

(3) The agency shall file with the court a copy of its order disposing of the motion to correct the record or to correct or add to the transcript. If the agency grants the motion in whole or in part, the agency shall serve on the adverse party or parties and file with the court a corrected record, a corrected transcript, or an additional transcript, as appropriate. When the

agency files a corrected record or transcript, in the discretion of the agency, the agency may serve and file only those pages as have been corrected.

~~(4) When the agency has filed its order disposing of a motion to correct the record or the transcript and, if the agency granted the motion in whole or in part, the corrected record or transcript, the record shall be deemed settled and the time for filing petitioner's opening brief shall begin.~~

(4~~5~~) Any party aggrieved by the agency's disposition of a motion to correct the record or to correct or add to the transcript, may request, by motion filed within 14 days after the date of filing of the agency's disposition, that the court review the agency's disposition. The motion shall be captioned "In the Court of Appeals of the State of Oregon" or "In the Supreme Court of the State of Oregon," as appropriate, and shall be entitled "Motion for Review of Agency Order Under ORAP 4.22."

(5~~6~~) (a) If no party files a motion to correct the record or correct or add to the transcript ~~is filed~~, the court will deem the record ~~shall be deemed~~ settled 15 days after it is filed, and the period for filing the petitioner's opening brief shall begin the next day.

(b) If a party files a motion to correct the record or correct or add to the transcript and the agency grants the motion in its entirety, the court will deem the agency record settled on the agency filing its order.

(c) If a party files a motion to correct the record or correct or add to the transcript and the agency denies the motion in whole or in part, the court will deem the agency record settled:

(i) On expiration of the time under subsection (4) of this rule to move for review of the agency's order or

(ii) If the party moves for review under subsection (4), on the court's disposition of the motion for review.

(d) On the record settling as provided in paragraphs (b) and (c) of this subsection, the court will notify the parties that the record is settled and that the period for filing the petitioner's brief has begun.

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[1] *See* ORS 183.482(5) regarding an application for leave to present additional evidence that was never part of the record before the agency in the proceeding.

See ORS 183.482(4) regarding correcting the record on judicial review of orders in contested cases: "* * * The court may require or permit subsequent corrections or additions to the record when deemed desirable. * * *"

Rule 4.64
RECORD ON JUDICIAL REVIEW

(1) The agency must prepare, transmit, and serve the agency record as provided in ORAP 4.20. ~~The agency shall transmit to the Court of Appeals the record, or the agreed part thereof if the parties have stipulated to shorten the record, as provided in paragraphs (a), (b), or (c) of this subsection, as appropriate. The record shall be accompanied by proof of service of copies of the record, on all other parties of record in the proceeding and on any other person required by law to be served.~~

~~(a) LUBA or the ERRC shall transmit the record in the manner and within the seven days allowed by ORS 197.850(5).~~

~~(b) The LCDC shall transmit the record in the manner and within the 21 days allowed by ORS 197.651(6).~~

~~(c) The CRGC shall transmit the record in the manner and within the 21 days allowed by ORS 196.115(3)(b)(A).~~

(2) The cover or folder for a record transmitted in paper form, and each disk for a record transmitted in optical disk form, and each electronic folder transmitted by electronic means, must be labelled to show the case title and agency number and identify it as a LUBA, LCDC, CRGC, or ERRC case, as appropriate. ~~The record shall be transmitted in a suitable cover or folder bearing on the outside the title and agency number of the case and clearly identifying it as a LUBA, LCDC, CRGC, or ERRC case, as appropriate. Whenever feasible, the original record shall be transmitted. The record shall be prepared in the manner required by ORAP 3.20.~~

(3) After the Administrator issues ~~court has issued~~ the appellate judgment, the Administrator will dispose of the record as provided in ORAP 4.20(10). ~~record will be returned to the agency, unless the court otherwise directs.~~

Rule 5.05
SPECIFICATIONS FOR BRIEFS

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

(b) (i) In the Supreme Court:

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

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

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

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

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

(ii) In the Court of Appeals:

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

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

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

(D) A combined cross-respondent's answering brief and appellant's reply brief may not exceed 10,000 words, with the reply brief part of the combined brief limited to 3,300 words.

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

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

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

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

(1)(c) of this subsection.

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

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

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

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

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

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

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

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

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

(b) Legibility and Readability Requirements

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

(ii) Briefs must ~~may~~ be prepared using ~~either monospaced type (such as Courier or Courier New) or~~ proportionally spaced type. ~~(such as Times New Roman). Monospaced type may not exceed 10 characters per inch (cpi) for both the text of the brief and footnotes. If proportionally spaced type is used, t~~The style must be Arial, Times New Roman, or Century Schoolbook. ~~, and t~~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 ~~and must not contain~~ 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 7.25 and ORAP 1.45(b) regarding use of recycled paper and printing on both sides of a page.

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

See Appendix 5.05-1.

~~**Rule 5.10**~~
~~**NUMBER OF COPIES OF BRIEFS;**~~
~~**PROOF OF SERVICE**~~

~~(1) Any party filing a brief on appeal or on judicial review in the Court of Appeals shall file with the Administrator* one brief.~~

~~(2) Any party filing a brief on appeal, judicial review, or other proceeding originally heard in the Supreme Court[1] shall file with the Administrator* one brief.~~

~~(3) Any party filing a brief shall serve two copies of the brief on every other party to the appeal, judicial review, or proceeding.~~

~~(4) The original brief shall contain proof of service on all other parties to the appeal. The proof of service shall be the last page of the brief or printed on or affixed to the inside of the back cover of the brief.~~

~~[1] For example, appeals from the Tax Court, judicial review of orders of the Energy Facility Siting Council relating to site certificate applications, bar admission, and disciplinary proceedings and original jurisdiction cases under Article VII (Amended), section 2, of the Oregon Constitution.~~

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

Rule 5.20
REFERENCE TO EVIDENCE
AND EXHIBITS; CITATION OF AUTHORITIES

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

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

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

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

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

(4~~3~~) The following abbreviations may be used:

"P Tr" for pretrial transcript;

"Tr" for transcript;

"Nar St" for narrative statement;

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

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

"PAR" for pretrial audio record;

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

"TCF" for trial court file;

"Rec" for record in judicial review proceedings only;

"Ex" for exhibit.

Other abbreviations may be used if explained.

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

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

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[1] Copies of the Oregon Appellate Courts Style Manual may be obtained from the Publications Section of the Office of the State Court Administrator, 1163 State Street, Salem, Oregon 97301-2563; (503) 986-5656; the Style Manual also is published on the Judicial Department's website at: [insert URL].

Rule 5.55
RESPONDENT'S ANSWERING BRIEF

(1) (a) The respondent's answering brief must ~~shall~~ follow the form prescribed for the appellant's opening brief, omitting repetition of the verbatim parts of the record in appellant's assignments of error. ~~It shall contain a concise answer to each of the appellant's assignments of error preceding respondent's own argument as to each.~~

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

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

(3) If a cross-appeal is abandoned, the respondent shall immediately notify the appellate court in writing and, if notice has not been given previously, the respondent shall notify the court of the abandonment when the respondent's answering brief is filed, in writing and separately from the brief.

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

Rule 5.92
SUPPLEMENTAL *PRO SE* BRIEFS

(1) When a client is represented by court-appointed counsel and the client is dissatisfied with the brief that counsel has filed, within 28 days after the filing of the brief, either the client or counsel may move the court for leave to file a supplemental *pro se* brief.[1] If the client files the motion, in addition to serving all other parties to the case, the client shall serve counsel with a copy of the motion. If counsel files the motion, in addition to serving all other parties to the case, counsel shall serve the client with a copy of the motion. Whoever files the motion may tender the proposed supplemental *pro se* brief along with the motion.

