

**OREGON RULES OF
APPELLATE PROCEDURE**

**SUPREME COURT
and
COURT OF APPEALS**

**Amended
January 1, 2007**

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Civil Appeals and Judicial Review
(ORS 21.010 and ORS 21.480)

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BRIEF COVER COLORS
(ORAP 5.05)

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Petitioner on Judicial Review	
Answering.....	Red
Respondent on Appeal	
Respondent on Judicial Review	

Combined Answering and Cross-Opening.....	Violet
Cross-Appellant on Appeal	
Cross-Petitioner on Judicial Review	
Cross-Answering.....	Red
Cross-Respondent on Appeal	
Cross-Respondent on Judicial Review	
Reply.....	Gray
Appellant on Appeal	
Petitioner on Judicial Review	
Combined Reply and Cross-Answering	
Answering to Cross-Assignment of Error.....	Red
Appellant on Appeal	
Petitioner on Judicial Review	
<i>Amicus Curiae</i>	Green

Supreme Court Only

Petition for Review of Court of Appeals Decision.....	Yellow
Response to Petition for Review.....	Orange
Brief on the Merits of Petitioner on Review.....	White
Brief on the Merits of Respondent on Review.....	Tan
Petition for Reconsideration.....	Yellow
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1. GENERAL RULES

Rule 1.05 SCOPE OF RULES

These rules apply to all proceedings in the Supreme Court and Court of Appeals.

Rule 1.10 CITATION TO APPELLATE RULES; EFFECTIVE DATE; TEMPORARY AMENDMENTS AND RULES

(1) These rules shall be cited as ORAP.

(2) The effective date of any amendment to or new rule of the Oregon Rules of Appellate Procedure shall be January 1 of the year following the adoption of the amendment or new rule. The rules as amended shall apply to any thing filed or time period commenced in the appellate courts on or after the effective date of the amendment or new rule. The superseded rules shall apply to any thing filed or time period commenced in the appellate courts before the effective date of any amendment or new rule.¹

(3) Notwithstanding subsection (2) of this rule, the appellate courts may adopt one or more temporary rules or temporary amendments to existing rules. Unless otherwise indicated in the order adopting the temporary rule or temporary amendment, the effective date of the rule or amendment shall be the date of the order, and the rule or amendment shall expire on the effective date of the next regularly adopted amendments to the Oregon Rules of Appellate Procedure.²

¹ These rules were last regularly amended effective January 1, 2007.

² A temporary new rule or temporary amendment to an existing rule will be published in the Oregon Appellate Courts Advance Sheets and on the Judicial Department's website (www.ojd.state.or.us).

Rule 1.15 TERMINOLOGY

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

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

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

- (a) "Administrator" means the State Court Administrator.
- (b) "Agreed narrative statement" means the parties' stipulated account of proceedings in lieu of a transcript or audio record.
- (c) "Appeal" includes judicial review.
- (d) "Appellant" means a party who files a notice of appeal or petition for judicial review.
- (e) "Appellate court" means the Supreme Court, Court of Appeals or both, as appropriate.
- (f) "Appellate judgment" shall have the meaning set out in ORAP 14.05(1)(a).
- (g) "Audio record" means the record of oral proceedings before a trial court or agency made by electronic means and stored or reproduced on audiotape or compact disc.
- (h) "Business day" means Monday through Friday excluding legal holidays.
- (i) "Cassette" means the cartridge containing the audio or video recording.
- (j) "Cross-appellant" means a party, already a party to an appeal, who files an appeal against another party to the case.
- (k) "Cross-respondent" means a party who is adverse to a cross-appellant.
- (l) "Decision" shall have the meaning set forth in ORAP 14.05(1)(b).
- (m) "Domestic relations case" includes but is not necessarily limited to these kinds of cases: dissolution of marriage, dissolution of domestic partnership, filiation, paternity, child support enforcement, child custody, modification of judgment of dissolution of marriage or domestic partnership, and adoption.
- (n) "Judgment" means any judgment document or order that is appealable under ORS 19.205, ORS chapter 138, or other provision of law.
- (o) "Legal advisor" means an attorney in a criminal case assisting a defendant who has waived counsel, as provided in ORS 138.504(2).
- (p) "Notice of appeal" includes a petition for judicial review and a notice of cross-appeal.
- (q) "Original" in reference to any thing to be served or filed shall mean the thing signed by the appropriate attorney or party and submitted for filing.
- (r) "Petitioner" means a party who files a petition.

- (s) "Respondent" means the party adverse to an appellant or a petitioner.
- (t) "Transcript" means a typewritten or printed transcription of oral proceedings before a trial court or agency.
- (u) "Trial court" means the court or agency from which an appeal or judicial review is taken.
- (v) "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.

Rule 1.20
ADMINISTRATIVE AUTHORITY TO REFUSE FILINGS;
SANCTIONS FOR FAILING TO COMPLY WITH RULES;
WAIVER OF RULES

(1) The Administrator may refuse to file any thing delivered for filing that does not comply with these rules or applicable statutes.

(2) The court on its own motion or on motion of a party may strike, with or without leave to refile, any brief, excerpt of record, motion or other thing that does not conform to applicable statutes or these rules.

(3) If a party responsible for causing a transcript to be prepared and filed fails to do so, after notice and opportunity to cure the default, the court may direct that the appeal proceed without the transcript. If the court directs that the appeal proceed without the transcript and the party is the appellant, the appellant shall file a statement of points relied on.¹

(4) The court on its own motion or on motion of a party may dismiss an appeal for want of prosecution if:

- (a) the appellant has failed to comply with applicable statutes or these rules;
- (b) fourteen days' notice of the noncompliance has been given to each attorney of record and to parties not represented by counsel; and
- (c) the court has not received a satisfactory response to the notice.

(5) For good cause, the court on its own motion or on motion of any party may waive any rule.

¹ See ORS 19.250(1)(e).

Rule 1.25

COMPUTATION OF TIME

(1) In computing any period of time prescribed or allowed by these rules or order of the court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless that day is a Saturday, a legal holiday (including Sunday), or a day or part of a day on which the court is closed for the purpose of filing documents, closed to the extent ordered by the Chief Justice, or closed before the end of normal working hours during which documents may be filed. In any of those events, the period runs until the end of the next day the court is open.

(2) When the period of time prescribed or allowed relates to serving a public officer or filing a document at a public office, and if the last day falls on a day when that particular office is closed before the end of or for all of the normal work day, the last day shall be excluded in computing the period of time within which service is to be made or the document is to be filed, in which event the period runs until the close of office hours on the next day the office is open for business.

(3) When a party intends to file by mail a brief or other thing, other than a notice of appeal or other document subject to ORS 19.260, and the brief or other thing is due on a date that all local United States Postal Service facilities unexpectedly are closed in whole or in part, the party filing the brief or other thing shall have until the next day that United States Postal Service facilities are open to file the brief or other thing.

(4) Except for an oral extension of time under ORAP 7.27, when the period of time prescribed or allowed is less than seven days, intermediate Saturdays and legal holidays, including Sundays, shall be excluded in the computation.

(5) As used in this rule, "legal holiday" means legal holiday as defined in ORS 187.010 and ORS 187.020.

(6) The normal work day of the Appellate Courts Records Section of the Office of the State Court Administrator is 8:00 a.m. to 5:00 p.m.

See ORS 174.120 and ORCP 10 A.

Rule 1.30 ATTORNEY BAR NUMBER

The bar number for each responsible attorney is required on notices of appeal, briefs, petitions for review, petitions for reconsideration, responses to petitions, documents in original proceedings, and motions.

Rule 1.35 FILING AND SERVICE

(1) Filing

(a) Any thing to be filed in the Supreme Court or Court of Appeals shall be delivered to the State Court Administrator, Appellate Courts Records Section, 1163 State Street, Salem, Oregon 97301-2563.

(b) If, pursuant to law or order of a court, a party's address is not subject to public disclosure, the party filing any thing in the Supreme Court or Court of Appeals shall provide an alternative contact address that the court may make available for public inspection.

(c) A person filing a notice of appeal, petition for judicial review or petition under the original jurisdiction of the Supreme Court may file by mail and the filing shall be complete on deposit in the mail if mailed in accordance with ORS 19.260(1). If the person relies on the date of mailing as the date of filing under ORS 19.260(1), the person shall certify the date of mailing and shall file the certificate, together with acceptable proof from the post office of the date of mailing, with the Administrator with proof of service on the parties to the appeal, judicial review or original proceeding. Acceptable proof from the post office of the date of mailing shall be a receipt for certified or registered mail, with the certified or registered mail number on the envelope or on the item being mailed, with the date of mailing either stamped by the United States Postal Service on the receipt or shown by a United States Postal Service postage validated imprint on the envelope received by the Administrator.

