

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

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

The Supreme Court and Court of Appeals propose to adopt permanent amendments to the following Oregon Rules of Appellate Procedure and appendices: 1.15, 1.32, 1.35, 2.05, 2.15, 3.05, 3.07, 3.15, 3.25, 3.33, 3.35, 3.40, 5.05, 5.10, 5.70, 5.80 (Brief Time Charts 1 and 2), 5.85, 5.95, 6.05, 6.10, 6.25, 7.05, 7.10, 7.55, 8.05, 8.15, 8.20, 8.50, 8.52, 9.05, 9.10, 9.17, 9.20, 9.25, 10.15, 10.25, 11.05, 11.10, 11.15, 11.20, 11.30, 11.32, 11.34, 11.35, 12.05, 12.07, 12.08, 12.09, 12.20, 12.25, 13.05, 13.10, 16.03, 16.05, 16.10, 16.15, 16.20, 16.25, 16.30, 16.35, 16.40, 16.50, 16.60, Appendices 2.05, 3.30, 3.33-1, 3.33-2, 3.35, 7.10-1, 16.50.

Amended rules and appendices are shown below with material to be deleted in ~~striketrough~~ print and material to be added in **bold and doubleunderlined** print.

Anyone may submit comments on the proposed rule changes. Comments must be submitted by the close of business on August 4, 2014, to:

Hon. Rives Kistler, Chair
Oregon Rules of Appellate Procedure Committee
Supreme Court Building
1163 State Street
Salem OR 97301

Rule 1.15 TERMINOLOGY

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

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(r) "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.²

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(t) "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).

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

(~~u~~y) "Respondent" means the party adverse to an appellant or a petitioner.

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

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

(~~x~~y) "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.

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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 <<http://tinyurl.com/eTransmissionpage>>.

Rule 1.32
OUT-OF-STATE ATTORNEY AND SELF-REPRESENTED PARTY
CONTACT INFORMATION; CHANGES IN CONTACT INFORMATION FOR
ATTORNEY, OUT-OF-STATE ATTORNEY, AND SELF-REPRESENTED
PARTY

(1) An out-of-state attorney who appears by brief or argues the cause under ORAP 6.10(4) or ORAP 8.10(4) and any self-represented party must provide the court with the address for that attorney or party.

(a) An out-of-state attorney also may consent to receive court notifications by e-mail by providing an e-mail address to the court.

(b) A self-represented party who consents to receive court notifications by e-mail must provide the court with an e-mail address and

(i) include a statement of consent to receive electronic notifications from the court in the party's initial filing in the cause; or

(ii) file a notice of consent to receive electronic notifications from the court.

(c) A self-represented party who has consented to receive electronic notifications from the court under paragraph (b) of this subsection may revoke that consent by notifying the court that the party's e-mail address should no longer be used and that all court notifications should be sent to the party by conventional mail.

(d) An out-of-state attorney or self-represented party who provides the court with an address or e-mail address under subsection (1) of this rule must notify the court of a change of address or e-mail address.¹

(2) If an attorney for a party files a change of address with the Oregon State Bar or if an out-of-state attorney or a self-represented party notifies the court of a change of mailing or e-mail address in writing or otherwise, the attorney or party must inform all other parties to the cause of the change of mailing or e-mail address within seven calendar days.

¹See also ORAP 16.10(2)(a)(v), regarding updated e-mail address for an Oregon State Bar member who is a registered user of the appellate electronic filing system.

Rule 1.35
FILING AND SERVICE

(1) Filing

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(d) Filing of briefs, petitions for attorney fees, statements of costs and disbursements, motions, petitions for review, and all other things required to be filed within a prescribed time, shall be complete if mailed or dispatched to a ~~third-party~~ commercial carrier on or before the due date if the method of mailing or delivery is at least as expeditious as first-class mail.

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(f) A correction or amendment to a previously filed document must be made by filing the entire corrected or amended document with the court. Any copy requirement or any eFiling document recovery charge that applied to the original document also applies to the corrected or amended version of the document. The caption of a corrected or amended filing must prominently display the word "CORRECTED" or "AMENDED," as applicable.

(2) Service Generally

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(b) Except as otherwise provided by law,³ service may be in person, by mail, or by ~~third-party~~ commercial carrier for delivery within three calendar days. Unless otherwise provided by law, service by mail or by ~~third-party~~ commercial carrier shall be complete on deposit in the mail or on dispatch to the carrier if the method of mailing or delivery is at least as expeditious as first-class mail.

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~~—— (e) If an attorney for a party files a change of address with the Oregon State Bar or with the court, or a self-represented party notifies the court of a change of address in writing or otherwise, the attorney or party must inform all other parties to the cause of the change of address within seven calendar days.~~

Rule 2.05
CONTENTS OF NOTICE OF APPEAL

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

* * * * *

(6) A designation of those parts of the proceedings to be transcribed² and exhibits³ to be included in the record in addition to the trial court file. **If the record includes an audio or video recording played in the trial court, the designation of record should identify the date of the hearing at which the recording was played and, if the appellant wants the transcript to include a transcript of the recording, a statement to that effect.**

Rule 2.15
FILING FEES IN CIVIL CASES

(1) This rule:

(a) does not apply to criminal, habeas corpus, post-conviction relief, juvenile court, civil commitment of allegedly mentally ill ~~or mentally retarded persons,~~ **persons or persons with an intellectual disability (as defined in ORS 427.005),** Psychiatric Security Review Board, and State Board of Parole cases;¹

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Rule 3.05
**TRIAL COURT RECORD ON APPEAL;
SUPPLEMENTING THE RECORD**

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

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

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

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

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

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Rule 3.07

INSPECTION OF CONFIDENTIAL AND SEALED MATERIALS, INCLUDING PRESENTENCE REPORTS IN CRIMINAL APPEALS

(1) If a trial court determines that the whole or a part of the trial court file or exhibits to be transmitted to the appellate court is not subject to inspection by one or more parties, by the attorney for any party, or by the public, and if the trial court is delivering the trial court file in paper form, the trial court shall place such material in a separate, sealed envelope labeled as follows:

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(7) A judge of the appellate court, the judge's legal and administrative staff, and the appellate court's legal and administrative staff may open and inspect any confidential or sealed material as necessary to process or decide a matter pending before the court. If the material is contained in an envelope, the person inspecting confidential or sealed material shall note on the envelope the person's name and the date of the inspection.

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Rule 3.15

PREPARATION AND FILING OF ~~TRIAL COURT~~ THE RECORD ON APPEAL

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(2) The trial court administrator shall identify separately by certificate and promptly forward on request of the appellate court:

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(c) if applicable, ~~the transcript of oral proceedings or~~ the audio or video record specified in the designation of record, or agreed narrative statement;¹ and

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¹ If the record of oral proceedings is a transcript, the transcript shall be transmitted to the appellate court as provided in ORAP 3.33.

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Rule 3.25 EXHIBITS

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(5) For purposes of this rule, "documentary exhibits" include text documents, photographs and maps, if not oversized, and audio and video ~~tapes~~ recordings. An oversized document is one larger than standard letter size or legal size.

Rule 3.33 PERSONS RESPONSIBLE FOR PREPARING 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; ~~and~~

(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:

* * * * *

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

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(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 ~~transcriptionist~~ 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 ~~transcriptionist(s)~~ 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, and telephone number, and e-mail address of each court reporter or ~~transcriptionist~~ 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 ~~transcriptionist~~ 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(1), and.

~~(b)~~ (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 and file the 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 transcript² within the time provided in ORS 19.370. 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.

(ed) 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

(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 subparagraph (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 subparagraph 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) The court reporter or transcriptionist preparing a transcript that otherwise would exceed one volume may prepare the transcript 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. However, 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 transcriptionist **transcriber**, at the party's own expense, for preparation of a transcript in the one page of transcript per one standard page format.⁵

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¹ See ORS 138.500(3).

² See Appendix 3.33-1 for form of certificate of preparation, ~~filing~~, and service of a transcript.