(2) The client shall attempt to prepare a supplemental *pro se* brief as nearly as practicable in proper appellate brief form. The brief shall identify questions or issues to be decided on appeal as assignments of error identifying precisely the legal, procedural, factual, or other ruling that is being challenged.[2] The last page of the brief shall contain the name and signature of the client. Unless the court orders otherwise, the statement of the case, including the statement of facts, and the argument together shall be limited to five pages.

(3) If the supplemental *pro se* brief includes an excerpt of record, the excerpt must contain only the information included in ORAP 5.50(2),[3] and only if that material is not included in the appellant's opening brief. If the supplemental *pro se* brief includes an appendix, it must comply with the appendix rules in ORAP 5.52 and shall not contain any confidential material.

(4~~3~~) A supplemental *pro se* brief is the client's product; therefore, if the client requests assistance in preparing the brief, counsel's obligation shall be limited to correcting obvious typographical errors, preparing copies of the brief, serving the appropriate parties, and filing the original brief with the court. If the client prepares and files the brief without the assistance of counsel, in addition to serving all other parties to the appeal, the client shall serve a copy of the brief on counsel.

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[1] "*Pro se*" means "for oneself" or "on one's own behalf." A supplemental *pro se* brief is the product of the party himself or herself, and not of the attorney representing the party.

[2] *See* ORAP 5.45, which describes requirements for assignments of error and argument.

[3] *See* ORAP 5.50(2) (indicating that an excerpt of record must contain "[t]he judgment or order on appeal or judicial review" and "[a]ny written or oral rulings by the lower tribunal or agency addressing the issues presented by the assignments of error").

Rule 5.95
BRIEFS CONTAINING CONFIDENTIAL MATERIAL

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

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

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

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

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

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

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

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

(6) Briefs in the following categories of cases are entirely confidential, and so are exempt from the requirements of subsections (1) to (5) of this rule: adoption, juvenile dependency (including termination of parental rights), juvenile delinquency, civil commitment of allegedly mentally ill persons and persons with an intellectual disability (as 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) ~~ORAP 5.10(1) and (3)~~ regarding the original and number of copies to be served on other parties to the case.

[1] *See, e.g.*, ORS 36.222(5) regarding confidential mediation communications and agreements; ORS 135.139, ORS 433.045(3), and ORS 433.055 regarding records revealing HIV testing information; ORS 137.077 regarding presentence investigation reports; ORS 179.495 and ORS 179.505 regarding medical records maintained by state institutions; ORS 412.094 regarding nonsupport investigation records; ORS 419B.035 regarding abuse investigation records; ORS 426.160 and ORS 426.370 regarding records in civil commitment cases; and ORS 430.399(5) regarding alcohol and drug abuse records.

* *See* Appendix 5.95.

Rule 6.15
PROCEDURE AT ORAL ARGUMENT

(1) In all cases in the Supreme Court:

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

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

(c) If there are two or more parties on one side, they shall divide their allotted time among themselves, unless the court orders otherwise.

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

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

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

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

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

(6) It is the general policy of Oregon appellate courts to prohibit reference at oral argument to any authority not cited either in a brief or in a pre-argument memorandum of additional authorities.[1] If a party intends to refer in oral argument to an authority not previously

cited, counsel shall inform the court at the time of argument and shall make a good faith effort to inform opposing counsel of the authority at the earliest practicable time. The court may, in its discretion, permit reference at argument to that authority and may give other parties leave to file a post-argument memorandum of additional authorities or a memorandum in response.

(7) ~~The Court of Appeals encourages any party who is aware of another case pending under advisement in the Court of Appeals raising the same or a similar issue as the case being argued to bring that fact to the attention of the court at oral argument, or in writing after oral argument or after submission without oral argument.~~

~~(8)~~ If counsel desires to have present at oral argument an exhibit that has been retained by the trial court, it is counsel's responsibility to arrange to have the exhibit transmitted to the appellate court.[2]

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

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

Rule 7.10
PREPARATION, FILING,
AND SERVICE OF MOTIONS

~~(1) A motion or a response to a motion shall be on 8-1/2 x 11 inch white paper, printed or typewritten, double-spaced, and securely fastened in the upper left-hand corner with a single staple. A motion or response may be prepared using either uniformly spaced type (such as produced by typewriters) or proportionally spaced type (such as produced by commercial printers and many computer printers). Uniformly spaced type shall not exceed 10 characters per inch (cpi) for both the text of the brief and footnotes. If proportionally spaced type is used, it shall not be smaller than 13 point for both the text of the motion or response and footnotes. Any supporting legal analysis must be incorporated into the motion or response and not set out as a separate memorandum of law. The first page of the motion or response shall contain the following information:~~

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

(1) (a~~b~~) For a motion other than a motion for extension of time, a title designating the party filing the motion and one of the motion titles listed in the "Motion Titles" section of Appendix 7.10-1.[1] For example, the motion of a respondent on appeal to dismiss the appeal for lack of jurisdiction should be titled "Respondent's Motion–Dismiss - Non-Appellant/Non-Petitioner" and the motion of the state for summary affirmance should be titled "Respondent's Motion–Summary Affirmance." If more than one motion is contained in a single document, the title of each motion shall be listed. If none of the

motion titles listed in Appendix 7.10-1 fairly describes the motion, select the title option of "Motion–Other" and add a title that accurately describes the motion. "Motion–Other" should be used only in circumstances in which the party has carefully reviewed the motion titles listed in Appendix 7.10-1 and does not find a title that describes the motion; or

(be) (i) For a motion for extension of time (MOET), a title designating the party filing the motion for extension of time and one of the MOET titles listed in the "Motions for Extension of Time (MOET)" section of Appendix 7.10-1. For example, the motion of an appellant for an extension of time to file the opening brief should be titled "Appellant's MOET–File Opening Brief." If more than one motion for extension of time is contained in a single document, or if a motion for extension of time is contained in a single document with another motion, the title of each MOET and/or motion shall be listed. If none of the MOET titles listed in Appendix 7.10-1 fairly describes the motion for extension of time, select the title option of "MOET–Other" and add a title that accurately describes the motion. "MOET–Other" should be used only in circumstances in which the party has carefully reviewed the MOET titles listed in Appendix 7.10-1 and does not find a title that describes the motion for extension of time; or

(iid) For a response to a motion or motion for extension of time (MOET), an indication that the filing is a response using the title of the motion or MOET to which the filing responds. For example, the response to a respondent's motion for summary affirmance should be titled "Response to Respondent's Motion–Summary Affirmance" and the response to an appellant's motion for extension of time to file the opening brief should be titled "Response to Appellant's MOET–File Opening Brief."

(2) A motion or response, excluding appendices or exhibits, longer than 20 pages shall contain an index of contents, an index of appendices or exhibits, and an index of authorities, each with page references.[2]

~~(3) A moving or responding party shall file with the Administrator the original motion or response with proof of service.~~

(34) Any party filing a motion to dismiss before the transcript has been filed shall serve a copy of the motion on the transcript coordinator and, if known to the party filing the motion to dismiss, all court reporters and transcribers who are responsible for preparing all or any part of the transcript on appeal.

(45) If a party files a motion for leave to file another document and submits the other document with the motion, then:

(a) if the court grants the motion, the date of filing for the other document relates back to the date of filing for the motion; or

(b) if the court denies the motion, the court will strike the other document.