(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 on or before the due date by first-class mail through the United States Postal Service.

(e) If filing is not done as provided in paragraphs (b) or (c) of this subsection, then the thing shall not be deemed filed until the thing actually is received by the Administrator.

(2) Service Generally

(a) A copy of any thing delivered for filing under these rules must also be served by the party or attorney delivering it to the other parties to the cause.¹

(b) Except as otherwise provided by law,² service may be in person or by first-class mail. Service by mail through the United States Postal Service shall be complete on deposit in the mail unless otherwise provided by statute.

(c) All service copies must include a certificate showing the date of filing.

(d) Any thing filed with the Administrator shall contain either an acknowledgment of service by the person served or proof of service in the form of a statement of the date of

personal delivery or deposit in the mail and the names and addresses of the persons served, certified by the person who made service.

(3) Service on Trial Court Administrators and Transcript Coordinators

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

(b) When a copy of a notice of appeal is required to be served on the transcript coordinator for the court from which the appeal is taken, the notice shall be mailed or delivered to the office of the trial court administrator addressed to "transcript coordinator."

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

(5) (a) Parties filing any thing in the Supreme Court or Court of Appeals, including but not limited to notices of appeal, petitions for judicial review, and petitions invoking original jurisdiction, motions, and briefs, are

(i) Required to use recycled paper if recycled paper is readily available at a reasonable price in the party's community. Further, parties are encouraged to use paper containing the highest available content of post-consumer waste, as defined in ORS 459A.500, that is recyclable in the office paper recycling program in the party's community, and

(ii) Encouraged to print on both sides of each sheet of paper of the thing being filed.

(b) The court will not decline to accept any filing on the ground that the filing does not comply with paragraph (a) of this subsection.³

¹ Whenever these rules authorize or require service of a copy of any thing on the Attorney General, the copy shall be served at this address: Attorney General of the State of Oregon, Office of the Solicitor General, 400 Justice Building, 1162 Court St. N.E., Salem, Oregon 97301-4096.

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

³ See ORS 7.250.

Rule 1.40
VERIFICATION; ADOPTING ORCP 17

(1) Except if specifically required by statute, no thing filed with the appellate court need be verified.

(2) When a statute requires a paper filed with the appellate court to be verified, a verification shall consist of a statement:

(a) that the person has read the paper and that the facts stated in the paper are true, to the best of the person's knowledge, information and belief formed after reasonable inquiry;

(b) signed and dated by the person; and

(c) sworn to or affirmed before a person authorized by law to administer oaths or affirmations, including, but not necessarily limited to, a notary public.

(3) Oregon Rule of Civil Procedure (ORCP) 17 is hereby adopted as a rule of appellate procedure applicable to the Supreme Court and Court of Appeals.¹

¹ See ORAP 13.25 regarding the procedure for requesting sanctions under this subsection.

See generally ORS 138.090 regarding the signing of notices of appeal in criminal cases, ORS 19.250(1)(f) regarding the signing of notices of appeal in civil cases, and ORAP 5.05(4)(g) regarding the signing of briefs.

2. NOTICE OF APPEAL

Rule 2.05 CONTENTS OF NOTICE OF APPEAL

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

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

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

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

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

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

(6) A designation of those parts of the proceedings to be transcribed³ and exhibits⁴ to be included in the record in addition to the trial court file.

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

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

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

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

(a) In a civil case, the notice of appeal shall contain proof of service on all other parties who appeared in the trial court and, for those civil cases in which the district attorney

appeared (*e.g.*, contempt proceedings), proof of service of a copy of the notice of appeal on the Attorney General.⁵

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

(i) The defendant, in an appeal by the state.

(ii) The district attorney, in an appeal by the defendant. The notice of appeal in such an appeal also shall contain proof of service of a copy of the notice of appeal on the Attorney General.⁵

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

(i) The trial court administrator; and

(ii) The transcript coordinator, if any part of the record of oral proceedings in the trial court has been designated as part of the record on appeal.⁶

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

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

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

³ See ORAP 3.33 regarding the appellant's responsibility to make financial arrangements with either the court reporter or the transcript coordinator for preparation of a transcript of oral proceedings.

⁴ See ORAP 3.25 regarding making arrangements for transmitting exhibits to the appellate court for use on appeal. See also Uniform Trial Court Rules (UTCRC) 6.120(2) and (3) regarding retrieval of exhibits by trial court administrators for use on appeal.

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

⁶ See footnote 4 to paragraph (10)(a) of this rule.

See ORS 19.240, ORS 19.250, and ORS 138.081; see also ORAP 8.20 regarding bankruptcy.

See Appendix 2.05 for a form of notice of appeal.

Rule 2.10
SEPARATE NOTICES OF APPEAL

(1) When two or more judgments collectively dispose of all claims or adjudicate the rights and liabilities of all parties in a case,¹ one notice of appeal is sufficient. The notice of appeal shall identify which judgment was entered last and the date of entry. The notice of appeal may identify one or more other judgments that the appellant intends to contest,² but the appellant shall not be limited to contesting the judgment or judgments so identified.

(2) If the trial court consolidates two or more cases but enters a separate judgment for each case, a separate notice of appeal must be filed as to each judgment, if a party wishes to appeal from each.

(3) After a party has filed a notice of appeal from a decision in a trial court case, if another party files a notice of appeal from a decision in the same trial court case, the Administrator may place the subsequent notice of appeal in the same appellate file as the first notice of appeal or may assign a new appellate case number to the subsequent notice of appeal, subject to the following:

(a) When the Administrator has placed a subsequent notice of appeal in the same appellate case file, any party may move the court to sever the case and for assignment of a new appellate case number to the subsequent notice of appeal.

(b) When the Administrator has assigned a new appellate case number to a subsequent notice of appeal, any party to either appeal may move to consolidate the appellate cases.

(4) With respect to violation or infraction cases initiated by citations and heard by the trial court at the same time, one notice of appeal identifying the judgment or judgments being appealed is sufficient.

¹ See *State ex rel Orbanco Real Estate Serv. v. Allen*, 301 Or 104, 720 P2d 365 (1986); *State ex rel Zidell v. Jones*, 301 Or 79, 720 P2d 350 (1986).

² See ORS 19.250(1)(c).

Rule 2.15
FILING FEES IN CIVIL CASES

(1) This rule:

(a) does not apply to criminal, habeas corpus, post-conviction relief, juvenile court, involuntary commitment of allegedly mentally ill or mentally retarded persons, Psychiatric

Security Review Board, and State Board of Parole cases;¹

(b) does apply to all other civil proceedings.²

(2) When one or more notices of appeal are filed at one time arising from a single or consolidated trial court case, one filing fee is required for each appellant or for two or more appellants appearing jointly. When a notice of appeal has been filed and a notice of appeal subsequently is filed in circumstances resulting in the creation of a new appellate court case,³ the appellant is required to pay a filing fee at the time of the subsequent notice of appeal.

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

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

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

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

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

¹ See ORS 21.010(2), (3).

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

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

Rule 2.20
APPEAL FROM SUPPLEMENTAL JUDGMENTS ON COSTS
AND ATTORNEY FEES AFTER NOTICE OF APPEAL FILED

(1) If the trial court enters a supplemental judgment awarding attorney fees or costs and

disbursements under ORCP 68 C(5)(b) after the notice of appeal has been filed, and if the appellant intends to challenge the supplemental judgment on appeal, the appellant, within 30 days after entry of the supplemental judgment, shall serve and file an amended notice of appeal from the supplemental judgment.

(2) If the trial court enters a supplemental judgment disallowing, in whole or in part, any request for attorney fees or costs and disbursements after the notice of appeal has been served, and if a respondent intends to challenge the supplemental judgment on appeal:

(a) If that respondent has, before entry of the supplemental judgment, timely filed notice of cross-appeal, that respondent, within 30 days after entry of the supplemental judgment, shall serve and file an amended notice of cross-appeal from the supplemental judgment.

(b) If that respondent has not, before entry of the supplemental judgment, timely filed notice of cross-appeal, that respondent, within 30 days after entry of the supplemental judgment, shall serve and file a notice of cross-appeal.

See generally ORS 19.270(1)(a) and ORS 20.220.

Rule 2.22

APPEALS IN JUVENILE CASES

(1) If an appeal is pending from an order or judgment of a juvenile court, the juvenile court enters a subsequent appealable order or judgment, and a party to the juvenile court case wishes to appeal from the subsequent order or judgment:

(a) If the party who wishes to appeal is the appellant in the pending appeal, the appellant shall serve and file an amended notice of appeal from the subsequent order or judgment.