³ See footnote 1 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 ~~The appellate courts anticipate that the 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~~
~~<<http://tinyurl.com/eTransmissionpage>>.~~

⁶⁵ 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 3.35 FORM OF TRANSCRIPT

(1) A transcript shall meet these specifications:

(a) It shall be prepared using ~~either uniformly spaced type (such as produced by typewriters) or proportionally spaced~~ **12-point** type (such as produced by commercial printers and many computer printers). ~~Uniformly spaced type shall be 10 characters per inch (cpi). If proportionally spaced type is used, it shall be 12 point type.~~ The font size shall be uniform and not vary from line to line or within the same line. Uppercase and lowercase letters shall be used according to rules of grammar; a transcript shall not be prepared using all uppercase letters.

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(g) Appropriate notation similarly shall be made of other proceedings, such as a motion for dismissal or a directed verdict, **audio or video recording played in court**, requested jury instructions, jury instructions, any opinion by the court, and other matters of special importance. **If possible, the voice or voices on an audio or video recording played in court must be identified by name or by role (such as "police officer," "suspect," "interviewer," "child").**

(h) It shall be preceded by an appropriate title page followed by an index noting:

* * * * *

(iii) appropriate notations of other proceedings such as motions for involuntary dismissal and directed verdict, audio or video recording played in court, requested jury instructions, jury instructions, opinion of the court and other matters of special importance.

(2) — When a transcript in excess of one volume is prepared by reducing the pages of the original transcript in such a manner as to fit up to four pages of transcript onto a single standard 8 1/2 x 11 inch page, the print font size and style for the condensed transcript shall be substantially similar to the print font size and style in Appendix 3.35.²

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

(2) The electronic version of the transcript filed with the Administrator as required by ORAP 3.33(4)(c) shall be in the following form:

(a) The electronic transcript shall be in Portable Document Format (PDF) that allows text searching, and copying and pasting into another document. The pagination of the transcript served on the parties shall correspond to the pagination of the electronic transcript filed with the court.

(b) If the transcript exceeds 200 pages, the electronic transcript shall be broken into separate PDF files of approximately equal length not to exceed 200 pages. Regardless of whether a transcript consists of one or more PDF files, each file shall be named in accordance with the file naming conventions set out in Appendix 3.35. If a PDF file contains more than one proceeding date, the beginning of each proceeding shall be bookmarked.

(c) If the transcript is in two volumes or less, it may be filed by attaching the electronic transcript to an e-mail directed to appealsclerk@ojd.state.or.us. If the Administrator determines that an electronic transcript must be rejected for security reasons (e.g., virus or malware), the court reporter or transcriber shall resubmit the transcript as directed by the Administrator. If the transcript is more than two volumes, it shall be filed by optical disk.

(d) The electronic transcript shall comply with ORAP 3.35(1)(a), (c), (d), (e), (f), (g), and (h). The electronic transcript also shall comply with ORAP 3.35(1)(b), except that it will not be printed. Notwithstanding ORAP 3.33(5)(c), the electronic transcript filed with the court shall be prepared in the one page of transcript per one standard page format.

¹ See ORAP 4.20 regarding use of previously prepared single-sided transcripts in judicial review cases.

² ~~See ORAP 3.33(5) regarding when a transcript may be prepared in the four pages of transcript per one standard page format.~~

Rule 3.40

ADDITION TO OR CORRECTION OF TRANSCRIPT

(1) A party desiring to correct or add to the transcript shall file a motion in the trial court within 15 days after the ~~filing~~ service of the transcript and ~~mail~~ serve a copy of the motion on the Administrator and on the transcript coordinator.¹ 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 ~~transcriptionist~~ transcriber is preparing the transcript, the transcript is not deemed filed until the last part of the transcript due on appeal is filed.

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(5) (a) If no motion to correct or add to the transcript is filed, the transcript shall be deemed settled 15 days after it is ~~filed~~ 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 allowed, 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.

Rule 5.05

SPECIFICATIONS FOR BRIEFS

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(2) (a) Except as provided in paragraph (2)(c) of this subsection, an opening, answering, combined, or reply brief shall comply with the word-count limitation in paragraph (2)(b) of this subsection.¹ Headings, footnotes, and quoted

material count toward the word-count limitation. The 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, ~~no opening, answering, or combined brief shall exceed 14,000 words and no reply brief shall exceed 4,000 words.;~~

(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, ~~no opening, answering, or combined brief shall exceed 10,000 words and no reply brief or reply part of a combined reply and cross-answering brief² shall exceed 3,300 words.;~~

(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.

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(d) **Except in the case of supplemental pro se briefs,** ~~A~~ an attorney or unrepresented party shall include at the end of each brief a certificate in the form illustrated in Appendix 5.05-2 that:

* * * * *

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

(b) If the court grants permission for a longer excerpt of record, appendix, or combined excerpt of record and appendix, **if filed in paper form,** the excerpt of record, appendix, or combined excerpt of record and appendix shall be printed on both sides of each page and ~~shall~~**may** be plastic spiral bound separately from the brief.³

(4) All briefs shall conform to these requirements:

(a) **If filed in paper form, the original of all briefs, including a petition for review or reconsideration in the Supreme Court or a response to a petition for review or reconsideration in the Supreme Court, must have a cover of white bond, regular finish without glaze, and at least 20-pound weight.**

~~(b) If filed in paper form, the front and back covers shall~~**of copies of briefs must** be paper of at least 65-pound weight. The cover of the brief ~~shall~~**copies must** be:

* * * * *

(viii) ~~For a petition for review or reconsideration in the Supreme Court, yellow;~~

(ix) ~~For a response to a petition for review or reconsideration in the Supreme Court, orange;~~

~~(x)~~(viii) For a brief on the merits of a petitioner on review in the Supreme Court, white;

~~(xi)~~(iv) For a brief on the merits of a respondent on review in the Supreme Court, tan.

~~(b)~~(c) The front cover shall 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 shall state the month and year in which the brief was filed.⁴

~~(e)~~(d) Pages and covers shall be a uniform size of 8-1/2 x 11 inches.

~~(d)~~(e) Paper for the text of the brief shall be white bond, regular finish without glaze, and at least 20-pound weight with surface suitable for both pen and pencil notation. If both sides of the paper are used for text, the paper shall be sufficiently opaque to prevent the material on one side from showing through on the other.⁵

~~(e)~~(f) Printed or used area on a page shall not exceed 6-1/4 x 9-1/2 inches, exclusive of page numbers, with inside margin 1-1/4 inches, outside margin 1 inch, top and bottom margins 3/4 inch.

~~(f)~~(g) Briefs shall be legible and capable of being read without difficulty. Briefs may be prepared using either uniformly spaced type (such as produced by typewriters) or proportionally spaced type (such as produced by commercial printers and many computer printers). Uniformly spaced type shall not exceed 10 characters per inch (cpi) for both the text of the brief and footnotes. If proportionally spaced type is used, the style shall be either Arial or Times New Roman and the size shall be not smaller than 14 point for both the text of the brief and footnotes. Reducing or condensing the typeface in a manner that would increase the number of words in a brief is not permitted. Briefs printed entirely or substantially in uppercase are not acceptable. All briefs shall be double-spaced with double space above and below each paragraph of quotation.

~~(g)~~(h) The last page of the brief shall 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.

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

(i) A brief shall be bound in a manner that allows the pages of the brief to lie flat when the brief is open, as provided in this paragraph. Regardless of whether a brief is prepared with text on one or both sides of the pages, the brief may be bound with a plastic comb binding, with the binding to be within 3/8 inch from the left edge of the brief. A brief also may be bound by stapling (1) if the brief is prepared with text only on one side of each page or (2) if the brief is prepared with text on both sides of the pages and does not exceed 20 pages (10 pieces of paper), excluding the cover but including the index, the excerpt of record and any appendix. A brief bound by stapling shall be secured by a single staple placed as close to the upper left-hand corner as is consistent with securely binding the brief.