(5~~6~~) A motion or response that is confidential, filed under seal, or otherwise exempt from disclosure[3] must include:

(a) in the caption, prominently displayed, the words "Confidential" or "Sealed," as applicable; and

(b) in the motion or response, a statement citing the authority by which the motion is deemed confidential, sealed, or otherwise exempt from disclosure.

(6~~7~~) A motion or response that includes an attachment consisting of material that is confidential, sealed, or otherwise exempt from disclosure[4] must comply with the requirements of ORAP 8.52.

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[1] A party's use of the motion titles listed in Appendix 7.10-1 assists the appellate courts in characterizing a motion in their case management system and in displaying a case register that more clearly indicates the filing and resolution of the motion.

[2] *See* ORAP 5.35(3).

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

[4] *See* footnote 3 to subsection (5~~6~~) of this rule.

See Appendix 7.10-2 for illustrations of motion title designations and Appendix 7.10-3 for illustrations of motions for extension of time title designations.

Rule 7.25
MOTION FOR EXTENSION OF TIME

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

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

(a) The date the notice of appeal was filed (or in the case of a petition for

review, the ;

(b) The date of the decision of the Court of Appeals for which review is being sought);

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

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

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

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

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

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

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

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

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

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

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

Rule 7.55
COURT OF APPEALS
APPELLATE COMMISSIONER

(1) Except as otherwise provided in subsection (2) of this rule, the appellate commissioner for the Court of Appeals is delegated concurrent authority to decide motions and own motion matters that otherwise may be decided by the Chief Judge under ORS 2.570(6).[1] The appellate commissioner is delegated concurrent authority to decide any other matter that the Court of Appeals or Chief Judge lawfully may delegate for decision.

(2) The appellate commissioner does not have authority to decide a motion that would result in the disposition of a case on its merits, except as to:

(a) A joint or stipulated motion for a disposition on the merits, where the relief granted is consistent with the relief sought in the motion.

(b) Except as provided in paragraph(c) of this subsection, a motion to reverse and remand for new trial under ORS 19.420(3) due to loss or destruction of the trial court record.

(c) A motion for summary affirmance to the same extent that the Chief Judge could decide the motion under ORS 30.647(3), ORS 34.712, ORS 138.225, ORS 138.660, ORS 144.335(6), or any other statute authorizing summary affirmance.

(3) The appellate commissioner shall have the authority to refer any matter to the Chief Judge or the Motions Department, as appropriate.

(4) (a) A party may seek reconsideration of a decision of the appellate commissioner as provided by ORAP 6.25, with the exceptions that

(i) the provision of ORAP 6.25(1)(e) disfavoring claims addressing legal issues already argued by the parties or addressed by the court shall not apply to petitions or motions for reconsideration of a decision of the appellate commissioner, and

(ii) only the original of the petition must be filed.

(b) If a party files a petition or motion for reconsideration of a ruling by the appellate commissioner, the appellate commissioner may consider the matter in the first instance. The appellate commissioner shall have the authority to grant a request for reconsideration and modify or reverse the result. However, if the appellate commissioner would deny the request or grant the request and affirm the result, the commissioner shall forward the request to the Chief Judge or the Motions Department, as appropriate, for decision.

(c) Except as provided in paragraph (d~~e~~) of this subsection, a decision of the

appellate commissioner is not subject to a petition for review in the Supreme Court, but the decision of the Chief Judge or the Motions Department on reconsideration of a ruling of the appellate commissioner is subject to a petition for review. ORAP 6.25(3) is not applicable to a ruling of the appellate commissioner.

(d) When the appellate commissioner makes a determination of appealability under ORS 19.235(3) and designates it as a summary determination as provided in ORAP 2.35(3)(a), the appellate commissioner's order is subject to a petition for review in the Supreme Court.

(5) As used in this rule, "own motion matter" includes but is not limited to an order to show cause why a case should not be dismissed for lack of jurisdiction or for lack of prosecution, an order of dismissal for lack of jurisdiction or lack of prosecution where the court has raised the ground for dismissal on its own motion, and an order for substitution of a public officer who is a party to the case where a new person has duly assumed the public office.

(6) As used in these rules, "Motions Department" means the Court of Appeals Motions Department.

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[1] The Chief Judge of the Court of Appeals established the Appellate Commissioner Program by Chief Judge Order No. 08-04, dated March 5, 2008. The order may be viewed on the Oregon Judicial Department's website at *http://www.publications.ojd.state.or.us/CJOrder0804.pdf*.

Rule 8.15
AMICUS CURIAE

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

(a) state whether the applicant intends to present a private interest of its own or to present a position as to the correct rule of law that does not affect a private interest of its own;

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

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

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

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

(2) The application shall be submitted by an active member of the Oregon State Bar.

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

(3) In the Court of Appeals, the application to appear *amicus curiae* may, but need not, be accompanied by the brief the applicant would file if permitted to appear. In the Supreme Court, the application shall be accompanied by the brief sought to be filed. The form of an *amicus* brief ~~and the number of copies of the brief~~ shall be subject to the same rules as those governing briefs of parties.[2] If, consistently with this rule, a brief is submitted with the application, then:

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

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

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

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

(a) A person wishing to appear *amicus curiae* may seek to appear in support of or in opposition to a petition for review, on the merits of the case on review, or both.

(b) Unless the court grants leave otherwise for good cause shown, an application to appear *amicus curiae* in support of or in opposition to a petition for review shall be filed within 14 days after the filing of a petition for review.

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

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

(ii) On the date the petitioner's brief on the merits on review is due, if *amicus curiae* is not aligned with any party on review,[3] or

(iii) Within 28 days after review is allowed, if petitioner on review has filed a notice that petitioner does not intend to file a brief on the merits or has filed no notice, regardless of the alignment of *amicus curiae*.

(d) If a person filing an application to appear *amicus curiae* wishes to file one brief in support of or in opposition to a petition for review and on the merits of the case,

the application and brief shall be filed within the same time that an application to appear in support of or in opposition to a petition for review would be filed. If a person has been granted permission to appear *amicus curiae* in support of or in opposition to a petition for review and the Supreme Court allows review, the person may file an *amicus curiae* brief on the merits without further leave of the court.

(e) If a party obtains an extension of time to file a petition for review, a response to a petition for review or a brief on the merits and if an *amicus curiae* brief was due on the same date as the petition, response or brief on the merits, the time for filing the *amicus curiae* brief is automatically extended to the same date.

(6) Except as provided in ORAP 11.30(7), with respect to cases in the Supreme Court on direct review or direct appeal, or other proceedings not subject to subsection (5), *amicus curiae* briefs shall be due as provided in subsection (4) of this rule.

(7) *Amicus curiae* may file a memorandum of additional authorities under the same circumstances that a party could file a memorandum of additional authorities under ORAP 5.85.

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

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

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

[2] *See* ORAP 5.05 to 5.30, ORAP 5.52, ORAP 5.77, ORAP 5.95, ORAP 9.05, ORAP 9.10, and ORAP 9.17 concerning requirements for briefs.

[3] *See* ORAP 9.17 concerning the due dates of briefs on review.

[4] *See* ORAP 6.10 concerning oral argument.

Rule 8.47
NOTIFICATION OF RELATED CASES

When a party files a brief in the Court of Appeals, if the party is aware of another case pending in an appellate court that arises out of the same case or consolidated case, or that involves the same transaction or event, the party must file a notice with the Court of Appeals identifying the related case by case title and appellate case number. The notice must be a separate document from the party's brief. A party may likewise notify the Court of Appeals if

the party is aware of another case pending in an appellate court that raises the same or a closely related issue. A party need not notify the Court of Appeals of a related case if another party has already done so.