(b) If the party who wishes to appeal is the cross-appellant in the pending appeal, the cross-appellant shall serve and file an amended notice of cross-appeal from the subsequent order or judgment.

(c) If the party who wishes to appeal is any other party to the case, that party shall file a notice of appeal from the subsequent order or judgment.

(d) Any such notice of appeal, amended notice of appeal, or amended notice of cross-appeal shall contain the appellate case number of the pending appeal and shall be served and filed within 30 days after entry of the subsequent order or judgment.¹

(2) This subsection applies to a motion for relief from an order or judgment filed in juvenile court under ORS 419B.923 during the pendency of an appeal.

(a) If the copy of the motion required to be served on the appellate court is not entitled "MOTION FOR RELIEF FROM ORDER OR JUDGMENT UNDER ORS 419B.923," the

copy shall be accompanied by a letter of transmittal identifying the motion as a motion for relief under ORS 419B.923.

(b) Any party to the appeal may request the appellate court to hold the appeal in abeyance pending disposition of the motion or to allow the appeal to go forward. In the absence of a request from a party, the court on its own motion will review the motion for relief from judgment and decide whether to hold the appeal in abeyance. If the court does not order the appeal to be held in abeyance, the appeal will go forward.

(c) If the appellate court holds an appeal in abeyance pending disposition of a motion for relief from order or judgment and subsequently the court receives a copy of the juvenile court's order deciding the motion, after expiration of the period within which an appeal from the order may be filed, the appellate court will decide whether to reactivate the case or take other action.

(d) A party wishing to appeal an order deciding a motion for relief from order or judgment under ORS 419B.923 during the pendency of an appeal shall file a notice of appeal within the time and in the manner prescribed in ORS chapter 19. The notice of appeal as filed shall bear the same appellate case number assigned to the original notice of appeal.

(3) At the request of a party to a juvenile case or on the court's own motion, the Chief Judge may refer the case to the Appellate Settlement Conference Program under ORAP 15.05.

¹ See ORS 419A.205.

See ORAP 10.15 regarding expediting dependency cases.

See ORAP 7.50 regarding summary affirmance in juvenile cases.

Rule 2.25
PARTIES TO APPEALS;
CASE TITLE CHANGE BY ADMINISTRATOR

(1) With respect to appeals from courts:

(a) The case title shall include all parties or entities ever named in the case, including parties or entities dismissed from the case, notwithstanding that the title of the judgment being appealed may not refer to all parties in the case.

(b) All parties should be named completely and should be identified by their designations in the trial court (*e.g.*, plaintiff, defendant, cross-plaintiff, intervenor) and on appeal, as appropriate (*e.g.*, appellant, respondent, cross-appellant, cross-respondent). A party to the case who is not a party on appeal should be designated only by that party's designation in the trial court.

(c) Parties to a crossclaim, third-party claim or counterclaim should be set forth in a separate case title under the original case title.

(d) Where the trial court has used an "In Re" or other similar case title that does not identify the adverse parties to the proceeding, such as in probate and juvenile court cases, the contesting parties should be set forth in a separate case title under the original case title.

(e) The title shall include the trial court case number or numbers.¹

(2) The Administrator may correct the title of the case on appeal or judicial review to include all persons who were parties to the proceeding below and to designate properly the parties according to their status on appeal or judicial review. If the Administrator corrects the title, the Administrator shall give notice and opportunity to respond to all parties to the appeal or judicial review.

(3) (a) A person who was a party to the case in the tribunal from which the appeal was taken but who was not designated in the notice of appeal as a party to the appeal may appear as of right as a party to the appeal by filing a notice of intent to participate as a party.

(b) If the notice of appeal in a juvenile court, guardianship, conservatorship or other similar proceeding does not identify the juvenile or protected person as a party to the appeal, the juvenile or protected person may appear as of right as a party to the appeal by filing a notice of intent to participate as a party.

(c) A notice of intent to participate on appeal under paragraph (a) or (b) of this subsection shall be filed within 21 days of the date of filing of the notice of appeal, or within such further time as may be allowed by the court, and shall be served on all other parties to the appeal and on the court reporter or transcriptionist, if any, preparing the transcript.

(d) A party who appears on appeal under paragraph (a) or (b) of this subsection may recover costs and attorneys fees, if any, and is liable for costs and attorney fees, if any, the same as any party to an appeal.

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

¹ See ORAP 4.15(2) regarding case titles on judicial review of agency orders. See Appendix 2.25.

Rule 2.30 CONSOLIDATION

The appellate court, on motion of a party or on its own motion, may consolidate cases for

purposes of appeal. Any party may file an objection to another party's motion for consolidation within 14 days after the filing of the motion. The appellate court, on motion of a party or on its own motion, may consolidate cases for oral argument, whether or not the cases have been consolidated for appeal.

Rule 2.35
SUMMARY DETERMINATION OF APPEALABILITY AND
EXPEDITED SUPREME COURT REVIEW

(1) As used in this rule, "decision" means any oral or written ruling of a circuit or the Tax Court.

(2) The Supreme Court in a direct appeal of a decision to that court and the Court of Appeals in an appeal of a decision to that court may make a summary determination of whether the decision is appealable.

(3) (a) If the court makes a summary determination of appealability, the order or opinion expressing the court's determination shall expressly state that the determination is a summary determination under ORS 19.235(3). The order or opinion also shall contain a notice informing the parties that the order or opinion is a summary determination of appealability under ORS 19.235(3), that the determination is subject to review or reconsideration by the Supreme Court, that the petition for review shall be filed within 14 days of the order or opinion or such shorter time as may be ordered by either court and that the Supreme Court will expedite its consideration of the petition.

(b) If an appellate determination of appealability does not expressly state that it is a summary determination of appealability under ORS 19.235(3), then the determination is not subject to ORS 19.235(3) or this rule.

(4) Unless a shorter period of time is ordered by the Court of Appeals or the Supreme Court, a petition for review of a summary determination by the Court of Appeals or a petition for reconsideration of a summary determination by the Supreme Court shall be filed within 14 days of the date of the appellate court's determination. The caption of the petition shall prominently display the words "Expedited Summary Determination of Appealability Pursuant to ORAP 2.35(4)." The Supreme Court shall expedite its consideration of a petition for review or reconsideration of a summary determination of appealability.

(5) If the appellate court has determined that the decision is not appealable and has dismissed the appeal, and the opportunity for review or reconsideration of that determination as provided in this rule has been exhausted or has expired, the Administrator shall immediately issue the appellate judgment.

See generally ORS 19.235.

Rule 2.40
NOTICE OF APPEAL IN GUILTY OR NO CONTEST PLEA,

**PROBATION OR SENTENCE SUSPENSION REVOCATION,
AND RESENTENCING CASES**

(1) Except as provided in subsections (2) and (3) of this rule, in addition to the notice of appeal requirements contained in ORAP 2.05, when a defendant in a criminal case appeals from a judgment following a guilty plea, no contest plea, resentencing pursuant to a remand from an appellate court, or resentencing pursuant to the judgment of a court granting post-conviction relief, or from an order or judgment revoking probation or sentence suspension:

(a) The caption of the notice of appeal shall identify the notice as a "Notice of Appeal Pursuant to ORAP 2.40."

(b) The body of the notice of appeal shall:

(i) Identify the type of proceeding from which the appeal arises (*e.g.*, guilty plea, no contest plea, probation revocation, etc.); and

(ii) Identify at least one colorable claim of error from the proceeding.¹

(2) If, concurrently with filing a notice of appeal in a case subject to subsection (1) of this rule, the defendant has filed a motion for delayed appeal under ORS 138.071(4), the defendant need not identify a colorable claim of error in the notice of appeal.

(3) If the defendant entered a conditional guilty or no contest plea under ORS 135.335(3), the defendant need not comply with paragraphs (1)(a) and (b) of this rule, but the caption of the notice of appeal shall identify the case as a "Conditional Plea Case."²

See generally ORS 138.050, ORS 138.053(3), and ORS 138.222(7)(a)-(c).

¹ *See State ex rel Dept. of Human Services v. Rardin*, 338 Or 399, 406-08, 110 P3d 580 (2005), for a description of "colorable claim of error." *See* Appendix 2.40 for illustrations of colorable claims of error.

² *See* ORAP 5.50(3) regarding how a defendant must establish on appeal that the defendant's guilty or no contest plea was conditional.

**Rule 2.45
SUMMARY DETERMINATION OF AUTHORITY
TO DECIDE ACTION AGAINST PUBLIC BODY**

(1) Referral to Court of Appeals of Question of Authority to Decide Case

(a) This subsection applies to an action or other proceeding against a public body when a circuit court or other tribunal refers the question of its legal authority to decide the case

pursuant to ORS 14.165.