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Rule 5.10 NUMBER OF COPIES OF BRIEFS; PROOF OF SERVICE

(1) Any party filing a brief on appeal or on judicial review in the Court of Appeals shall file with the Administrator* one brief, marked as the original, and ~~13~~five copies, except as provided in paragraphs (1)(a) and (1)(b) of this rule. ~~Any party who filed a brief or briefs in the Court of Appeals shall file seven additional copies of the brief or briefs within 14 days after the date of notice from the Administrator that the Supreme Court has allowed a petition for review in the case.~~

* * * * *

(b) The original and ~~10~~five copies only need be filed for any case in which the state, a state agency, or a county juvenile department is represented by the Attorney General and the adverse party is represented by appointed counsel compensated by the Office of Public Defense Services at state expense. Under this paragraph, the Administrator may provide additional copies of briefs as needed and bill the parties for the additional copies.

(2) Any party filing a brief on appeal, judicial review, or other proceeding originally heard in the Supreme Court¹ shall file with the Administrator* one brief, marked as the original, ~~and 15 copies.~~

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

Rule 5.70 REPLY BRIEF

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(3) (a) Except on request of the appellate court or on motion of a party that demonstrates the need for a reply brief, reply briefs shall not be submitted in the following cases:

* * * * *

(v) forcible entry and detainer; ~~and~~

(vi) judicial review of orders of the Land Use Board of Appeals and Land Conservation and Development Commission in land use cases, as provided in ORAP 4.66(1)(c); and

(vii) adoption cases and certain juvenile delinquency proceedings subject to ORAP 10.15.

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

(i) if the court grants the motion, the date of filing for the reply brief relates back to the date of the filing for the motion;

(ii) if the court denies the motion, the court will strike the
reply brief.

Rule 5.80

TIME FOR FILING BRIEFS

* * * * *

BRIEF TIME CHART 1

CASE TYPE	Opening Brief	Answering and Cross-Opening Brief	Reply Brief	Answering Brief to Cross-Assignment of Error	Cross-Respondent's Answering Brief	Cross-Appellant's Reply Brief	DATE FROM WHICH SCHEDULE IS CALCULATED The opening brief due date is calculated by counting from the date that any of the following has occurred. See chart for appropriate number of days. The answering brief due date is calculated by counting from the date the opponent's brief was filed. See ORAP 1.35(1)(d) regarding the date of filing.
Criminal ¹ Probation Revocation Violations Habeas Corpus Post-Conviction Civil Commitment Forcible Entry and Detainer Civil Appeal from Circuit Court not listed above Tax Court	49	49	0	21			Date transcript has been deemed settled. ORS 19.370(7). [or] Date circuit court order settling transcript has been entered if a motion to correct has been filed. ORS 19.370(7). [or] Date notice of agreed narrative statement filed in circuit court. ORS 19.380. [or] Date notice of appeal filed if no transcript has been designated.
	49	49	21*	21*	49 21	21	
	49	49	21	21	21	21	
Adoption Juvenile ²	28	28	0				
Land Use Board of Appeals (LUBA) Land Conservation and Development Commission (LCDC) ³	21	21	0				Date petition for judicial review filed.

¹ Regarding death sentence cases, see ORAP 12.10(6); regarding certain pretrial appeals when the defendant is in pretrial custody on felony charges, see ORAP 10.25 and ORAP 12.07.

² See ORAP 10.15.

³ Those LCDC orders specified in ORAP 4.60(1)(b).

* Can be one brief.

BRIEF TIME CHART 2

CASE TYPE	Opening Brief	Answering and Cross-Opening Brief	Reply Brief	Answering Brief to Cross-Assignment of Error	Petition for Review	Response to Petition for Review	Petitioner's Brief on the Merits	Respondent's Brief on the Merits	Petition for Reconsideration	DATE FROM WHICH SCHEDULE IS CALCULATED The opening brief due date is calculated by counting from the date that any of the following has occurred. See chart for appropriate number of days. The answering brief due date is calculated by counting from the date the opponent's brief was filed. <i>See</i> ORAP 1.35(1)(d) regarding the date of filing.
Judicial Review of all other Agency Action	49	49	21	21						Date record has been deemed settled. ORAP 4.22.
Petition for Review Response Petitioner's Brief on the Merits Respondent's Brief on the Merits Petition for Reconsideration					35	14	28	28	14	Date of Court of Appeals decision. Date petition for review was filed. Date petition for review allowed by Supreme Court. Date petitioner's brief on the merits filed. Date of Supreme Court decision.
Bar Discipline	28	28	14							Date of acknowledgment of receipt of record.
Judicial Discipline and Disability	28	28	0							
Certified Questions of Law										
Mandamus	28	28	0							Date that the case is at issue
Habeas Corpus										
Quo Warranto										
Energy Facility Siting Council/ <u>Public Utility Commission</u>	14	14	0							Date petition for review is filed.
Reapportionment										
Review	8/1	10*	5*							Legislative Assembly enacts reapportionment.
Legislative Secretary of State	9/15									Secretary of State adopts reapportionment.

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

Rule 5.85
ADDITIONAL AUTHORITIES

(1) Any party filing a memorandum of additional authorities or a response memorandum shall submit the memorandum in the manner provided in this rule, subject to any instructions of the court. A party may submit a memorandum of additional authorities after the filing of the party's brief but before oral argument without leave of the court. ~~After oral argument, a party may submit a memorandum of additional authorities only with leave of the court.~~ **After oral argument, a party must file a motion for leave to file a memorandum of additional authorities. If the party submits a memorandum of additional authorities with the motion, then:**

(a) if the court grants the motion, the date of filing for the memorandum of additional authorities relates back to the date of filing for the motion; or

(b) if the court denies the motion, the court will strike the memorandum of additional authorities.

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

* * * * *

(c) Shall be filed with the Administrator together with ~~eight copies, if filed in the Supreme Court, and five copies, if filed in the Court of Appeals.~~¹

(d) If filed less than five business days before oral argument, shall include in the caption the words "ORAL ARGUMENT SCHEDULED FOR [DATE]."

(3) If a party files or is given leave to file a memorandum of additional authorities, any other party to the case who has filed a brief may file a response. Unless the court directs otherwise, a response is due ~~14 days after the date of filing of the memorandum of additional authority to which the party is responding.~~

(a) 14 days after the date of filing of the memorandum of additional authorities to which the party is responding; or

(b) if the date of filing of the memorandum of additional authorities relates back to the date of filing of the motion under paragraph (1)(a) or this rule, 14 days after the date of entry of the order granting the motion.

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

Rule 5.95 BRIEFS CONTAINING CONFIDENTIAL MATERIAL

* * * * *

(2) (a) If a brief described in subsection (1) of this rule is filed in the Court of Appeals, the party filing the brief shall file ~~15~~the original and five copies of the confidential brief and ~~six copies~~the original of the redacted brief.

~~————(b)—— If a brief described in subsection (1) of this rule is filed in the Supreme Court, the party filing the brief shall file 10 copies of the confidential brief and eight copies of the redacted brief.~~

~~————(c)——~~ (b) 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.

* * * * *

(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, and civil commitment of ~~mentally ill and mentally deficient persons~~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 5.10(1) and (3) regarding the original and number of copies to be filed and served on other parties to the case.

* * * * *

Rule 6.05 REQUEST FOR ORAL ARGUMENT; SUBMISSION WITHOUT ARGUMENT

(1) ~~(a)——~~ This rule applies to proceedings in the Court of Appeals, ~~2~~

(2) (a) The Administrator will send the parties notice of the date that a case is scheduled to be submitted to the court ("the submission date"). Parties to the

case may request oral argument ~~in the Court of Appeals~~ by filing a "Request for Oral Argument" in the form illustrated in Appendix 6.05 and directed to the attention of the court's calendar clerk. If a party files a timely request for oral argument, the case will be argued on the submission date and all parties who have filed a brief may argue. If no party files a timely request for oral argument, the case shall be submitted on the briefs on the submission date without oral argument, unless the court directs otherwise.

* * * * *

(~~23~~) Notwithstanding subsection (~~12~~) of this rule, ~~in the Court of Appeals~~, if a self-represented party files a brief, the case will be submitted without argument by any party. An attorney representing himself or herself is not considered to be a self-represented party for the purpose of this rule.

(~~34~~) Notwithstanding subsection (~~12~~) of this rule, when a respondent submits an answering brief confessing error as to all assignments of error and not objecting to the relief sought in the opening brief, the respondent shall so inform the court by letter when the brief is filed or at any time thereafter. On receipt of respondent's notice that a brief confesses error, the case will be submitted without oral argument. The appellant may by letter bring to the court's attention that a respondent's brief appears to confess error. If the court concurs, the case will be submitted without oral argument.