Rule 9.05
PETITION FOR SUPREME COURT REVIEW OF COURT OF APPEALS DECISION

(1) Reviewable Decisions

As used in this rule, "decision" means a decision of the Court of Appeals in the form of an opinion, per curiam opinion, or affirmance without opinion, or an order ruling on a motion, own motion matter, petition for attorney fees, or statement of costs and disbursements, including an order of the appellate commissioner together with the decision of the Chief Judge or Motions Department under ORAP 7.55(4)(cb) or an order of the appellate commissioner under ORAP 7.55(4)(dc).

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

(a) Except as provided in ORS 19.235(3) and ORAP 2.35(4), any party seeking to obtain review of a decision of the Court of Appeals shall file a petition for review in the Supreme Court within 35 days after the date of the decision of the Court of Appeals.[1] The Supreme Court may grant an extension of time to file a petition for review.

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

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

(iii) If a petition for review is filed after the filing of a timely petition for reconsideration, the petition for review will not be submitted to the Supreme Court until the Court of Appeals issues its written disposition of the petition for reconsideration.[2]

(c) (i) If a party files a petition for review after the appellate judgment has issued, the party must file with the petition a motion to recall the appellate

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

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

(3) Form and Service of Petition for Review

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

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

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

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

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

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

(B) If by per curiam opinion, affirmance without opinion, or by order, the members of the court who decided the case.[3]

(v) Contain a notice whether, if review is allowed, the petitioner on review intends to file a brief on the merits or to rely on the petition for review and brief or briefs filed in the Court of Appeals.[4]

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

(vii) Comply with the requirements in ORAP 5.95 governing briefs

containing confidential material.

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

(4) Contents of Petition for Review

The petition shall contain in order:

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

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

(c) A statement of specific reasons why the legal question or questions presented on review have importance beyond the particular case and require decision by the Supreme Court.[5]

(d) If desired, and space permitting, a brief argument concerning the legal question or questions presented on review.

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

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

[3] *See* Appendix 9.05.

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

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

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

Rule 9.17
BRIEFS ON THE MERITS ON REVIEW

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

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

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

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

(ii) A concise statement of:

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

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

(iii) A summary of the argument.

(iv) The argument.

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

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

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

(i) If petitioner files a brief on the merits on review, respondent's brief

on the merits on review is due within 28 days thereafter;

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

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

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

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

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

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

~~(6) The original shall be filed with the Administrator, together with proof of service. Two copies of the brief shall be served on each party to the review.~~

Rule 11.05
MANDAMUS:
INITIATING A MANDAMUS PROCEEDING

(1) A party seeking a writ of mandamus in the Supreme Court shall apply by filing a petition substantially in the form prescribed by this rule.

(2) Except as otherwise provided in this rule, a petition for writ of mandamus shall comply as to form with ORAP 5.05(3)~~(4)(c) through (h)~~. The petition shall also include, in addition to any matters required by law:

(a) A title page including a caption containing the title of the proceeding, a heading indicating the type of writ requested (*e.g.*, "petition for alternative writ of mandamus," "petition for peremptory writ of mandamus"), and, if the mandamus proceeding arises from a matter before a lower court or administrative agency, the

identifying number, if any, assigned to the matter below.

(i) In a mandamus proceeding that challenges the action of a judge in a particular case in the circuit court, the Tax Court, or the Court of Appeals, the case title of the proceeding shall be the same as the case title in the lower court, except that the party seeking relief shall be designated as the "relator" in addition to that party's designation in the trial court, and the adverse real party in interest shall be designated as the "adverse party" in addition to that party's designation in the trial court. The judge or court shall not be named as a defendant in the mandamus proceeding.[1]

(ii) In any other mandamus proceeding,[2] the case title of the proceeding shall be "State ex rel _____, Plaintiff-Relator, v. _____, Defendant," which title shall appear on the petition and all other documents filed in the proceeding.[3]

(b) On the title page, the relator shall include the litigant contact information required by ORAP 1.30. If any party is not represented by an attorney, the title page shall include the party's name, mailing address, and telephone number.

(c) A statement in support of the petition, containing:

(i) A concise but complete statement of facts material to a determination of the question or questions presented and the relief sought;

(ii) A statement why the petition is timely.[4]

(iii) A statement why application was not made to the circuit court for relief; and

(iv) A statement why appeal or any other applicable potential remedy is not a plain, speedy and adequate remedy in the ordinary course of law, precluding issuance of the writ.[5]

(d) Proof of service as follows:

(i) In a mandamus proceeding that challenges the action of a judge in a particular case in the circuit court, the Tax Court, or the Court of Appeals, the relator shall accompany the petition with proof of service on the adverse party, any other party (if any) to the proceeding in the lower court, and the judge or court whose action is challenged in the mandamus proceeding.

(ii) In any other mandamus proceeding, the relator shall accompany the petition with proof of service on the defendant and, if the mandamus proceeding arises from another proceeding or controversy, proof of service on any other party to the proceeding or controversy.

(iii) If the state, a state officer, or a state agency is a party to the case, proceeding, or controversy from which the mandamus proceeding arises, the relator shall include proof of service on the Attorney General.[6]

(e) If the relator seeks a stay in the proceedings from which the mandamus proceeding arises, the caption shall indicate "STAY REQUESTED," and the relator shall show, in the statement in support of the petition, that the relator requested a stay from the court, judge, or administrative agency or official whose order or decision is being challenged and that the request for a stay was denied, or that it would be futile to request a stay from the court, judge, or administrative agency or official. If the relator seeks to have the Supreme Court stay the proceedings from which the mandamus proceeding arises, the relator shall file a motion pursuant to chapter 7 of the Oregon Rules of Appellate Procedure.

(f) If the mandamus proceeding challenges a written order or decision, a copy of the order or decision shall be attached to the petition.

(3) The relator shall accompany the petition:

(a) With a memorandum of law with supporting arguments and citations. The form of the memorandum shall comply with ORAP 7.10(1) and (2).

(b) If the mandamus proceeding arises from a matter in which a record has been made, the relator must assemble an excerpt of record containing such parts of the record relating to the matter as is necessary for a determination of the question or questions presented and the relief sought. The excerpt of record must comply with ORAP 5.50(5).

(c) In a mandamus proceeding that challenges the action of the Court of Appeals, the Tax Court, or a judge in a particular case in the circuit court, the relator need not accompany the petition with a proposed form of writ of mandamus; in any other mandamus proceeding, the relator shall do so.

(4) (a) The caption of any memorandum, motion, or any other document filed in the mandamus proceeding, except the petition for a writ of mandamus, shall display prominently the words "MANDAMUS PROCEEDING."[7]

(b) If no record was made below, the petition, memorandum, and other supporting material may be submitted as a single document.

(c) If a record was made in the matter from which the mandamus proceeding has arisen, the relator shall assemble and submit the petition, the memorandum in support of the petition, and the excerpt of record as separate documents.

(d) The original petition and accompanying documents shall be filed with the Administrator.

(5) If the petition, memorandum, or an accompanying motion in a mandamus proceeding includes an attachment containing material that is, by statute or court order, confidential, sealed, or otherwise exempt from disclosure,[8] the filing must comply with the requirements of ORAP 8.52.

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[1] *See* Illustration 1a in Appendix 11.05.

[2] For example, mandamus proceedings that challenge the act or failure to act of a public official or administrative agency, or that challenge administrative action of a judge or other action of a court of an institutional nature.

[3] *See* Illustrations 2 and 3 in Appendix 11.05.