(b) The court or other tribunal shall:

(i) Issue a referral order entitled "REFERRAL ORDER PURSUANT TO ORS 14.165" stating the nature of the question of authority to decide the action or proceeding that has arisen, briefly summarizing the parties' contentions, and, if time is of the essence, identifying the date by which the court or other tribunal requests that the matter be decided.

(ii) Transmit the referral order and the record to the Court of Appeals through the State Court Administrator, and send a copy of the referral order to each party.

(c) Any party wishing to address in the Court of Appeals the question of which court or other tribunal, if any, has authority to decide the action or proceeding may file a memorandum addressing the question. Any such memorandum shall be in the form prescribed in ORAP 7.10 for motions generally, shall not exceed 10 pages without leave of the court, and shall be served and filed within 21 days after the date of receipt by the Court of Appeals of the referral order.

(d) The Court of Appeals will decide the question as provided in ORS 14.165(5) summarily and as expeditiously as practicable, and will endeavor to decide the question by the date, if any, identified in the referral order.

(e) The Court of Appeals will issue an order communicating its decision to the parties and to the court or other tribunal that referred the question. If the Court of Appeals decides that another court or other tribunal has authority to decide the case, the Court of Appeals will enter a transfer order and send a copy of the order to each party. Pursuant to ORS 14.165(8), the person who filed the action or proceeding must comply with the provisions of ORS 14.165(8) to accomplish the transfer. At the request of the court or other tribunal to which the case has been transferred, the Court of Appeals will transmit the record to the court or other tribunal.

(f) No filing fee or first appearance fee is due for a referral to the Court of Appeals for a summary determination under ORS 14.165 of the question of authority to decide a case.

(2) Court of Appeals Determination that it is the Correct Forum

On referral of a question to the Court of Appeals under ORS 14.165(1)(b) or (3), if the Court of Appeals decides that it is the appropriate court to decide a case referred to it:

(a) The State Court Administrator will assign the case a regular appellate case number.

(b) The Court of Appeals will enter an order stating its determination that it is the appropriate court to decide the case and identifying any actions that a party must take to perfect the case. On entry of the order, the case will be deemed to have been transferred to

the Court of Appeals.

(c) For the purpose of determining the next event in the appellate process, the case will be deemed to have been filed in the Court of Appeals as of the date of entry of the order referred to in paragraph (2)(b) of this rule.*

(d) The appellant or petitioner shall pay the appellate court filing fee within 10 days of the date of entry of the Court of Appeals' order or such additional time as the court may allow. Any respondent shall pay the respondent's first appearance fee on the respondent's first appearance thereafter.

(3) Transfer of Case to the Court of Appeals

(a) If the circuit court determines pursuant to ORS 14.165(1)(a) that the Court of Appeals is the court authorized by law to hear an action or proceeding against a public body and transfers the case to the Court of Appeals, the person who filed the action or proceeding must comply with ORS 14.165(8).

(b) When the person who filed the action or proceeding files a copy of the transfer order with the State Court Administrator, the Administrator will assign a case number to the case. For the purpose of determining the next event in the appellate process, the case will be deemed to have been filed in the Court of Appeals on the day of filing of a copy of the circuit court's transfer order.*

(c) The person filing the action or proceeding shall pay the appellate filing fee at the same time as filing a copy of the transfer order or within such additional time as may be allowed by the Court of Appeals. Any respondent shall pay the respondent's first appearance fee on the respondent's first appearance thereafter.

(d) The Court of Appeals will give a party notice of any actions that the party must take to perfect the case in the Court of Appeals.

* Regardless of the date that the case is deemed filed in the Court of Appeals for the purpose of determining the next event in the appellate process, *see* ORS 14.165(6) and (7) regarding determining the timeliness of the filing of the action or proceeding.

See generally ORS 14.165. *See* ORS 14.165(10) for a definition of "public body" and "tribunal."

With respect to cases subject to referral to the Court of Appeals under ORS 34.102(5), *see* ORAP 4.74.

3. RECORD ON APPEAL

Rule 3.05 TRIAL COURT RECORD ON APPEAL; SUPPLEMENTING THE RECORD

(1) In any appeal from a trial court, the trial court record on appeal shall consist of the trial court file, 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) The record of oral proceedings shall be a transcript, unless the oral proceedings were recorded by audio or video recording equipment and the appellate court has waived preparation of a transcript and ordered that the appeal proceed on the audio or video record alone. The parties may file an agreed narrative statement in lieu of or in addition to a transcript, as provided in ORS 19.380 and ORAP 3.45.

(3) The appellate court, on motion of a party or on its own motion, may order that any thing in the record in the trial court whether or not designated as part of the record in the notice of appeal, be transmitted to it or that parts of the oral proceedings be copied or transcribed, certified and transmitted to it.¹

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

Rule 3.07 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 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, the trial court shall place such material in a separate, sealed envelope labeled as follows:

(a) If the trial court determines that the material be subject to inspection only by the parties or their attorneys, the trial court shall mark "confidential" on the envelope.

(b) If the trial court determines that the material not be subject to inspection by anyone, including any party or any party's attorney, the trial court shall mark "sealed" on the envelope.

(2) (a) In a criminal case, the presentence report is part of the record on appeal.

(b) After the notice of appeal is filed, upon request of counsel for either defendant or the state, the trial court shall cause a copy of the presentence report to be delivered forthwith to

counsel, except that, if, pursuant to ORS 137.079, the trial court has excepted from disclosure any part of the presentence report, the trial court shall forward to counsel only those parts of the presentence report not excepted from disclosure, with an indication that other matter has been excepted from disclosure.

(c) When the appellate court requests the trial court to forward the trial court record, the trial court shall include the presentence report in a separate, sealed envelope marked "confidential."

(d) Any material excepted from disclosure under ORS 137.079 shall be placed in an envelope marked "sealed."

(e) The presentence report is not a public record and is not subject to inspection or disclosure to a party, a party's attorney, or the public except as provided in subsection (3) of this rule.

(3) (a) As to material other than a presentence report, upon request of a party or an attorney for a party, the Administrator shall permit the party or counsel to inspect material marked "confidential."

(b) As to a presentence report, upon request of counsel for either the defendant or the state, the Administrator shall permit the party's attorney to inspect the presentence report or any part thereof marked "confidential."

(4) The Administrator shall not permit any person to inspect "sealed" material, except on order of the trial or appellate court or pursuant to subsection (5) of this rule.

(5) If the Administrator declines a person's request to permit inspection of confidential or sealed material, the person may file a motion with the appellate court seeking leave to inspect the material. The appellate court may decide the motion itself or remand the motion to the trial court for a ruling.

(6) If the Administrator permits inspection of confidential or sealed material subject to restricted inspection under this rule, the Administrator shall note on the envelope the date of the inspection and the person who inspected the material.

(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 decide a matter pending before the court. The person inspecting confidential or sealed material shall note on the envelope the person's name and the date of the inspection.

(8) The provisions of this rule apply to the extent practicable to any material submitted to an appellate court in the first instance when the appellate court determines that such material is not subject to inspection by a party, a party's attorney, or the public.

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

(1) The trial court administrator shall promptly send to the Administrator and to each party to the appeal a copy of any order settling the transcript.¹ If the date of entry in the register is not apparent from the face of the order, the trial court administrator shall state on the order the date of entry.

(2) In criminal and other cases in which the trial court appoints an attorney to represent a party or authorizes preparation of a transcript at state expense, the trial court administrator shall promptly send to the Administrator and provide to the transcript coordinator a copy of any order appointing an attorney on appeal or authorizing preparation of a transcript at state expense.

(3) In a criminal case, after a notice of appeal is filed, if the trial court, on motion of a party or on its own motion, enters a judgment or a modified, corrected or amended judgment, the trial court administrator promptly shall send a copy of the judgment to the Administrator, to the defendant or to the attorney for the defendant if the defendant is represented by counsel, to the district attorney, and to the Solicitor General of the Department of Justice.²

¹ See ORAP 3.40(4).

² See, for instance, a modified judgment to correct arithmetic or clerical errors or to delete or modify any erroneous term in the judgment under ORS 138.083(1); an amended judgment specifying the amount of restitution to be paid by the defendant under ORS 138.083(2); a modified sentence under ORS 137.712(1) or the temporary provisions of Oregon Laws 1997, chapter 852, sections 5 to 7a (printed following ORS 137.712); a modified judgment under ORS 137.754, and a judgment or new or amended judgment under ORS 19.270(4).

Rule 3.15
PREPARATION AND FILING OF TRIAL COURT RECORD

(1) The trial court administrator shall prepare and file the record in the same manner in all appeals.