Rule 6.10 WHO MAY ARGUE; FAILURE TO APPEAR AT ARGUMENT

(1) A party may present oral argument only if the party has filed a brief.

* * * * *

(5) (a) After any party has filed and served a request for oral argument pursuant to ORAP 6.05(~~12~~), any party who decides to waive oral argument or cannot attend oral argument shall give the court and all other parties participating in oral argument at least 48 hours' notice that the party will not be appearing for oral argument.

* * * * *

Rule 6.25
RECONSIDERATION BY COURT OF APPEALS

* * * * *

(2) A petition for reconsideration shall be filed within 14 days after the decision. The petition shall have attached to it a copy of the decision for which reconsideration is sought. The form of the petition and the manner in which it is served and filed shall be the same as for motions generally, except that:

(a) The petition shall be accompanied by four copies, if the case was decided by a department of the court, or by ~~10~~13 copies, if the case was decided by the full court, and

* * * * *

Rule 7.05
MOTIONS IN GENERAL

* * * * *

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

~~(4)~~(5) Unless the court directs otherwise, all motions will be considered without oral argument.

~~(5)~~(6) Parties shall be referred to by their designation in the appellate court. Hyphenated designations are discouraged. However, in motions in domestic relations cases, parties shall be referred to as husband or wife, mother or father, or other appropriate specific designations.

* * * * *

Rule 7.10
PREPARATION, FILING,
AND SERVICE OF MOTIONS

(1) A motion or a response to a motion, ~~including a supporting memorandum,~~ 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:

* * * * *

(2) A motion or response, ~~including any supporting memorandum, but~~ 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) A moving or responding party shall file with the Administrator the original motion or response with proof of service ~~and the number of copies specified in paragraph (3)(b) of this rule.~~

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

——(ii)—~~Except as provided in subparagraph (3)(b)(iii) of this rule, one copy of a motion or response shall be filed in the Court of Appeals;~~

——(iii)—~~Parties need not file copies of motions for extensions of time, consolidation, permission to file reply briefs or extended briefs, appellants' motions to dismiss, or stipulated motions to dismiss.~~

* * * * *

(5) 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.

(6) A motion or response that is confidential, filed under seal, or otherwise exempt from disclosure³ 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.

(7) A motion or response that includes an attachment consisting of material that is confidential, sealed, or otherwise exempt from disclosure⁴ must comply with the requirements of ORAP 8.52.

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 (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 7.55
COURT OF APPEALS
APPELLATE COMMISSIONER

* * * * *

(4) (a) A party may seek reconsideration of a decision of the appellate commissioner as provided by ORAP 6.25, with the ~~exception~~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 (c) 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.

* * * * *

Rule 8.05
SUBSTITUTION OF PARTIES
IN CIVIL CASES;
EFFECT OF DEATH OR ABSCONDING OF
DEFENDANT IN CRIMINAL CASES

* * * * *

(3) If a defendant in a criminal case, a petitioner in a post-conviction relief proceeding, a plaintiff in a habeas corpus proceeding, a petitioner in a parole review proceeding, or a petitioner in a prison disciplinary case, on appeal of an adverse decision, escapes or absconds from custody or supervision, the respondent on appeal may move for dismissal of the appeal. If the **court determines that the appellant is not in custody on escape or under supervision abscond status** at the time the **court decides the motion is decided by the court**, the court may dismiss the appeal or judicial review. **If the court has not been advised otherwise, the court may assume that the appellant remains on escape or abscond status when the court considers and decides the motion.**

Rule 8.15
AMICUS CURIAE

* * * * *

(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.

* * * * *

Rule 8.20
EFFECT OF BANKRUPTCY PETITION

(1) ~~Whenever a party by notice, with proof of service on all other parties to the case, shows that a case on appeal is subject to the stay provisions of 11 USC § 362(a)(1)⁺ (relating to bankruptcy proceedings), the court shall enter an order holding the appeal in abeyance and hold the appeal in abeyance until it is shown to the court's satisfaction that the stay has been lifted or that 11 USC § 362(a)(1) is not applicable to the case.~~ **When a matter is pending in the appellate courts and a party learns that the matter is subject to the stay provisions of 11 USC § 362(a)(1)¹ (relating to bankruptcy proceedings), the party shall give notice of that fact to the appellate court, together with proof of service of the notice on all other parties to the case. The court will enter an order holding the matter in abeyance until it is shown to the court's satisfaction that the stay has been lifted or that 11 USC § 362(a)(1) is not applicable to the case.**

* * * * *

Rule 8.50
SEGREGATION OF
PROTECTED PERSONAL INFORMATION

* * * * *

(2) (a) A person or entity required to file a document in the appellate court that contains protected personal information may submit that information on a separate document together with a motion describing the information and requesting that the appellate court keep the separate document segregated from the appellate court file. **The caption of the separate document must prominently display the words "Segregated Personal Protected Information, ORAP 8.50(2)(a), Confidential."** The moving party shall serve a copy of the motion on all other parties to the appeal, review, or other proceeding. During the pendency of the motion, the separate document will not be available for public inspection.

(b) A person or entity who has filed a document in the appellate court that contains protected personal information may submit a motion to replace the document with a document that redacts the protected personal information and requesting that the appellate court keep the original document segregated from the appellate court file. **The caption of the motion must prominently display the words "Motion -- Redact Previously Filed Document, ORAP 8.50(2)(b)."** The moving party shall submit the proposed redacted document with the motion. The moving party shall serve a copy of the motion and the proposed redacted

document on all other parties to the appeal, review, or other proceeding. During the pendency of the motion, the document containing protected personal information will not be available for public inspection.¹

* * * * *

Rule 8.52
CONFIDENTIAL AND SEALED ATTACHMENTS

A document that includes an attachment containing material that is, by statute or court order, confidential, sealed, or otherwise exempt from disclosure¹ must include:

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

(2) in the filing, a statement citing the authority by which the attachment is deemed confidential or sealed.

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 generally ORAP 16.15(5)(b) for procedure for eFiling attachments that are confidential or otherwise exempt from disclosure.

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

* * * * *

(3) Form and Service of Petition for Review

* * * * *

(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, ~~marked as such, and 12 copies, together~~ with proof of service.

* * * * *

Rule 9.10

RESPONSE TO PETITION FOR REVIEW

* * * * *

(3) A response shall be in the form of a brief prepared in conformity with ORAP 5.05 and ORAP 5.35. For purposes of ORAP 5.05, the response must not exceed 5,000 words or (if the certification under ORAP 5.05(2)(d) certifies that the preparer does not have access to a word-processing system that provides a word count) 15 pages. ~~The cover of a response shall be orange.~~ Any party filing a response shall file with the Administrator one ~~response, marked as the original, and 12 copies~~ response, serve two copies of the response on every other party to the review, and file proof of service.

Rule 9.17

BRIEFS ON THE MERITS ON REVIEW

* * * * *

(5) ~~The original of each brief, marked as such, and 12 copies,~~ shall be filed with the Administrator, together with proof of service. Two copies of the brief shall be served on each party to the review.