[4] *See State ex rel Redden v. Van Hoomissen*, 281 Or 647, 576 P2d 355 (1978), and *State ex rel Fidanque v. Paulus*, 297 Or 711, 688 P2d 1303 (1984), regarding timeliness. As a rule of thumb, the relator usually should file the petition within 30 days after the date of the action that the relator seeks to challenge in mandamus.

[5] *See* ORS 34.110; *State ex rel Automotive Emporium v. Murchison*, 289 Or 265, 611 P2d 1169 (1980).

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

[7] *See* Illustration 1b in Appendix 11.05.

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

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

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

Rule 11.25
BAR ADMISSION, REINSTATEMENT, AND DISCIPLINARY PROCEEDINGS

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

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

(b) The accused in a disciplinary proceeding.

(c) The applicant in a contested admission proceeding.

(d) The applicant in a contested reinstatement proceeding.

(2) (a) A petition concerning a disciplinary proceeding, a bar applicant's contested admission or a former member's contested reinstatement shall be filed with the Administrator, together with an opening brief, with proof of service on all parties, within 28 days after written notice to the Bar's Disciplinary Counsel and the parties of the court's receipt of the record of the proceedings before the trial panel under Oregon State Bar Rule of Procedure (BR) 10.5(a) or the Board of Bar Examiners under Rule for Admission 9.60(1). An answering brief shall be due 28 days after filing of the opening brief. A reply brief, if any, shall be due 14 days after filing of the answering brief.

(b) A brief in any of the proceedings named in this rule shall conform to ORAP 5.05, ~~ORAP 5.10,~~ ORAP 5.35, and ORAP 9.17(5), except that no excerpt of record is required, and shall show proof of service on all parties to that proceeding. The Bar shall be served by service on the Bar's Disciplinary Counsel.

(3) If, notwithstanding BR 10.5(b), an accused who is required to file a petition and brief fails to do so within the time allowed under BR 10.5(a), the Bar shall:

(a) File a petition and brief within the time allowed for filing an answering brief. The brief shall comply with the rules governing petitions and opening briefs. At the time the petition and brief are filed, the Bar shall indicate whether it wishes to waive oral argument and submit the case on the record, or

(b) Submit a letter stating that it wishes the matter submitted to the court on the record without briefing or oral argument. Notwithstanding waiver of briefing and oral argument under this paragraph, at the direction of the Supreme Court, the Bar shall file a petition and brief within the time directed by the court.

(4) If the case is argued orally, the party who files the opening brief shall argue first.

See ORS 9.536, and Oregon State Bar Rules of Procedure, which are found on the Oregon State

Bar's website, <*http://osbar.org*>, and in Thomson/West's *Oregon Rules of Court*.

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 ~~trial court administrator of 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 ~~trial~~ court clerk or administrator shall separately provide that information.

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

(3) The Supreme Court will consider whether to accept a question certified to it without oral or written argument from the parties unless otherwise directed by the Supreme Court.

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

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

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

(c) On receipt of a stipulated designation or separate designations of record,

the Administrator shall request from the ~~trial court administrator of 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. ~~No reply brief will be permitted except upon leave of the court.~~

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

(7) The case will be set for oral argument as soon as practicable after the parties' briefs are filed.

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

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

Rule 13.05
COSTS AND DISBURSEMENTS

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

(2) The court will designate a prevailing party and determine whether the prevailing

party is allowed costs at the time that the court issues its decision.

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

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

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

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

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

(6) (a) (i) Except as provided in paragraph (ii) of this subsection, whether a brief is printed or reproduced by other methods, the party allowed costs is entitled to recover 10 cents per page for the number of briefs required to be filed or actually filed, whichever is less, plus two copies for each party served and two copies for each party on whose behalf the brief was filed.

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

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

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

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

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

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

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

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

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

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

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[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 15.05
APPELLATE SETTLEMENT
CONFERENCE PROGRAM

(1) Cases Subject

(a) The procedures in this rule apply to cases filed in the Court of Appeals. The Chief Judge or the Chief Judge's designee shall determine the individual cases or categories of cases that may be included or excluded from the appellate settlement conference program (program). Upon the court's own motion, at any time, a panel of the Court of Appeals may refer a case to the program.

(b) (i) A settlement conference shall be held for any case assigned to the program unless the program director or the court cancels the conference or removes the case from the program. A party or person with actual authority to settle the case must be present at the program settlement conference unless that person's absence or appearance by telephone is approved prior to the conference by the program director.

(ii) After the first settlement conference is held, any party may withdraw from the program, except that the program director may require the parties to attend one or more additional conferences as the program director deems reasonable and necessary to facilitate a settlement. If the program director requires the parties to attend one or more additional conferences, the neutral's fee for any additional conference will be paid by the program and not by the parties.

(2) Supervising Judge and Program Director

(a) The Chief Judge shall have overall responsibility for the program but may appoint a supervising judge and a program director for the program.

(b) If a supervising judge is appointed, the supervising judge shall have the powers needed to administer the program. The Chief Judge, and the supervising judge if one is appointed, may delegate authority to the program director.

(c) If the Chief Judge, or the supervising judge if one is appointed, serves as a judge or judge pro tempore of the Court of Appeals, the Chief Judge or supervising judge may not participate in the consideration of any case in which the judge is aware of confidential information concerning the case obtained from the program.

(d) If a judge or judge pro tempore of the Court of Appeals serves as the neutral in a case and the case does not settle and proceeds in the Court of Appeals, that judge shall not thereafter participate in any way in the case. Further, such judge shall take steps as necessary to insure that the judge does not disclose to other judges or to court staff any communication from the settlement conference.

(3) Neutrals

(a) The Chief Judge shall determine the responsibilities and qualifications of neutrals to be provided by the program and shall approve the neutrals selected for the program. The supervising judge, if one is appointed, or program director will assign neutrals for individual cases.

(b) A neutral shall not act in any other capacity in the case.

(4) Abeyance of Appeal

(a) (i) On assignment of a case to the program, the court will hold preparation of the transcript (including correcting it or adding to it), preparation of the record, and briefing, in abeyance for a period of 120 days after the date of the notice of assignment of the case to the program. During that time, a party to the appeal may file an amended designation of record. A party wishing to hold in abeyance any other aspect of the appeal or seeking an extension of time to complete any other task required by law or by the Oregon Rules of Appellate Procedure must file an appropriate motion with the court.

(ii) At the end of the 120-day abeyance period, if the parties have engaged in settlement negotiations and need more time to reduce the settlement to writing or to implement a settlement, any party may request the program director to order, and the program director may order, an extension of the abeyance period for up to 60 days. If all parties to an appeal agree to an extension for longer than 60 days, the program director may extend the abeyance period for as long as reasonably necessary to implement a settlement.

(b) If a respondent files a motion to dismiss the appeal or an appellant files a motion to stay enforcement of the judgment when the case is being held in abeyance, in addition to serving a copy of the motion on all other parties to the appeal, the party shall serve a copy of the motion on the program director accompanied by a letter of transmittal stating whether the party prefers that the motion be decided before the case proceeds in the program. The program director may direct that the case proceed in the program or may terminate the referral. If the program director terminates the referral, the case may be re-referred to the program after the court disposes of the motion to stay enforcement or denies the motion to dismiss.

(c) The program director may reactivate a case held in abeyance at any time:

(i) On the program director's own motion; or

(ii) On motion of a party showing good cause for reactivating the appeal. In addition to serving a copy of the motion on all other parties to the appeal, a party filing a motion to reactivate shall serve a copy of the motion on the

program director.