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

(a) the trial court file, or part thereof designated by the parties if less than the entire file has been designated;

(b) the exhibits specified in the designation of record;

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

(d) any part of the trial court record ordered by the appellate court pursuant to ORAP 3.05(3).

(3) If the record of oral proceedings is an audio record and the appellate court has directed that the appeal proceed on the audio record without a transcript, the trial court administrator shall place the original audio record and the official log and reporter's certificate in an envelope or other suitable container, clearly identified as containing the audio record and official log, and forward the envelope or other container to the Administrator along with the trial court file.

See ORS 19.005, ORS 19.365, and ORS 138.185(1).

See ORAP 3.63 regarding the trial court record in proceedings recorded by videotape equipment.

Rule 3.20 TRIAL COURT FILE

(1) The trial court administrator shall prepare an index of the contents of the trial court file and shall securely fasten the index and file in a suitable cover or folder showing on the outside the title and trial court number of the case and the court and county from which the appeal is taken. The index may consist of a printout of the computer case register showing next to each entry the page in the trial court file at which each item will be found.

(2) Pages shall be consecutively numbered at the bottom of the page, commencing with the bottom page of the trial court file. Each document shall be separately indexed, in chronological order, with the last filed document on the top.

See ORS 19.005(7) and ORS 19.365(2).

Rule 3.25 EXHIBITS

(1) Exhibits designated as part of the record on appeal shall not be transmitted to the appellate court unless requested by the Administrator. The Administrator will request transmittal of documentary exhibits when it requests transmittal of the trial court file under ORAP 3.15(2), or sooner if requested by a party. The Administrator will request transmittal of a nondocumentary exhibit only if requested to do so by a party to the appeal or at the direction of the court. A party wishing to have one or more nondocumentary exhibits transmitted to the appellate court shall notify the Administrator by letter specifying the exhibit or exhibits to be transmitted. The letter shall be submitted to the Administrator no later than the date of filing of that party's brief and shall be copied to all other parties to the appeal.

(2) When the appellate court requests transmittal of documentary exhibits, the trial court administrator promptly shall transmit the documentary exhibits to the appellate court in a single envelope, so far as practicable, and shall note thereon or, if no envelope is used, on a separate

list, the number and description of all exhibits being transmitted, with notations indicating those received and those not received in evidence.

(3) Notwithstanding a party's request for nondocumentary exhibits pursuant to subsection (1) of this rule, the trial court administrator need not transmit exhibits which are bulky, dangerous or difficult to transmit or store, such as machinery, firearms, clothing, narcotics, chemicals, money, or jewelry, unless a party in its request to the Administrator identifies the exhibit with particularity and requests that the Administrator arrange to have the exhibit transmitted to the appellate court. The trial court administrator shall make appropriate notation of retained exhibits on the exhibit list.

(4) If a party fails to comply with UTCR 6.120(2) requiring return of documentary exhibits within 21 days of receipt of the trial court's request, following the filing of a notice of appeal by any party, the appellate court may order that the appeal proceed without consideration of that party's exhibits.

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

Rule 3.30

EXTENSION OF TIME FOR PREPARATION OF TRANSCRIPT

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

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

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

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

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

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

Rule 3.33
PERSONS RESPONSIBLE FOR PREPARING 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.

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

- (i) A court reporter, the transcript coordinator shall forward a copy of the notice of appeal to the court reporter or reporters who reported the proceedings designated as part of the record on appeal and inform the reporter(s) of the due date of the transcript.
- (ii) Audio or video recording, the transcript coordinator shall identify one or more qualified transcriptionists, forward a copy of the notice of appeal to the transcriptionist(s) along with a certified copy of the audio or video tape recording, and notify the transcriptionist(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) for preparation of the transcript.

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

(d) If the transcript coordinator has not notified the reporter(s) or assigned the case to a transcriptionist 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) 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 of each court reporter or transcriptionist, 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 with whom arrangements have been made to prepare a transcript to:

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

(b) Serve and file² the transcript within the time provided in ORS 19.370 and, if the transcript is not served and filed within that time, to move for an extension of time.

(5) 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 transcript be prepared 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, at the party's own expense, for preparation of a transcript in the one page of transcript per one standard page format.³

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

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

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

¹ See ORS 138.500(3).

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

³ See ORAP 3.35(2) regarding the form of a transcript prepared in the four pages of transcript per one standard page format.

Rule 3.35

FORM OF TRANSCRIPT

(1) A transcript shall meet these specifications:

(a) It shall be typewritten or printed. Type shall be standard pica or equivalent size or, if

word processing equipment is used, 12 point print, no fewer than 9 or 10 characters to the typed inch, first impression, and clear and legible. 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.

(b) It shall be prepared on good quality white, opaque, unglazed paper, 8-1/2 x 11 inches in size, with numbered lines, and printed on both sides of each page.¹ It shall be double-spaced and each page shall contain 25 lines of text, no more and no less, except for the last page of the transcript. The margins of each page shall be one inch on each side, at the top, and at the bottom.

(c) Each question shall be prefaced by "Q" and each answer shall be prefaced by "A." Each question and answer shall begin on a separate line no more than five spaces from the left margin and no more than five spaces from the "Q" and "A" to the beginning of the text. Text that carries on to the next line shall begin at the left margin.

(d) Colloquy, parentheticals, and exhibit markings shall begin no more than 15 spaces from the left margin. Text that carries on to the next line shall begin at the left margin.

(e) Quoted material shall begin no more than 15 spaces from the left margin. Text that carries on to the next line shall begin no more than 10 spaces from the left margin.

(f) Each page shall be consecutively numbered at the top right corner, and to the left thereof shall be given the name of the witness followed by a notation indicating whether the testimony is on direct, cross, redirect or recross examination, indicated by "D," "X," "ReD," or "ReX."

(g) Appropriate notation similarly shall be made of other proceedings, such as a motion for dismissal or a directed verdict, requested jury instructions, jury instructions, any opinion by the court, and other matters of special importance.

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

(i) the first page of the direct, cross, redirect, and recross testimony of each witness;
(ii) all exhibits, with notation of the nature thereof and of the page of the record where offered and, when appropriate, where received in evidence; and

(iii) appropriate notations of other proceedings such as motions for nonsuit and directed verdict, requested jury instructions, jury instructions, opinion of the court and other matters of special importance.

(i) Each transcript volume shall be bound in a manner that allows the pages of the transcript to lie flat when the transcript is open, as provided in this subparagraph. The transcript volume shall be bound with a plastic comb binding, with the binding within 3/8 inch of the left edge of the transcript. A transcript volume may be bound by stapling if the

transcript does not exceed 20 pages (10 pieces of paper), excluding the cover. A transcript volume 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 transcript.

(j) It shall have a cover sheet of clear plastic or 65-pound weight paper, front and back.

(k) If a transcript exceeds 200 pages, it shall be bound into volumes of approximately equal size of not more than 200 pages each. Volumes shall be consecutively numbered on their covers.

(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 inch x 11 inch page, the print font size for the original transcript shall be 14 point.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 a 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 requested by the party, on computer diskette or compact disk in a format convenient for the court reporter or transcriptionist. A transcript furnished to a party under this subsection is not in lieu of a written transcript.

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 of the transcript and mail a copy of the motion to the Administrator and to 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 is preparing the transcript, the transcript is not deemed filed until the last part of the transcript due on appeal is filed.

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

(3) After the filing of a timely motion to correct or add to the transcript, the trial court shall have the authority to grant an extension of time for making the corrections or additions to the transcript.

(4) (a) If the trial court allows a motion to correct the transcript, after the filing of the

corrected transcript, the moving party shall request that the trial court enter an order settling the transcript. The appeal will remain in abeyance until receipt by the Administrator of a copy of the order settling the transcript as provided in paragraph (5)(b) of this rule.

(b) If the trial court allows a motion to add to the transcript, the appeal will remain in abeyance for a period of 15 days after the filing of the additional transcript. If a motion to correct the additional transcript is filed timely, the appeal will continue in abeyance pending disposition of the motion to correct and receipt of an order settling the transcript as provided in paragraph (5)(b) of this rule.

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

(5) (a) If no motion to correct or add to the transcript is filed, the transcript shall be deemed settled 15 days after it is filed,³ and the period for filing the appellant's 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.

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

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

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

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

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

Rule 3.45

AGREED NARRATIVE STATEMENT

If the parties agree to a narrative statement in lieu of or in addition to a transcript and the parties are able to reconstruct the statements and testimony of the judge, parties, counsel, witnesses, and others present at the proceeding, the narrative statement shall follow as nearly as practicable the form prescribed for transcripts in ORAP 3.35; otherwise, the statement may be in narrative form. The appellant shall file the agreed narrative statement in the trial court for

transmittal to the Administrator. When the narrative statement is delivered for filing with the trial court, the appellant shall give notice thereof to the Administrator, showing the date of filing.