~~———— (6) ——— Any party filing a brief on the merits on review, including any intervenor and any person who has been granted permission to appear *amicus curiae*, shall submit a copy of the brief on the merits on review in electronic form in addition to complying with the filing and service requirements in subsection (4).[†] A party who electronically files a brief using the appellate courts' eFiling system, pursuant to chapter 16 of these rules, is exempt from the requirements of this section. A person confined in a state institution and not represented by counsel who is filing a brief on the merits is exempt from the requirements of this subsection. Any party who lacks the technological capability to comply with this subsection may file a motion to be relieved from the requirements of this subsection at the same time that the party files its brief on the merits on review.~~

~~—— (a) — The filing party shall submit the electronic form of the brief on the merits on review in Portable Document Format (PDF) configured at a resolution of 300 dpi and attach the electronic form of the brief to an e-mail sent to *briefs@ojd.state.or.us*. The subject line of the e-mail shall contain the case title and Supreme Court case number as assigned by the Administrator in substantially the following format: "Doe v. Smith, SC_____." The e-mail address is to be used for the purpose of submitting an electronic brief on the merits on review only. The Administrator will not respond to any e-mail sent to this address. Submission of any document by e-mail to this address will not constitute compliance with any other filing, service, or submission requirement of these rules.~~

~~—— (b) — The electronic form of the brief on the merits on review shall be identical in content and format to the printed form of the brief. The filing party shall include in the electronic form of the brief on the merits on review the excerpt of record and appendices to the brief unless the filing party lacks the technological capability to convert the excerpt of record or appendices into electronic form. A party who submits an electronic version of a brief on the merits on review without the excerpt of record or appendices shall inform the court in the body of the transmittal e-mail that the party lacks the technological capability to convert the excerpt of record or appendices into electronic form.~~

~~—— (c) — Except as provided in ORAP 5.95(6), if a brief on the merits on review contains material that is, by statute, rule, or court order, confidential or exempt from disclosure, the filing party shall provide both a redacted version and an unredacted version in separate attachments.² The filing party should name the attachments so as to allow easy identification of each version.~~

~~—— (d) — The filing party shall submit the electronic form of the brief on the merits on review via e-mail on the same day that the filing party mails or delivers the brief to the Administrator.~~

~~—— (e) — The filing party shall certify that the e-mail attachment containing the electronic form of the brief on the merits on review has been scanned for viruses and that it is virus-free.~~

²As needed, the court will post additional information regarding this subsection on the Judicial Department's website: ~~<<http://courts.oregon.gov>>~~. (At the time of publication of these rules, information about e-mailing copies of merits briefs can be found as follows: select "Courts," then "Supreme Court," then the link for "requirement to email .pdf copies.")

² ~~See ORAP 5.95.~~

Rule 9.20
ALLOWANCE OF REVIEW
BY SUPREME COURT

* * * * *

(3) When the Supreme Court allows a petition for review, the court may request the parties to address specific questions. Those specific questions should be addressed at oral argument and may also be addressed in the parties' briefs on the merits on review or by additional memoranda. If addressed by additional memoranda, the original ~~and 12 copies of such additional~~ memoranda shall be filed and copies served ~~and filed~~ not less than seven days before argument or submission of the case.

* * * * *

Rule 9.25
RECONSIDERATION IN SUPREME COURT

* * * * *

(2) The petitioner shall file the original ~~and 12 copies of the~~ petition with the Administrator. The original shall show proof of service of two copies on every other party to the appeal or review.

~~—— (3) — No other party shall respond unless the court so requests.~~

(3) Any response to a petition for reconsideration must be filed within seven days after the filing of the petition for reconsideration

(4) The court shall either deny or allow reconsideration. If the court allows reconsideration, the court may reconsider with or without further briefing or oral argument. Reconsideration shall result in affirmance, modification, or reversal of the decision that has been reconsidered.

Rule 10.15
JUVENILE DEPENDENCY AND ADOPTION CASES

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

* * * * *

(c) In a disposition proceeding pursuant to ORS 419B.325, a dispositional review proceeding pursuant to ORS 419B.449, a permanency proceeding pursuant to ORS 419B.470 to 419B.476, or a termination of parental rights proceeding, respecting the record in the trial court, the appellant may shall designate as part of the record on appeal only the transcripts of the proceedings giving rise to the judgment or order being appealed, and the exhibits in the proceeding, and the list prepared by the trial court under ORS 419A.253(2) and all reports, materials, or documents identified on the list. The appellant or respondent may move to include as part of the record on appeal a transcript of an earlier proceeding or exhibits in an earlier proceeding based only on a showing that the trial judge took judicial notice of or otherwise considered the record of the earlier proceeding in the course of deciding the disposition, dispositional review, permanency or termination of parental rights proceeding. A party may file a motion to supplement the record with additional material pursuant to ORS 19.365(4) and ORAP 3.05(3).

* * * * *

Rule 10.25
EXPEDITED APPEAL OF CERTAIN PRETRIAL ORDERS IN CRIMINAL CASES

(1) ~~When a defendant is charged with a felony and is in custody pending an appeal by the state under ORS 138.060(1)(a) or (c) from an order made before trial in a criminal case dismissing or setting aside the accusatory instrument or suppressing evidence:~~ This rule applies to a pretrial appeal under ORS 138.060(1)(a) or (c) when the defendant is charged with a felony and is in custody, and the trial court has dismissed or set aside the accusatory instrument or suppressed evidence.

(2) In all cases subject to this rule:

(a) The case caption of any brief, motion, petition, or other paper filed with the court shall include the words "EXPEDITED APPEAL UNDER ORS _____" and identifying the statute authorizing the expedited appeal.

(b) Appellant's opening brief shall be due 35 days after the transcript settles. Failure to file the opening brief within the prescribed time will result in automatic dismissal of the appeal.

(c) Respondent's answering brief shall be due 35 days after appellant's opening brief is served and filed. If respondent fails to file an answering brief within the prescribed time, the appeal will be submitted on appellant's opening brief and oral argument, and respondent will not be allowed to argue the case.

____(2) ~~In all cases subject to this rule:~~

____(a _____

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

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

Rule 11.05
MANDAMUS:
INITIATING A MANDAMUS PROCEEDING

* * * * *

(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 ~~shall~~must assemble an excerpt of record, ~~prepared in compliance with ORAP 5.50(6),~~ 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(6), except that the excerpt may be up to 100 pages. If a longer excerpt is necessary, the relator may seek leave of the court.

* * * * *

(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

* * * * *

(d) The original ~~and eight copies of the~~ 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.

* * * * *

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.

* * * * *

**Rule 11.10
MANDAMUS:
RESPONSE BY ADVERSE PARTY AND
CONSIDERATION BY THE COURT**

(1) Unless the court directs otherwise, the adverse party in a mandamus proceeding that challenges the action of a judge in a particular case in the circuit court, the Tax Court, or the Court of Appeals or the defendant in any other mandamus proceeding may file a memorandum in opposition.¹ The form of the memorandum shall comply with ORAP 7.10(1) and (2). The original ~~and eight copies of the~~ memorandum

shall be filed within 14 days after the date the petition was filed. A relator may not file a reply memorandum unless the court has requested one.

- (2) The petition and any memoranda in opposition to the petition shall be consi

Rule 11.15
MANDAMUS:
BRIEFS AND ORAL ARGUMENT

* * * * *

(3) The relator may file a reply brief only with leave of the court. A motion requesting leave to file a reply brief shall be filed, ~~without copies,~~ within seven days after the filing of the brief to which permission to reply is sought. The content of a reply brief shall be confined to matters raised in the answering brief, and the form shall be similar to an answering brief, but need not contain a summary of argument.

* * * * *

(5) All briefs shall be prepared in substantial conformity with ORAP 5.35 through 5.50. An original brief, ~~plus 15 copies,~~ shall be filed with the Administrator with proof of service showing that two copies were served on each party. ~~Parties shall also submit briefs in electronic form as outlined in ORAP 9.17(6).~~

* * * * *

Rule 11.20
HABEAS CORPUS AND
QUO WARRANTO PROCEEDINGS

* * * * *

(3) If the petition for a writ of habeas corpus includes an attachment containing material that is, by statute or court order, confidential, sealed, or otherwise exempt from disclosure,¹ the petition must comply with the requirements of ORAP 8.52.

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 generally ORAP 16.15(5)(b) for procedure for eFiling attachments that are confidential or otherwise exempt from disclosure.

* * * * *

Rule 11.30 BALLOT TITLE REVIEW

* * * * *

(5) (a) The petition shall have attached to it a copy of the ballot title as certified to or filed with the Secretary of State and containing the full text of the ballot title and a photocopy of the text of the measure as submitted to the Secretary of State.

* * * * *

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

(6) The Attorney General has five business days after the filing of the petition, unless a shorter time is ordered by the court, to:

* * * * *

(b) File an answering memorandum.* * * The Attorney General must file ~~an~~the original ~~of the~~ answering memorandum, with proof of service on counsel for the petitioner. * * *.