(5) Submission of Information

The parties may be required to submit information to facilitate the screening of cases for the program or the program settlement conference. The parties shall submit this information in a timely manner to the program director or the neutral as designated in the request. Each party also shall submit the requested information to the other parties, with the exception of material that is designated by the party as confidential, which shall be treated by the program director or the neutral as confidential pursuant to subsection (6) of this rule.

(6) Confidentiality

(a) Program settlement conferences are subject to ORS 36.210 to 36.238. The confidentiality of communications with the program commences upon assignment of the appeal to the program, and terminates upon reactivation and removal of the appeal from the program.

(b) All materials submitted to the supervising judge or to the neutral and all materials created by the supervising judge or the neutral that pertain to a program settlement conference and are not a part of the record on appeal shall be maintained separately from the record of the case. These materials shall not be subject to disclosure, except as the law may require or as the parties and the supervising judge may all agree. The materials referred to in this paragraph shall be destroyed at the time and in the manner prescribed by the policy adopted by the program director pursuant to the Task Force on Records Retention.

(c) The supervising judge or program director may request the parties or the neutral or both to provide oral and written evaluations of the case settlement process. The materials referred to in paragraph (6)(b) of this rule, and oral and written evaluations of the case settlement process, may be used to evaluate the program. Any evaluation of the program, whether disseminated to the appellate courts or to the public, shall not disclose specific case identifying information.

(7) Appellate Settlement Conference Program Fees

(a) For the purposes of this paragraph, multiple parties who are represented by the same attorney or attorneys shall be deemed to be a single party. Except as provided in paragraph (d) of this subsection, each party to the appeal who participates in the program shall pay the initial program fee prescribed in this subsection. Each party shall pay the initial program fee directly to the neutral or, if instructed by the program director, to the State Court Administrator. Except as provided in paragraph (f) of this subsection, each party shall pay the initial program fee no later than the date of the first settlement conference. Unless otherwise agreed to by the parties, the neutral, and the program director, each party to a general civil or domestic relations appeal must pay an initial program fee of $350, and each party to a workers' compensation appeal must pay an

initial program fee of $150. In all other appeals, the parties, neutral, and program director shall agree on the fees.

(b) (i) The initial program fee shall cover up to one hour of neutral preparation time and up to five hours of settlement conference time whether or not the settlement conference involves more than one session.

(ii) In unusual cases, if the neutral reasonably needs more than one hour of preparation time, the neutral may contact the program director and the program director may contact the parties to discuss whether to exclude the additional preparation time from the initial program fee.

(iii) If the parties agree to extend the settlement conference beyond the initial five hours, the parties shall compensate the neutral for any additional time that is expended and recorded by the neutral, with the total cost of the additional time being shared equally by the parties. The rate shall be $150 per hour, unless otherwise agreed to by the parties, the neutral, and the program director.

(c) If an individual or entity who is not a party to the appeal participates in the settlement conference as part of an attempt to reach a global resolution of a dispute or disputes outside the scope of the appeal but involving some or all of the parties to the appeal, the program director may require each such individual or entity to pay the program fees prescribed in paragraph (a) of this subsection.

(d) The Chief Judge or the Chief Judge's designee may waive or defer payment of program fees on motion of a party based on a showing that the party is financially unable to pay the fees without substantial economic hardship in providing basic economic necessities to the party or the party's dependent family. If liability for payment of a party's share of program fees is waived or deferred, that party's portion of program fees shall be paid by the program from funds appropriated for that purpose.

(e) When a settlement conference is conducted by a neutral, an administrative law judge, "Plan B" retired judge, or other person who does not accept a fee for the services, the parties shall make the program fees payable to the State Court Administrator, reference the case name and number, and mail it to: Appellate Settlement Conference Program, 1163 State Street, Salem, OR 97301-2563.

(f) A party whose program fees are deferred and who has not paid the fees by the conclusion of the settlement conference shall remain liable for the unpaid fees, unless the fees are waived following completion of the settlement conference. If a party's program fees have been paid by the program and the party thereafter pays the fees, the fees shall be paid to the program as provided in paragraph (e) of this subsection.

(8) Actions Are Not Reviewable

Except as necessary to decide a motion for sanctions under subsection (9) of this rule, the actions of a neutral, a program director, or a supervising judge shall not be reviewed by the Court

of Appeals or by the Supreme Court.

(9) Sanctions

At the request of the program director, the court may impose sanctions against a party, or counsel for a party, or both, for the failure of the party, or counsel, or both to perform any act required by this rule or by the written policies of the Appellate Settlement Conference Program. Sanctions include but are not necessarily limited to monetary assessments and dismissal of the appeal.

_____

See ORS 2.560(3).

Rule 16.05
DEFINITIONS

(1) ~~"Conventional filing" means the filing of a paper document with an Oregon appellate court in accordance with the Oregon Rules of Appellate Procedure.~~

~~(2)~~ "Document" means a brief, petition, notice, motion, response, application, affidavit or declaration, or any other writing that, by law, may be filed with an appellate court, including any exhibit or attachment referred to in that writing

(2~~3~~) "Electronic filing" or "eFiling" means the process whereby a user of the eFiling system transmits a document directly from the user's computer to the electronic filing system to file that document with the appellate court.

(3~~4~~) "Electronic filing system" or "eFiling system" means the system provided by the Oregon Judicial Department for a party to electronically submit ~~the electronic filing of~~ a document for filing in the appellate courts via the internet. The system may be accessed at the Judicial Department's website.[1] ~~Appellate eFiling.~~

(4~~5~~) "Electronic payment system" means the system provided by the Oregon Judicial Department for paying filing fees and associated charges electronically in the appellate court.

(5~~6~~) An "eFiler" means a person registered with the eFiling system who submits a document for electronic filing with the appellate court.

(6~~7~~) "Electronic service" or "eService" means the process for a user of the eFiling system to accomplish service via the electronic mail function of the appellate court eFiling system.

(7~~8~~) "Hyperlink" means a navigational link in the electronic version of a document to another section of the same document or to another electronic document accessible via the internet.

(89) "Initiating document" means any document that initiates a case, including but not limited to a notice of appeal; a petition for review; a petition for judicial review; a petition for a writ of mandamus, habeas corpus or *quo warranto*; and a recommendation for discipline from the Oregon State Bar or the Commission on Judicial Fitness and Disability.

(910) "PDF" means Portable Document Format, an electronic file format.

(1011) "Username" means the identifying term assigned to an eFiler by the court, used to access the appellate court eFiling system.

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[1] <http://courts.oregon.gov/services/online/Pages/appellate-efile.aspx>

Rule 16.20
FILING FEES AND eFILING CHARGES

(1) The appellate courts may impose a transaction charge for using the eFiling system, as prescribed by order of the Chief Justice.

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

(23) An eFiler shall pay any required filing fees or eFiling charges at the time of the electronic filing, by using the electronic payment system, unless otherwise directed by the court. Charges for electronic filing may be recovered in the manner provided by ORAP 13.05.

(34) If an eFiler seeks to waive or defer filing fees, the eFiler shall apply for a waiver or deferral of filing fees by eFiling an application to waive or defer filing fees at the time of filing a document electronically.

~~[1] A link to a chart outlining the number of printed copies required for each eFiled document is available at http://www.courts.oregon.gov/services/online/Documents/Appellate-eFile/COA_Document_Required_Copies.pdf or http://www.courts.oregon.gov/services/online/Documents/Appellate-eFile/SC_Document_Required_Copies.pdf.~~

Rule 16.25
ELECTRONIC FILING AND ELECTRONIC FILING DEADLINES

(1) ~~A filer may use the eFiling system at any time, except when the system is temporarily unavailable.[1]~~ Except as provided in subsection (4), ~~T~~the filing deadline for any

document filed electronically is 11:59:59 p.m. in the time zone in which the court is located on the date by which the document must be filed.