See ORS 19.380.

Rule 3.50
RETURN OF RECORDS AND EXHIBITS

(1) When the appellate judgment issues, the Administrator shall return the trial court or agency record, file, and exhibits to the trial court or agency.

(2) Jurisdiction over exhibits not forwarded to the appellate court and, after issuance of the appellate judgment, over those returned to the trial court or agency by the appellate court rests exclusively with the trial court or agency.

See ORS 19.365(6); *see also* ORAP 3.55.

Rule 3.55
WITHDRAWAL OF PAPERS OR EXHIBITS

No one shall remove from the office of the Administrator or from the court any thing on file with the appellate court except:

- (1) A judge or justice may do so for official business.
- (2) An administrative or legal staff person may do so for official business:
 - (a) Respecting a matter in the Supreme Court, with the authorization of the Chief Justice or a justice authorized by the Supreme Court to decide motions;
 - (b) Respecting a matter in the Court of Appeals, with the authorization of the Chief Judge or a judge authorized by the Court of Appeals to decide motions.

(3) Any party or member of the public seeking to withdraw any thing shall file a motion stating the reason for the request and specifying the thing desired. If the court grants the motion, the person allowed to withdraw the thing shall furnish the Administrator a receipt for the thing withdrawn.

Rule 3.63
USE OF AUDIO OR VIDEO RECORD ON APPEAL

(1) Where the appeal will proceed on the audio or video record without a transcript, on payment of the prescribed fee,¹ the trial court administrator shall:

- (a) Arrange for duplication of the audio or video record and the official log of the audio or

video record. Any duplicate copy of an audio or video record prepared for appeal shall contain the caption and trial court number of the proceeding and the number of tapes used in the proceeding (*e.g.*, 1 of 5).

(b) Cause the copy of the audio or video record and official log to be served on the party requesting it and to have a certificate of duplication and proof of service prepared.

(c) Cause to be placed in the trial court file the original of the audio or video record, official log and certificate of duplication and proof of service, where they shall remain until the appellate court requests that the trial court record be forwarded to the appellate court, as provided in ORAP 3.15.

(2) The trial court administrator shall file and serve copies of the audio or video record within 14 days after receiving notice that the appellate court has waived preparation of a transcript and is allowing the appeal to be heard on the audio or video record alone.

(3) The appellate court may order the transcription of any part of an audio or video recording not previously transcribed that the appellate court determines necessary for deliberation. The cost of transcription under this subsection shall be paid in the first instance by the parties to the appeal in such proportions as directed by the appellate court.

(4) (a) If the trial court administrator has previously provided a copy of all or part of the audio or video record to a party, on appeal that party need not pay for and the trial court administrator need not provide another copy of the audio or video record to that party.

(b) If the trial court administrator does not provide a duplicate copy of the audio or video record to a party on appeal under paragraph (a) of this subsection, the trial court administrator shall prepare and sign a proof of service certifying the date or dates on which the party received a copy of the audio or video record. The trial court administrator's certificate shall constitute proof of service of the audio or video record on that party and shall be forwarded to the appellate court in lieu of the proof of service required in paragraph (1)(c) of this rule.

(c) If the trial court administrator has provided a copy of all or part of an audio or video record to a party or the attorney for a party and on appeal the party is represented by an attorney or by a different attorney, respectively, the party or the attorney for a party who received a certified copy of the audio or video record shall, on request and without charge, give the audio or video record to the attorney or different attorney representing the party on appeal. The person giving the audio or video record may require that the person receiving the audio or video record provide a receipt therefor.

(d) If the trial court administrator has provided part but not all of the audio or video record to a party, the provisions of paragraphs (a), (b), and (c) of this subsection shall apply to so much of the audio or video record as has been previously provided to a party.

(5) If a part of a recording is extracted from the official audio or video recording and duplicated for the purpose of appeal, the trial court administrator shall attach a certificate stating that the copy is an accurate copy of the extracted part of the original. The copy containing the extract of the official recording shall become the official recording on appeal in lieu of the copy referred to in subsection (1) of this rule. The trial court administrator shall make copies of the extracted copy of the recording for service on the parties to the appeal, and prepare a certified copy of the relevant part or parts of the official log, to be served and filed as part of the record on appeal.

¹ With respect to video records, Chief Justice Order No. 89-13, issued February 28, 1989, and amended March 8, 1989, prescribes a fee of \$20.00 per cassette.

4. JUDICIAL REVIEW OF ADMINISTRATIVE AGENCY PROCEEDINGS

A. GENERALLY

Rule 4.05 PROCEDURE TO CONFORM TO CIVIL CASES

Insofar as practicable, and except where some other procedure is provided by statute or these rules, the procedure for judicial review of an order in a contested case, judicial review of a rule or judicial review of a ruling arising out of a declaratory ruling proceeding shall be the same as for appeals in civil cases.

See generally ORS 183.400, ORS 183.410, and ORS 183.482.

Rule 4.10 REVIEW OF ORDERS OF BOARD OF PAROLE

Judicial review of reviewable orders of the Board of Parole and Post-Prison Supervision, which shall be entitled "Parole Review," shall be in accordance with the rules for judicial review of orders of state agencies in contested cases and shall show the Board of Parole and Post-Prison Supervision as respondent.

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

(1) A petition for judicial review shall be typewritten, double-spaced, and in the form illustrated in Appendix 4.15-1 or Appendix 4.15-2, showing bar numbers, mailing addresses, and telephone numbers of the attorneys for the respective parties and the names, mailing addresses, and telephone numbers of parties appearing *pro se*. Only the original need be filed.

(2) The title shall be as it was before the agency to the extent possible. The title shall include the names of the parties to the proceeding regardless of whether the title of the agency proceeding included the names of the parties. The title also shall include the agency if the agency is a party to the judicial review. The parties shall be shown on judicial review with appropriate party designations as "petitioner" for the party seeking judicial review and "respondent" for the party against whom relief is sought. A subsequent party seeking judicial review of the same agency order shall be designated as "cross-petitioner."¹

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

any party unreasonably refusing to stipulate to limit the record.

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

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

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

(b) the Attorney General, even if the agency is not a party.² In a workers' compensation case, only if the State Accident Insurance Fund is a party to the case and is representing a state agency, the petition shall show proof of service on the Attorney General;

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

(d) any other person required by law to be served.³

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

² See footnote 1 to ORAP 1.35 for the service address of the Attorney General.

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

See ORS 183.482 concerning contents of the petition and service requirements.

Rule 4.20 RECORD ON REVIEW

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

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

(3) The record shall be prepared in the manner provided by ORAP 3.20(1) and transmitted in a suitable cover or folder bearing on the outside the title and agency number of the case and the name of the agency from which the review is taken. Whenever feasible, the original record shall be transmitted. Notwithstanding ORAP 3.20(2), the agency may prepare the record either with the first filed document on top or the last filed document on top. Each document shall be

separately indexed. Pages shall be consecutively numbered at the bottom of the page, commencing with the first page of the file if the first filed document is on top or with the bottom page of the file if the last filed document is on top. Notwithstanding ORAP 3.35(1)(b), any transcript of oral proceedings prepared for use by the administrative agency or tribunal and printed on only one side of each page is acceptable on judicial review.

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

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

¹ See ORAP 14.05.

Rule 4.22 **CORRECTING THE RECORD ON JUDICIAL REVIEW**

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

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

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

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

(2) The party shall serve the court with a copy of the motion.

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

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

shall begin.

(5) Any party aggrieved by the agency's disposition of a motion to correct the record or to correct or add to the transcript, may request, by motion filed within 14 days of the date of filing of the agency's disposition, that the court review the agency's disposition.

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

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

Rule 4.25 ADDITIONAL EVIDENCE

(1) An application under ORS 183.482(5) for leave to present additional evidence on judicial review shall be submitted as a motion. The motion shall be accompanied by an affidavit describing the evidence sought to be presented, specifying why the evidence was not produced at the agency hearing and stating whether an extension of time was requested for the purpose of producing the evidence before the agency.

(2) When the court grants an application to present additional evidence pursuant to ORS 183.482(5), it may designate the time in which the new evidence, together with the agency's new findings and order, or certificate that it elects to stand on its original findings and order, shall be filed with the court.

(3) The filing by the agency of the new evidence and findings and order, or certificate that it elects to stand on its original findings and order, shall be accompanied by proof of service of copies of the new evidence, except exhibits unless otherwise provided by law, and the agency's new findings and order or certificate on all parties required to be served.