* * * * *

(8) The petitioner has five business days after the filing of the answering memorandum, unless a shorter time is ordered by the court, to file a reply memorandum. Any reply memorandum must be in the form prescribed by ORAP 7.10 for answers to motions and must not be longer than five pages. The petitioner must file ~~an~~the original ~~of the~~ reply memorandum, with proof of service on the Attorney General.

* * * * *

(10) (a) For ballot title review proceedings in which the Supreme Court has referred the Attorney General's certified ballot title to the Attorney General for modification, the Attorney General must prepare and modified ballot title. * * *.

(b) The petitioner, or an intervenor under paragraph (10)(c), may file an objection to the modified ballot title within five business days after the date of filing of the modified ballot title. An objection or proposed objection under paragraph (10)(c) must be in the form prescribed by ORAP 7.10, and it may not exceed 10 pages. The objection or proposed objection must be filed with and actually received by the Administrator- within the time required. * * *.

* * * * *

(11) (a) If the Supreme Court issues a dispositional decision in which the court dismisses the petition, certifies the Attorney General's certified ballot title, or certifies the Attorney General's modified ballot title, with or without additional modification, the Administrator will issue the appellate judgment on the next judicial day after the filing date of the decision.

* * * * *

Rule 11.32

VOTERS' PAMPHLET EXPLANATORY STATEMENT REVIEW

* * * * *

(5) The Administrator will issue the appellate judgment on the next judicial day after the filing date of the Supreme Court's dispositional decision.

* * * * *

Rule 11.34

ESTIMATE OF FINANCIAL IMPACT REVIEW

* * * * *

(5) The Administrator will issue the appellate judgment on the next judicial day after the filing date of the Supreme Court's dispositional decision.

Rule 11.35
REAPPORTIONMENT REVIEW

The practice and procedure for review of reapportionment under Article IV, section 6, of the Oregon Constitution shall be as follows:

* * * * *

(3) The petition shall be accompanied by ~~two copies~~ one copy of such part of the reapportionment as is necessary for a determination of the question presented and the relief sought.

(4) The petitioner shall file with the Administrator the original petition ~~and eight copies, together~~ with proof of service of a copy of the petition on the Secretary of the Senate, the Chief Clerk of the House, the Secretary of State, and the Attorney General.² The petition shall be accompanied by the filing fee prescribed in ORS 21.010(5).

* * * * *

(6) (a) The Legislative Assembly, the Secretary of State, or any other person who desires to oppose a petition shall, no later than 10 business days after the date the petitioner's opening brief is due, file with the Administrator ~~an~~ the original ~~and eight copies of an~~ answering brief and, if not exempt from payment of filing fees, pay the respondent's first appearance fee prescribed in ORS 21.040. Any party who files an answering brief shall be known in the review proceeding as a "respondent."

* * * * *

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

Rule 12.05
DIRECT APPEAL OR JUDICIAL
REVIEW IN THE SUPREME COURT

(1) Where a statute authorizes a direct appeal from a court of law to the Supreme Court,¹ except as otherwise provided by statute or by rule of appellate procedure, the appeal shall be taken in the manner prescribed in the rules of appellate procedure relating to appeals generally, ~~including submission of briefs in electronic form as outlined in ORAP 9.17(5).~~

* * * * *

Rule 12.07
EXPEDITED APPEAL OF CERTAIN
PRETRIAL ORDERS IN CRIMINAL CASES

(1) On appeal ~~by the state under ORS 138.060(2) from an order made before trial in a criminal case~~ a pretrial order dismissing or setting aside the accusatory instrument or suppressing evidence, when a defendant is charged with murder or aggravated murder and is in custody:

(a) The case caption of any brief, motion, petition, or other paper filed with the court shall include the words "EXPEDITED APPEAL UNDER ORS _____" ~~and identifying the statute authorizing the expedited appeal.~~ 138.060(2)."

* * * * *

(2) On a petition for review of a decision of the Court of Appeals, ~~when a defendant is charged with a felony and is in custody pending in an appeal under ORS 138.060(1)(a) and/or (c) from a pretrial order made before trial in a criminal case~~ dismissing or setting aside the accusatory instrument or suppressing evidence, when a defendant is charged with a felony and is in custody:

(a) The case caption of any brief, motion, petition, or other paper filed with the court shall include the words "EXPEDITED REVIEW UNDER ORS _____" ~~and identifying the statute authorizing the expedited appeal.~~ 138.060(1)."

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

~~——(3)—— Under ORS 138.255(2), if the Supreme Court accepts an appeal pending in the Court of Appeals and briefing has not been completed, the Supreme Court will establish a briefing schedule as necessary.~~

~~——(4)——~~ (3) In all cases subject to this rule:

* * * * *

Rule 12.08

INTERLOCUTORY APPEAL OF ORDER CONCERNING CRIME VICTIM'S RIGHTS

* * * * *

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

(4) Notwithstanding ORAP 1.35(1)(c), a notice of interlocutory appeal and the response are deemed filed when those documents are physically received by the Administrator or, if the documents are filed electronically, as provided by ORAP ~~16.35~~25.

* * * * *

(6) A respondent may file a response within seven days of the date the notice of interlocutory appeal is filed with the Supreme Court. A respondent shall file ~~an~~the original ~~and eight copies of a~~ response with the Administrator. The response shall comply with ORAP 7.10(1) and (2), except as otherwise provided by this rule. The response may contain a designation of parts of the trial court record not designated in the notice of interlocutory appeal.

* * * * *

Rule 12.09

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

* * * * *

(3) The petitioner shall file ~~an~~the original ~~and eight copies of the~~ petition for review ~~with the Administrator. If~~and the excerpts of the record ~~include more than 50~~

~~pages, the petitioner need file only two copies of the excerpts of the record~~with the Administrator.

* * * * *

(5) Notwithstanding ORAP 1.35(1)(c), a petition for review and the response, if any, are deemed filed when those documents are physically received by the Supreme Court or, if the documents are filed electronically, as provided by ORAP 16.3525.

* * * * *

(7) The respondent may, but need not, file a response to a petition for review filed under this rule. The respondent may file ~~an~~the original response ~~and eight copies~~ within seven days of the petition for review or within seven days after the Supreme Court issues an order granting review. The response shall comply with ORAP 9.10, unless otherwise provided by this rule. The response may contain a designation of parts of the trial court record not designated in the petition for review.

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

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

* * * * *

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

* * * * *

(c) As nearly as practicable, briefs shall be prepared as provided in ORAP 5.05 through 5.52, except that, ~~in lieu of assignments of error, the brief shall address each certified question accepted by the court, and only the original and 15 copies of the brief need be filed. Parties shall also submit briefs in electronic form as outlined in ORAP 9.17(6).~~2

* * * * *

Rule 12.25
EXPEDITED JUDICIAL REVIEW OF ~~ORDER~~ORDERS OF
THE ENERGY FACILITY SITING COUNCIL AND THE PUBLIC UTILITY
COMMISSION

On direct judicial review of an order of the Energy Facility Siting Council under ORS 469.403 or of the Public Utility Commission under ORS 758.017:

(1) The case caption of any brief, motion, or other paper filed with the court shall include the words "EXPEDITED JUDICIAL REVIEW UNDER ORS 469.403." " and identifying the statute authorizing the expedited judicial review proceeding.

(2) Within seven days after being served with a copy of the petition for judicial review, the Energy Facility Siting Council or the Public Utility Commission, as appropriate, shall transmit the record to the Administrator. The record shall be accompanied by proof of service of copies of the record, except exhibits, on all other parties of record in the proceeding and on any other person required by law to be served.

* * * * *

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

* * * * *

Rule 13.05
COSTS AND DISBURSEMENTS

* * * * *

(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 ~~need only~~must file the original statement of costs and disbursements, without copies, but 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 ~~and eight copies in the Supreme Court. Only the original objection or reply shall be filed in the Court of Appeals.~~

Rule 13.10

PETITION FOR ATTORNEY FEES

* * * * *

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

* * * * *

(8) The original of any petition, objections, or reply shall be filed with the Administrator, accompanied by ~~five~~**four** copies if filed in the Court of Appeals ~~and eight copies if filed in the Supreme Court~~, together with proof of service on all other parties to the appeal, judicial review, or proceeding.