(2) The submission of a document electronically by the eFiler and acceptance of the document by the court accomplishes electronic filing. When accepted for filing, the electronic document constitutes the court's official record of the document.

(3) (a) The court considers a document received when the eFiling system receives the document. The eFiling system will send an email that includes the date and time of receipt to the eFiler's e-mail address, and to any other e-mail address provided by the eFiler, to confirm that the eFiling system received the document.

(b) When the court accepts the document for filing, the eFiling system will affix to the document the time of day, the day of the month, the month, and the year that the eFiling system received the document. The date and time of filing entered in the register relate back to the date and time that the eFiling system received the document. The eFiling system will send an email that includes the date and time of acceptance to the eFiler's e-mail address and to any other email address provided by the eFiler. If the document was electronically served by the eFiling system pursuant to ORAP 16.45,[1] the date of service will also relate back to the date that the eFiling system received the document.

(4) (a) As used in this subsection, "temporary unavailability" means the eFiling system is temporarily unavailable or an error in the transmission of the document or other technical problem prevents the eFiling system from receiving the document. A "temporary unavailability" does not include a problem with the eFiler's equipment or software, or other problem within the eFiler's control.

(b) When a party is unable to use the eFiling system because of a temporary unavailability, the party may file and serve the document as provided in subparagraph (i) or (ii) of this paragraph.

(i) The party may conventionally file and serve the document. If the party conventionally files and serves the document by the end of the next business day following the cessation of the temporary unavailability, together with satisfactory proof of the temporary unavailability, the filing and service date relates back to the date the party attempted to eFile the document.

(ii) Upon cessation of the temporary unavailability, the party may use the eFiling system to file and, except as provided in ORAP 16.45(3), serve the document. If the party files and serves the document using the eFiling system by 11:59:59 p.m. of the next business day following the cessation of the temporary unavailability and submits satisfactory proof of the temporary unavailability, the filing and service date relates back to the date the party attempted to eFile the document.

(c) Paragraph (b) of this subsection does not apply to extend any jurisdictional time period imposed by statute, including those related to the filing and service of a notice of appeal, a petition for judicial review, or any other initiating document. A party's circumstances may require the party to conventionally file and serve an initiating document within the time period imposed by statute.

(d) "Satisfactory proof of the temporary unavailability" means a written description of the temporary unavailability, together with any supporting documentation, satisfactory to the court.

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

(5) Documents Conventionally Filed: The court may digitize, scan, or otherwise reproduce a document that is filed conventionally into an electronic record, document, or image. The court subsequently may destroy a conventionally filed document in accordance with the protocols established by the State Court Administrator under ORS 8.125(11).

~~[1] The eFiling system will be temporarily unavailable due to regularly scheduled maintenance and may be temporarily unavailable due to an eFiling system malfunction. The regularly scheduled maintenance hours are listed at Appellate eFiling FAQs~~

[1] As provided in ORAP 16.45(3), the eFiling system cannot electronically serve some documents.

~~See subsection (4) of this rule for seeking relief from an untimely filing due to an eFiling system malfunction.~~

Rule 16.45
ELECTRONIC SERVICE

(1) Registration as an eFiler with the eFiling system constitutes consent to receive service via the electronic mail function of the eFiling system.

(2) (a) Except as provided in subsection (3), a party eFiling a document with the appellate court may accomplish service of that document on any other party's attorney, if that attorney is a registered eFiler, by using the eService function of the eFiling system. The eFiling system will generate an e-mail to the attorney being eServed that includes a link to the document

that was eFiled. To access the eFiled document, the attorney who has been eServed must log in to the eFiling system.

(b) eService is effective under this rule when the eFiler has received a confirmation e-mail stating that the eFiled document has been received by the eFiling system.

(3) A party eFiling a document must accomplish service via the conventional manner, as provided by ORAP 1.35 and other applicable rules and statutes, if:

(a) The document to be served: ~~is an initiating document;~~

(i) initiates a case in the Court of Appeals;

(ii) initiates a case in the Supreme Court under that court's original jurisdiction;

(iii) is a first motion for extension of time to file a petition for review in the Supreme Court; or

(iv) if no motion for extension of time has been filed, is a petition for review in the Supreme Court;

(b) The party to be served is self-represented; or

(c) The attorney to be served is not a member of the Oregon State Bar or has obtained a waiver to the mandatory eFiling requirement under ORAP 16.60.

(4) All eFiled documents must be accompanied by a proof of service under ORAP 1.35(2)(e). The proof of service must certify service on all parties regardless of the means by which service was accomplished, including eService. The proof of service must state that service was accomplished at the person's email address as recorded on the date of service in the eFiling system, and need not include that person's email address or mailing address.

(5) If an eFiled document is not eServed by the eFiling system because of an error in the transmission of the document or other technical problem experienced by the eFiler, the court may, upon satisfactory proof, permit the service date of the document to relate back to the date that the eFiler first attempted to eServe the document. A party must show satisfactory proof by filing and serving an accompanying letter explaining the circumstances, together with any supporting documentation.

Rule 16.60
MANDATORY ELECTRONIC FILING

(1) ~~Except for a document that must or may be conventionally filed under ORAP 16.30, a~~An active member of the Oregon State Bar must file a document using the eFiling

system.~~,~~ except:

(a) When a document must or may be conventionally filed under ORAP 16.30, or

(b) When the eFiling system is temporarily unavailable as provided in ORAP 16.25.

(2) An active member of the Oregon State Bar required under subsection (1) of this rule to file a document using the eFiling system ~~A person~~ may obtain a waiver of the requirement ~~in subsection (1) of this rule~~ as follows:

(a) The member ~~person~~ must file one of the following:

(i) a request for waiver in all cases before the Court of Appeals, or the Supreme Court, or both, for a specific period of time; or

(ii) a motion in an existing case for waiver in that specific case.

(b) A request or motion must include an explanation describing good cause for the waiver. The request or motion may be filed conventionally.

(c) The Administrator is authorized to approve or deny a request filed under subparagraph (a)(i) of this subsection. If the court or the Administrator approves a ~~the~~ request under that subsection, the person must

(i) file a copy of the court's or the Administrator's approval in each case subject to the waiver; and

(ii) include the words "Exempt from eFiling per Waiver Approved [DATE]" in the caption of all documents conventionally filed during the duration of the waiver.

(d) If the court grants a motion filed under subparagraph (a)(ii) of this subsection, the person must include the words "Exempt from eFiling per Waiver Granted [DATE]" in the caption of all documents conventionally filed in the case.

(3) The Administrator is authorized to suspend subsection (1) of this rule when the Administrator becomes aware of a temporary unavailability as defined in ORAP 16.25(4)(a) and, in the Administrator's judgment, the temporary unavailability is likely to prevent electronic filing for a substantial period of time under the circumstances.~~when the eFiling system is unavailable for technical reasons other than regularly scheduled weekend maintenance.~~[1]

(a) If the Administrator suspends subsection (1) of this rule, then the Administrator will strive to provide 24-hour advance notice of the suspension to registered eFilers via email and to the public via notice on the Oregon Judicial

Department's website. If circumstances make it impractical to provide 24 hours' notice, the Administrator will provide as much advance notice as is practical under the circumstances.