(4) The granting of an application to present additional evidence shall suspend the time for filing briefs until the filing by the agency of the findings upon the additional evidence, unless otherwise ordered by the court.

Rule 4.30 REVIEW OF AGENCY DENIAL OF MOTION TO STAY

A party may move for review of an agency's denial of a motion to stay. The motion shall include all documents that the party believes to have been considered by the agency on the party's request for a stay from the agency, the agency's written decision, if any, and any other

documents the party considers relevant. The court may lengthen or shorten the period of time in which the agency may respond to the motion, as provided in ORAP 7.05(3).

See ORS 183.482(3)(d).

Rule 4.35
AGENCY WITHDRAWAL OF ORDERS

(1) (a) If an agency, pursuant to ORS 183.482(6), withdraws an order for the purpose of reconsideration, it shall file with the Administrator a notice of the withdrawal. The notice shall include a statement of reasons why the order is being reconsidered and the date the agency expects to submit a new order to the court after reconsideration. An order on reconsideration shall be filed within 60 days after the filing of the notice of withdrawal or within such other time as the court may allow.

(b) If an agency not subject to ORS 183.482(6) withdraws an order on judicial review for the purpose of reconsideration it shall file with the Administrator a copy of its order or other decision withdrawing that order, accompanied by a statement of reasons why the order is being withdrawn and a statement whether the agency expects to submit a new order to the court following the withdrawal and, if so, when.

(2) The filing of a notice under subsection (1) of this rule shall suspend proceedings on the petition for judicial review until an order on reconsideration is filed, or the time designated therefor expires, unless otherwise ordered by the court.

(3) Regardless whether an order first has been withdrawn for the purpose of reconsideration under paragraphs (1)(a) or (b) of this rule, if an agency issues an order on reconsideration, the Attorney General shall file a copy of the order on reconsideration with the Administrator. The order shall be filed within seven days after the agency issues the order on reconsideration.

(4) (a) (i) Except as provided in subparagraph (4)(a)(ii) of this rule, after the filing of an order on reconsideration, if the petitioner desires judicial review of the order on reconsideration, the petitioner shall file an amended petition for judicial review or notice of intent to proceed with judicial review within a period equal to that allowed for filing an original petition.¹ No filing fee is required for an amended petition.

(ii) If the petitioner on judicial review of an order of the Board of Parole and Post-Prison Supervision desires to continue the judicial review after the Board issues its order on reconsideration, the petitioner shall file a notice of intent to proceed with judicial review within the period equal to that allowed for filing an original petition, unless the court allows additional time.²

(b) A person who is dissatisfied with the order on reconsideration and who does not file under paragraph (4)(a) of this rule may file a petition for judicial review of the order on

reconsideration in accordance with statute and these rules.

(c) If no petition or notice of intent to proceed with judicial review is timely filed, the judicial review proceeding in the Court of Appeals will be dismissed.

(5) If the agency has considered any material beyond the present record, the agency shall submit an amended record to the Administrator within 14 days after the filing of a petition, amended petition for judicial review, or notice of intent to proceed with judicial review. The amended record on review shall be prepared pursuant to ORAP 4.20.

(6) If the petitioner filed a brief before the withdrawal of the order for reconsideration, in addition to filing an amended petition for judicial review or notice of intent to proceed with judicial review as required by paragraph (4)(a) of this rule, the petitioner may give notice to the Administrator of the petitioner's intent to proceed on the original brief. If the petitioner had not filed a brief or desires to file a supplemental brief, the petitioner's brief shall be filed 28 days after the date the amended petition for judicial review or notice of intent to proceed with judicial review was filed or the date the agency submitted the amended record to the Administrator, whichever is later. A respondent's brief, if any, shall be filed within 28 days after the filing of the petitioner's brief or notice that the petitioner will proceed on the original brief.

¹ See ORS 183.482(6).

² See ORS 144.335(10).

Rule 4.40
APPEARANCE BY AGENCY
NOT A PARTY

(1) If an agency whose order, rule, ruling, policy, or other action is at issue is not a party to the proceeding, it may intervene as a party in the Court of Appeals by filing a brief. The brief shall be due on the same date that the respondent's brief is due.

(2) If an agency has filed a brief in the Court of Appeals and the decision is adverse to the agency's view of its order, rule, ruling, policy, or other action, the agency may petition for review as provided in ORAP 9.05.

(3) If an agency has not intervened in the Court of Appeals, it may file a petition for intervention and for reconsideration or review under ORAP 9.05 and ORAP 9.10.

(4) If the Supreme Court accepts review in a proceeding in which an agency's order, rule, ruling, policy, or other action is at issue, the agency may intervene by filing a brief. The brief shall be due on the same date that the respondent's brief on the merits on review is due.

(5) If an agency has intervened under this rule, it may move to argue orally before the Supreme Court or Court of Appeals. The motion must be filed at least seven days before the date set for argument.

(6) An agency intervening in a proceeding under this rule is a party only in the appellate courts and the agency's party status terminates upon issuance of the appellate judgment.

**B. JUDICIAL REVIEW OF FINAL ORDERS OF
THE LAND USE BOARD OF APPEALS (LUBA)**

**Rule 4.60
LUBA CASES IN GENERAL**

(1) Insofar as practicable, and except where some other procedure is provided by statute or these rules, the procedure for judicial review of final orders of the Land Use Board of Appeals (LUBA) shall be the same as for judicial review of administrative proceedings, including that the form, content, and service of the petition shall be as prescribed in ORAP 4.15.

(2) The petitioner shall establish in the petition for judicial review, by reference to the record of the local proceeding before LUBA or by petitioner's affidavit accompanying the petition, that the petitioner has statutory standing to invoke the jurisdiction of the court.

See ORS 197.850.

**Rule 4.64
RECORD ON REVIEW**

(1) The Land Use Board of Appeals (LUBA) shall transmit to the Court of Appeals the record, or the agreed part thereof if the parties have stipulated to shorten the record pursuant to ORS 197.850(5), in the manner and within the seven days allowed by ORS 197.850(5). 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.

(2) The record shall be transmitted in a suitable cover or folder bearing on the outside the title and LUBA number of the case and clearly identifying it as a LUBA case. Whenever feasible, the original record shall be transmitted. The record shall be prepared in the manner required by ORAP 3.20.

(3) After the court has issued the appellate judgment, the record will be returned to LUBA, unless the court otherwise directs.

**Rule 4.66
TIME FOR FILING BRIEFS**

(1) Notwithstanding ORAP 5.80, the petitioner's opening brief and excerpt of record shall be served and filed not later than 21 days after the filing of the petition for judicial review.

Failure to file the opening brief within the time allowed by this rule will result in automatic dismissal of the petition.

(2) The respondent's brief shall be served and filed within 21 days after the filing of petitioner's opening brief. If the respondent fails to file a brief within the time allowed by this rule, the cause will be submitted on petitioner's brief and oral argument, and the respondent will not be allowed to argue the case.

(3) No reply brief shall be permitted.

Rule 4.67
LOCAL GOVERNMENT DOCUMENTS

The petitioner shall include copies of all provisions of local government documents (*e.g.*, ordinances, plans) pertinent to its arguments on judicial review in the excerpt of record if the provisions are part of the record or in an appendix to the petitioner's opening brief if the provisions are not part of the record.¹

¹ To determine whether material properly belongs in the excerpt of record or in an appendix, see ORAP 5.50 and ORAP 5.52.

Rule 4.68
CROSS-PETITIONS

(1) A cross-petition for judicial review, if any, shall be served and filed within seven days after the filing of the petition for judicial review.

(2) A cross-petitioner's brief and excerpt of record shall be served and filed within 14 days after the filing of petitioner's opening brief and may, if appropriate, be combined with the respondent's brief.

(3) A petitioner's answering brief on cross-petition for judicial review shall be served and filed within seven days after the filing of the cross-petitioner's brief. If the petitioner fails to file an answering brief on cross-petition within the time allowed by this rule, the cross-petition will be submitted on cross-petitioner's brief and oral argument, and petitioner will not be allowed to argue issues raised by the cross-petition.

(4) No reply brief on cross-petition shall be permitted.

Rule 4.70
NO CONTINUANCES

Except as prescribed in ORS 197.850(7) and ORS 197.860, in the Court of Appeals, no continuance or extension shall be granted as to the time specified by statute for transmission of

the record, the time specified by these rules for filing the cross-petition, and the briefs or the time set for oral argument.

Rule 4.72
MOTION NOT TOLLING TIME

A motion made before oral argument will not toll the time for transmission of the record, filing of briefs or hearing argument.