* * * * *

Rule 16.03

APPLICABILITY

These rules apply to electronic filing in the Oregon Court of Appeals and the Oregon Supreme Court. At this time, only attorneys who are members of the Oregon State Bar and are authorized to practice law in Oregon are eligible to file documents electronically.

Rule 16.05 DEFINITIONS

* * * * *

(8) "Hyperlink" means a ~~reference or a navigation element~~navigation link in ~~an~~the electronic version of a document to another section of the same document or to another electronic document ~~that may be located on~~accessible via the internet.

* * * * *

Rule 16.10 eFILERS

* * * * *

(2) Conditions of Electronic Filing

(a) To access the eFiling system, each eFiler agrees to and shall

* * * * *

(v) advise the ~~appellate courts and the Oregon State Bar~~Judicial Department Enterprise Technology Services Division of changes~~any~~change in the eFiler's e-mail address.¹

* * * * *

¹ Use the form located on the Judicial Department's website, at the following address: <http://courts.oregon.gov/OJD/OnlineServices/eFile/pages/techsupport.aspx>.

An eFiler should allow two business days for processing the update. Once the update is made, it becomes effectively immediately. This obligation is independent from the obligation of Oregon lawyers to notify the Oregon State Bar when the lawyer's e-mail address changes.

Rule 16.15 FORMAT OF DOCUMENTS TO BE FILED ELECTRONICALLY

(1) Any document filed via the eFiling system must be in a Portable Document Format (PDF) or Portable Document Format/A (PDF/A) that is compatible with the eFiling system requirements- and that does not exceed 25 megabytes. An eFiler should break down a document that exceeds the size limit into as few smaller separate documents as possible, which the filer may upload as supporting documents under ORAP 16.15(5).¹ The PDF document shall allow text searching and shall allow copying and pasting text into another document.

* * * * *

(5) Except as provided in subsection (1) and paragraphs (5)(a) through (c) of this rule, to the extent practicable, an electronic filing must be submitted as a unified single PDF file, rather than as separate eFiled documents or as a principal eFiled document with additional supporting documents attached through the eFiling system.³

(a) A memorandum of law accompanying a petition in a mandamus, habeas corpus, or quo warranto proceeding in the Supreme Court under ORAP 11.05 or ORAP 11.20 must be submitted as a supporting document to the eFiled petition attached through the eFiling system.

(b) For an electronic filing containing an attachment that is confidential or otherwise exempt from disclosure, the eFiler must eFile the attachment separately from the principal document, not as a supporting document attached through the eFiling system. For the principal document, the eFiler must include a comment that the related eFiling is a confidential attachment to the principal document. For the eFiled attachment, the eFiler must select the document name "Notice to Court Confidential Attachment."

(c) For an electronically filed motion seeking approval to file another document, including an application to appear *amicus curiae* with an accompanying brief, where the eFiler intends to submit the brief or other document for filing at the same time, the brief or other document must be electronically filed separately from the motion seeking approval or application to appear *amicus curiae*, rather than being submitted as a supporting document attached to the motion. For each electronic filing transaction under this paragraph, the eFiler must include the following comments:

(i) For the motion seeking approval or application to appear *amicus curiae*, a comment that the eFiler is submitting the brief or other document through a separate eFiling transaction; and

(ii) For the brief or other document, a comment that the electronic filing transaction relates to the earlier electronic filing transaction that submitted the motion or application to appear *amicus curiae*.

³ Examples of content that should be included as part of a unified single PDF file include: (1) notice of appeal, judgment being appealed, and certificate of service; (2) petition for judicial review, agency order as to which review is sought, and certificate of service; (3) petition for reconsideration, underlying decision as to which reconsideration is sought, and certificate of service; (4) petition for review, Court of Appeals decision as to which review is sought, and certificate of service; (5) motion, affidavit or declaration (if any) and certificate of service; (6) Supreme Court mandamus or habeas corpus petition, copy of order or written decision, and certificate of service; (7) Supreme Court memorandum in support of a mandamus or habeas corpus petition, excerpt of record, and certificate of service.

Rule 16.20 FILING FEES AND eFILING CHARGES

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

Rule 16.25 ELECTRONIC FILING

~~_____ (1) Electronic Filing:~~ (1) A filer may use the eFiling system at any time, except when the system is temporarily unavailable.¹ The filing deadline for any document filed electronically is 11:59:59 p.m. in the time zone in which the court is located on the date by which the document must be filed.

(2) 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 ~~shall transmit a~~ 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) — To complete the electronic filing process, the document must be accepted by the court. The court shall notify the eFiler via the eFiler's e-mail address, and any other e-mail address provided by the eFiler, when the court accepts the eFiler's document.~~

~~—— (c) — If the court rejects a document submitted for filing via the eFiling system, the court shall notify the eFiler of the rejection via the eFiler's e-mail address, and any other e-mail address provided by the eFiler, and the document shall not become part of the court's file. To complete the filing requirements after the court has rejected a document, the eFiler may conventionally file the document or may resubmit the document via the eFiling system and repay the applicable filing fee via the electronic payment system.~~

~~—— (2) (b) —~~ After the court receives a document, the court accepts the document for filing. When the court accepts the document, 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 e-mail address provided by the eFiler. If the document was electronically served by the eFiling system pursuant to ORAP 16.45, the date of service will also relate back to the date that the eFiling system received the document.

(4) If the eFiling system is temporarily unavailable due to a system malfunction or if an error in the transmission of the document or other technical problem prevents the eFiling system from receiving a document, the court may, upon satisfactory proof, permit the filing date of the document to relate back to the date that the eFiler first attempted to file the document electronically. A party must show satisfactory proof by filing and serving with the document as to which the party seeks relation back an accompanying letter explaining the circumstances, together with any supporting documentation. Problems with the eFiler's

equipment, the eFiler's hardware or software, or other problems within the eFiler's control generally will not excuse an untimely filing.

(5) 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).

⁺ ~~See ORAP 16.20(4).~~

¹ **The eFiling system will be temporarily unavailable due to regularly scheduled maintenance and may be temporarily unavailable due to an eFiling system malfunction. The regularly scheduled maintenance hours are listed at <<http://tinyurl.com/eFileFAQpage>> (<<http://courts.oregon.gov/OJD/OnlineServices/eFile/electronicFilingFAQs.page?>>).**

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

Rule 16.30 SPECIAL FILING AND SUBMISSION REQUIREMENTS

(1) A document filed under seal, including a motion requesting that a simultaneously filed document be filed under seal or a document with an attachment that is sealed by statute or court order, must be filed conventionally.

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

(23) For all ~~other~~ documents, unless otherwise provided by these rules or directed by the court, an eFiler shall not submit to the court paper copies of an eFiled document.

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

Rule 16.35 ELECTRONIC FILING DEADLINES

~~———— (1) — Electronic filing is permitted at all times.[†] The filing deadline for any document filed electronically is 11:59:59 p.m. in the time zone in which the court is located on the date by which the document must be filed.~~

~~———— (2) — The court considers a document submitted for filing when the document is received by the eFiling system. The eFiling system will issue a confirmation receipt to the eFiler that includes the date and time of receipt.~~

~~———— (3) — If the court accepts the document for filing, the eFiling system will affix to the document the time of day, the day of the month, the month, and the year that the electronic filing system received the document. The date and time of filing entered in the register relate back to the date and time that the eFiling system received the document. If the document was electronically served by the eFiling system pursuant to ORAP 16.45, the date of service will also relate back to the date and time that the eFiling system received the document.~~

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

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

[†] ~~The eFiling system will be temporarily unavailable due to regularly scheduled maintenance and may be temporarily unavailable due to an eFiling system malfunction. The regularly scheduled maintenance hours are listed at <<http://tinyurl.com/eFileFAQpage>>~~

~~(<http://courts.oregon.gov/OJD/OnlineServices/eFile/electronicFilingFAQs.page?>>).
See subsection (4) of this rule for seeking relief from an untimely filing due to an eFiling system malfunction.~~

Rule 16.40

ELECTRONIC SIGNATURES

* * * * *

(2) (a) In addition to information required by statute or rule to be included in the document, an electronically filed document must include a signature block that includes the printed name of the eFiler, ~~preceded by an electronic symbol intended to substitute for a signature (such as a scan of the eFiler's handwritten signature of "s/") in the space where the signature would otherwise appear.~~ **and an indication that the printed name is intended to substitute for the eFiler's signature. The attorney's bar number and an indication of the party the attorney represents must appear as part of or in addition to the signature block.**

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

(b) The Administrator is authorized to provide notice on the Judicial Department's website¹ that eFilers may not include signature blocks generated by certain programs that are incompatible with the appellate electronic court systems.