(b) If the Administrator suspends subsection (1) of this rule under this subsection, then an active member of the Oregon State Bar may file the document as provided in ORAP 16.25(4). ~~conventionally file a document until 5:00 p.m. on the first full business day after the day on which the electronic filing system becomes available.~~

(4) If a filer submits a document for conventional filing in contravention of subsection (1) of this rule and the filer has not obtained a waiver pursuant to subsection (2) of this rule, nor is the electronic system unavailable as described in subsection (3) of this rule, then the Administrator is authorized to take any of the following actions:

(a) Accept the document for filing and provide notice to the filer that the Administrator will reject future conventional submissions by the filer that are subject to subsection(1) of this rule.

(b) Refuse to accept the document for filing.

(c) Return the document to the filer as unfiled.

(d) Refer the filing to the court for consideration of sanctions under ORAP 1.20(2).

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[1] ~~The regularly scheduled weekend maintenance schedule is posted on the Oregon Judicial Department's website.~~

APPENDIX 3.33-1

Illustration for ORAP 3.33(4)(b) and ORS 19.370

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

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

CERTIFICATE OF PREPARATION
AND SERVICE OF TRANSCRIPT

I certify that I prepared:

All of the transcript designated as part of the record for this appeal. [or]

These parts of the transcript designated as part of the record for this appeal: [List the dates of all proceedings transcribed, the volume number of the transcript(s), and the page numbers specific to each transcript.]

_____.

I certify that the original of this Certificate was filed with the Appellate Court Administrator and copies were served on the trial court administrator and transcript coordinator on [date].

I certify that on [date] a copy of the transcript or part thereof prepared by me and a copy of this Certificate were served on:

[name and address of each person served]

[Date]

_____
Court Reporter or Transcriber

APPENDIX 3.35

Illustration for ORAP 3.35(2)(b)

File Naming Conventions for Electronic Transcripts

Transcripts, Nonconfidential Case:

[Appellate Case Number]_transcript-[year-month-day, of ~~hearing~~proceeding-am/pm if appropriate] [volume number, if applicable]_pp[starting page number-ending page number] [court reporter or transcriber last, first name]

Example: CA123456_transcript-2002-02-15-am_vII_pp205-410_johnsonerin

If the transcript spans several dates, then the date span should be indicated, such as:

SC012345_transcript-2002-02-15to2002-02-20_johnsonerin

Transcripts, Confidential Cases (juvenile, adoption, civil commitment):

[Appellate Case Number]_transcript-confidentialcase-[year-month-day, of ~~hearing~~proceeding-am/pm if appropriate]_[court reporter or transcriber last, first name]

Example: CA123456_transcript-confidentialcase-2002-02-15-am_vX_pp1000-1205_johnsonerin

APPENDIX 4.15-1

Illustration for ORAP 4.15
(Other than Workers' Compensation Case)

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

[The title should be set up, to the extent possible, as it was before the agency, showing the parties with their appropriate appellate designations]	)	[Agency Name]
	)	No. _____
	)	CA A _____

PETITION FOR JUDICIAL REVIEW

Petitioner seeks judicial review of the final order of the _____ in case number _____, dated _____.

The parties to the judicial review proceeding before the Court of Appeals are:

Petitioner(s) Respondent(s)

_____

_____

The name, bar number, address, telephone number, and e-mail address of the attorney(s) for each party represented by an attorney is:

Name & Bar Number _____ Representing _____
Address _____ Telephone Number _____
E-mail Address _____

Name & Bar Number _____ Representing _____
Address _____ Telephone Number _____
E-mail Address _____

The name, address, and telephone number of each self-represented party is:

Name _____
Address_____ Telephone Number _____
E-mail address _____

□ I consent to receiving notices from the appellate court by e-mail.

□ I consent to receiving the agency record by Secure File Transmission Protocol (SFTP).

~~Name _____~~
~~Address _____ Telephone Number _____~~

A. Attached to this petition is a copy of the order, rule or ruling for which judicial review is sought. If a copy of the order, rule or ruling is not attached, the nature of the order for which review is sought is _____.

B. Petitioner was a party to the administrative proceeding which resulted in the order for which review is sought.

[or]

Petitioner was denied status as a party to the administrative proceeding that resulted in the order for which review is sought.

[or]

Petitioner is adversely affected or aggrieved by the order as set forth in an affidavit attached to this petition.

C. Petitioner is not willing to stipulate that the agency record may be shortened.

[or]

Petitioner is willing to stipulate that the agency record may be shortened and designates these parts of the record to be included in the record:_____.

DATED this _____ day of _____, _____.

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

CERTIFICATE OF SERVICE

I certify that on [date] , I served a true copy of this petition for judicial review on:

_____ _____

_____ _____

_____ _____
[State agency and address] Attorney General of the State of Oregon
Office of the Solicitor General
_____ 400 Justice Building

_____

1162 Court Street NE
Salem, Oregon 97301-4096

[Other party(ies) or attorney for other party(ies)]

by [specify method of service]:

__ United States Postal Service, ordinary first class mail
__ United States Postal Service, certified or registered mail, return receipt requested
__ hand delivery
__ other (specify) _____

CERTIFICATE OF FILING

I certify that on __[date]__, I filed the original of this petition for judicial review with the Appellate Court Administrator at this address:

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

by [specify method of filing]:

__ United States Postal Service, ordinary first class mail
__ United States Postal Service, certified or registered mail, return receipt requested
__ hand delivery
__ other (specify) _____

_____
[Signature of petitioner or attorney]

_____
[Typed or printed name of petitioner
or attorney]

APPENDIX 4.15-2

Illustration for ORAP 4.15
(Workers' Compensation Case)

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of the Compensation of _____, Claimant. _____, Petitioner, v. _____, Respondent.	))))))))))	WCB Case No._____ CA A_____

PETITION FOR JUDICIAL REVIEW
OF ORDER OF THE WORKERS' COMPENSATION BOARD

Petitioner seeks judicial review of the Workers' Compensation Board Order on Review dated _____.

The parties to the judicial review proceeding before the Court of Appeals are:

Petitioner(s) Respondent(s)

_____

_____

The name, bar number, address, telephone number, and e-mail address of the attorney(s) for each party represented by an attorney is:

Name & Bar Number _____ Representing _____
Address _____ Telephone Number _____
E-mail Address _____

Name & Bar Number _____ Representing _____
Address _____ Telephone Number _____
E-mail Address _____

The name, address, and telephone number of each self-represented party is:

Name _____
Address_____ Telephone Number _____
E-mail address _____

□ I consent to receiving notices from the appellate court by e-mail.

□ I consent to receiving the agency record by Secure File Transmission Protocol (SFTP).

~~Name _____~~
~~Address_____ Telephone Number _____~~

The relief sought and reason relief should be granted are:
_____

DATED this _____ day of _____, _____.

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

CERTIFICATE OF SERVICE

I certify that on __[date]__ , I served a true copy of this petition for judicial review on:

Workers' Compensation Board
_____
_____
[address]

_____ _____

_____ _____

_____ _____
[Other party(ies) or attorney for other party(ies)]

by [specify method of service]:
__ United States Postal Service, ordinary first class mail
__ United States Postal Service, certified or registered mail, return receipt requested
__ hand delivery
__ other (specify) _____

CERTIFICATE OF FILING

I certify that on __[date]__, I filed the original of this petition for judicial review with the Appellate Court Administrator at this address:

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

by [specify method of filing]:

__ United States Postal Service, ordinary first class mail
__ United States Postal Service, certified or registered mail, return receipt requested
__ hand delivery
__ other (specify) _____

_____
[Signature of petitioner or attorney]

_____
[Typed or printed name of petitioner
or attorney]