* * * * *

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

Rule 16.50

HYPERLINKS AND BOOKMARKS IN eFILED BRIEFS

(1) An eFiled document may contain one or more hyperlinks to other parts of the same document or hyperlinks to a location outside of the document that contains a source document for a citation.

~~_____ (a) _____ When a party eFiles a brief, the party is encouraged to electronically bookmark the sections of the brief addressing separate assignments of error or questions presented on review using PDF document creation software.~~

_____ (a) _____ When a party eFiles a brief or other memorandum that is accompanied by excerpts of record or attachments, the party is encouraged to hyperlink citations to the relevant portions of the excerpts or attachments.

* * * * *

(2c) A hyperlink to cited authority does not replace standard citation format. The complete citation must be included within the text of the document. Neither a hyperlink, nor any site to which it refers, shall be considered part of the record. A hyperlink is simply a convenient mechanism for accessing material cited in an eFiled document.

(2) When a party eFiles a brief, the party is encouraged to electronically bookmark the sections of the brief, excerpt of record, and any appendix using PDF document creation software. The caption of a bookmark should be concise. The sections of the brief that should be bookmarked include the discussion on each assignment of error or question presented on review, or the response to any assignment of error or presented question. The sections of the excerpt of record or appendix that should be bookmarked include the judgment, order, or opinion under review and any separate findings or determinations that are part of that disposition.

See Appendix 16.50 (example of electronic view of bookmarks).

Rule 16.60

~~PROTECTED INFORMATION~~

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

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

~~_____ (3) _____ A party filing a brief containing confidential material must comply with ORAP 5.95 by eFiling the redacted version of the brief and conventionally filing the~~

~~unredacted version within three business days after the court's acceptance of the document.~~

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

APPENDIX 2.05

Illustration for ORAP 2.05

IN THE COURT OF APPEALS OF THE STATE OF OREGON

_____)	
Plaintiff-Appellant,)	
(or Plaintiff-Respondent))	_____ County Circuit
)	Court No. _____
)	
v.)	
_____)	
Defendant-Respondent.)	NOTICE OF APPEAL
(or Defendant-Appellant))	

1.

(Plaintiff/Defendant) hereby gives notice of appeal from the judgment entered in this case on [date of judgment], signed by Judge _____, in the _____ County Circuit Court.

* * * * *

5.

If the record includes an audio or video recording played in the trial court and the appellant wants the transcript to include a transcript of the recording:]

The record includes one or more audio or video recordings that were played in the trial court, and appellant wants the transcript to include a transcript of those recordings. The dates of each hearing at which such a recording was played are:

_____.

6.

[Only if less than the entire record is designated in paragraph 4:]

Appellant intends to rely on the following points:

_____.

67.

This appeal is timely and otherwise properly before the Court of Appeals because:

_____.

78.

Attached to this notice of appeal is a copy of the judgment being appealed. Also attached are copies of any other materials pertinent to determining appellate jurisdiction.

89.

[If filing two or more notices of appeal in cases that were consolidated in the trial court and the appellant would like the cases to be consolidated in the appellate court:]

Appellant requests that this case be consolidated in the appellate court with the appeal from _____ County Circuit Court, case number _____, in which a notice of appeal was filed on _____.

910.

CERTIFICATE OF SERVICE

* * * * *

APPENDIX 3.30

Illustration for ORAP 3.30

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

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

**~~REPORTER'S~~ REQUEST BY REPORTER OR TRANSCRIBER FOR TIME
EXTENSION
FOR PREPARATION OF TRANSCRIPT**

~~1. I reported all (or a part) of the proceedings identified in the designation of record.~~
1. I am responsible for preparing a transcript for _____ days of proceedings ~~and.~~ A transcript of those proceedings will be approximately _____ pages. The transcript was ordered on [date] .

* * * * *

Date

Court Reporter
or Transcriber

County

Telephone No.

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))	
)	
)	
v.)	
)	
Defendant-Respondent.)	
(or Defendant-Appellant))	

____ County Circuit
Court No. _____

CA A _____

CERTIFICATE OF PREPARATION, ~~FILING,~~
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:

_____.

~~Other portions of the record were reported by~~

_____.

~~I certify that the original of the transcript or portion thereof prepared by me, consisting of _____ volumes, and a copy of this Certificate were filed with the trial court administrator on _____.~~

I certify that the original of this Certificate was ~~mailed to~~ **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 by ~~(U.S. mail/personal service)~~ on:

[name and address of each person served]

Material served by mail was deposited in the U.S. Postal Service facility at _____
in a sealed envelope, addressed as shown above, with postage fully prepaid thereon.

[Date]

Court Reporter **or Transcriber**

APPENDIX 3.33-2

Illustration for ORAP 3.33(4)(c)

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

_____)	
<u>Plaintiff-Appellant,</u>)	
<u>(or Plaintiff-Respondent)</u>)	<u>County</u>
)	<u>Circuit Court No.</u>
)	
v.)	
_____)	<u>CA A</u>
<u>Defendant-Respondent,</u>)	
<u>(or Defendant-Appellant)</u>)	

CERTIFICATE OF FILING 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:

_____.

The transcript is now settled.

I certify that on _____ [date] _____ the transcript or part thereof
prepared by me was filed with the Appellate Court Administrator in electronic form
in the form required by ORAP 3.35(2).

I certify that on _____ [date] a copy of this Certificate was 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-am/pm if appropriate] [court reporter or transcriber last, first name]

Example: CA123456 transcript-2002-02-15-am 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-am/pm if appropriate] [court reporter or transcriber last, first name]

Example: CA123456 transcript-confidentialcase-2002-02-15-
am johnsonerin

APPENDIX 7.10-1

List of Commonly Used Motion Titles for ORAP 7.10(1)(b) and (c)¹

Motion Titles (Motions Other Than Motions for Extension of Time–ORAP 7.10(1)(b))

* * * * *

Motion–Redact Previously Filed Document, ORAP 8.50(2)(b)

* * * *

Illustration for ORAP 16.50

This is not how the Board and the ALJ approached the matter.

If one looks at a preponderance of all the medical evidence in the record² and it demonstrates that the different findings (that claimant had no impairment relative to her accepted left ankle sprain) by Dr. Stewart, the attending physician, are more accurate than those of the medical arbiter, those findings should have been utilized for purposes of establishing impairment in this case.

It follows that Dr. Ballard should not have been allowed to determine claimant's impairment, in which case, claimant would not have been awarded any permanent disability.

PETITIONER'S SECOND ASSIGNMENT OF ERROR

The Board's finding that affirmed the ALJ's Opinion & Order relative to the permanent disability award is not supported by substantial evidence.

I. Preservation of Error

The Board's error is apparent in the Order on Review from which the Employer's Petition for Judicial Review has been filed. The Board found as follows:

"Turning to the present case, we agree with the ALJ's reasoning regarding the medical arbiter's opinion. Consequently, we affirm the ALJ's permanent disability award."

² Claimant's history of left ankle sprains; the variable results of the physical examinations referred to by Dr. Yodlowski; the subjective complaints unsupported by objective findings; the opinions of Drs. Yodlowski and Stewart, and statements by Dr. Hinz; the post-closure October 2010 emergency room treatment for left foot problems; and the denial of claimant's then current condition in December 2010.



Bookmarks



A151110 CA - Brief - Opening 09-20-2012

Statement of Facts

AE 1: WCB erred in affirming the permanent disability award

AE 2: Permanent disability finding is not supported by substantial evidence

AF 3: WCB erred in affirming attorney fee award

ALJ Opinion and Order

WCB Order on Review