Rule 4.74
SUMMARY DETERMINATION OF LUBA
JURISDICTION BY COURT OF APPEALS

(1) When a question arises whether authority to review a case lies in a circuit court or in LUBA, the circuit judge or the chairperson of LUBA shall refer the question to the Court of Appeals through the Administrator.

(2) The circuit judge or chairperson, as appropriate, shall sign an order referring the matter to the Court of Appeals, setting forth why the question has arisen and briefly summarizing the jurisdictional contentions.

(3) The circuit judge or chairperson, as appropriate, may either request counsel for one of the parties to have copies of all documents in the file prepared for transmittal to the Court of Appeals or may direct that it be done by the trial court administrator or the equivalent LUBA staff person. In either event, either the counsel so designated or the circuit judge or chairperson shall address a letter to the Administrator to accompany the transmittal of the file stating that the file is being transmitted pursuant to ORS 34.102(5) and informing the Administrator whether the matter needs to be decided within a certain time.

(4) If counsel for either party or the circuit judge or chairperson, as appropriate, desires to set forth legal points or authorities in support of a position, a memorandum of points and authorities shall accompany the file and cover letter and be transmitted to the Administrator with the file.

(5) The decision of the Court of Appeals shall be made as expeditiously as practicable, and the decision shall be communicated in writing to the circuit judge or chairperson, with copies to counsel for the parties.

(6) Nothing in this rule shall be construed as limiting the authority of a judge of any court to transfer a case to another court that has jurisdiction over the matter.

See ORS 34.102(5).

5. PREPARATION AND FILING OF BRIEFS

Rule 5.05 SPECIFICATIONS FOR BRIEFS

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

(2) (a) No opening, answering, or combined brief shall exceed 50 pages.¹ That limitation does not include the index, excerpt of record, or appendix.

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

(c) No reply brief shall exceed 15 pages.

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

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

(b) If the court grants permission for a longer excerpt of record, appendix, or combined excerpt of record and appendix, the excerpt of record, appendix, or combined excerpt of record and appendix shall be printed on both sides of each page and shall be plastic spiral bound separately from the brief.²

(4) All briefs shall conform to these requirements:

(a) Front and back covers shall be paper of at least 65-pound weight. The cover of the brief shall be:

(i) For an opening brief, blue;

(ii) For an answering brief, red;

(iii) For a combined answering and cross-opening brief, violet;

(iv) For a reply or combined reply and answering brief on cross-appeal, or an answering

brief to a cross-assignment of error under ORAP 5.57, gray;

(v) For the brief of an intervenor, the color of the brief of the party on whose side the intervenor is appearing;

(vi) For the brief of *amicus curiae*, green;

(vii) For a supplemental brief, the same color as the primary brief.

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

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

(b) 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 names, bar numbers, addresses, and telephone numbers of counsel for the parties and the name, address, and telephone number of a party appearing *pro se*. The lower right corner of the brief shall state the month and year in which the brief was filed.³

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

(d) 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.⁴

(e) 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) 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, it shall not be smaller than 13 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) 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) 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 subparagraph. 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 of the left edge of the brief. A brief also may be bound by stapling if the brief is prepared with text only on one side of each page or 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.

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

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

² *See* ORAP 5.50 regarding the excerpt of record generally.

³ *See* ORAP 5.95 regarding the title page of a brief containing confidential material.

⁴ *See* ORS 7.250 and ORAP 1.35(5) regarding use of recycled paper and printing on both sides of a page.

See Appendix 5.05.

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 20 copies, except as provided in paragraphs (1)(a) and (1)(b) of this rule.

(a) The original and five copies only need be filed for:

- (i) A brief submitted pursuant to ORAP 5.90 and a brief filed in response;
- (ii) A respondent's brief confessing error and not opposing the relief sought in the opening brief;
- (iii) A brief submitted by a party who is not represented by an attorney and who has been determined to be indigent by the court or whose brief has been copied at the expense of the public institution of which the party is a resident, and a brief filed in response.

(b) The original and 10 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.

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

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

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

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

See ORAP 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 5.12
BRIEFS OR PETITIONS FOR REVIEW
CHALLENGING CONSTITUTIONALITY OF
STATUTES OR CONSTITUTION

A party filing a brief, petition for review, or petition invoking the court's original

jurisdiction that challenges the constitutionality of an Oregon statute or an Oregon constitutional provision shall, at the time the brief or petition is filed, provide the Attorney General* with a copy of the brief or petition. The cover of the brief or petition shall state that the brief or petition includes a challenge to the constitutionality of a statute or constitutional provision and shall identify the statute or constitutional provision being challenged.

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

Rule 5.15
DESIGNATION OF PARTIES IN BRIEFS

In the body of a brief, parties shall not be referred to as appellant and respondent, but as they were designated in the proceedings below, except that in domestic relations proceedings the parties shall be referred to as husband or wife, father or mother, or other appropriate specific designation.

Rule 5.20
REFERENCE TO EVIDENCE
AND EXHIBITS; CITATION OF AUTHORITIES

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

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

(3) The following abbreviations may be used:

"P.Tr." for pretrial transcript;

"Tr." for transcript;

"Nar. St." for narrative statement;

"ER." for Excerpt;

"App." for Appendix;

"A.R. Tape No. ____, Cue No. ____";

"P.A.R." for pretrial audio record;

"Rec." for record;

"Ex." for exhibit.

Other abbreviations may be used if explained.

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

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

¹ Copies of the Oregon Appellate Courts Style Manual may be obtained from the Publications Section of the Office of the State Court Administrator, 1163 State Street, Salem, Oregon 97301-2563; (503) 986-5656.

Rule 5.30
ORDINANCES, CHARTERS,
STATUTES, AND OTHER WRITTEN
PROVISIONS TO BE SET OUT

If an appeal involves an ordinance, charter, statute, constitutional provision, regulation, or administrative rule, so much of the provision as relevant shall be set forth verbatim with proper citation. If lengthy, such matter should be appended or footnoted and need not be set out verbatim if it appears in another brief in the case and is cross-referenced appropriately.

Rule 5.35
APPELLANT'S BRIEF: INDEX

The appellant's combined brief and excerpt shall begin with:

(1) an index of the contents of the brief, including a statement of the substance of each assignment of error, without argument, with appropriate page references;

(2) an index of appendices, if any; and

(3) an index of all authorities referred to, classified by cases (alphabetically arranged and with complete citations), constitutional and statutory provisions, texts, treatises, and other authorities, and indicating the pages of the brief where the authorities are cited. Citations are to be in the form prescribed by the Oregon Appellate Courts Style Manual. Reference to "*passim*" or "*et seq.*" in the index of authorities is discouraged.

Rule 5.40
APPELLANT'S BRIEF:
STATEMENT OF THE CASE

The appellant's brief shall open with a clear and concise statement of the case, which shall set forth in the following order under separate headings:

(1) The nature of the action or proceeding, the relief sought and, in criminal cases, the indictment or information, including citation of the applicable statute.

(2) The nature of the judgment sought to be reviewed and, if trial was held, whether it was before the court or a jury.

(3) A statement of the statutory basis of appellate jurisdiction and, where novelty or possible doubt makes it appropriate, other supporting authority.

(4) A statement of the date of entry of the judgment in the trial court register, the date that the notice of appeal was served and filed, and, if more than 30 days elapsed between those two dates, why the appeal nevertheless was timely filed; and any other information relevant to appellate jurisdiction.

(5) In cases on judicial review from a state or local government agency, a statement of the nature and the jurisdictional basis of the action of the agency and of the trial court, if any.

(6) A brief statement, without argument and in general terms, of questions presented on appeal.

(7) A concise summary of the arguments appearing in the body of the brief.

(8) A concise summary, without argument, of all the facts of the case material to determination of the appeal. The summary shall be in narrative form with references to the places in the transcript, narrative statement, audio record, record, or excerpt where such facts appear.

(9) In a dissolution proceeding or a proceeding involving modification of a dissolution decree, the summary of facts shall begin with the date of the marriage, the ages of the parties, the ages of any minor children of the parties, the custody status of any minor children, the amount and terms of any spousal or child support ordered, and the party required to pay support.

(10) Any significant motion filed in the appeal and the disposition of the motion. A party need not file an amended brief to set forth any significant motion filed after that party's brief has been filed.

(11) Any other matters necessary to inform the court concerning the questions and contentions raised on the appeal, insofar as such matters are a part of the record, with reference to the parts of the record where such matters appear.

Rule 5.45
ASSIGNMENTS OF ERROR AND ARGUMENT

(1) A question or issue to be decided on appeal shall be raised in the form of an assignment

of error, as prescribed in this rule. Assignments of error are required in all opening briefs of appellants and cross-appellants. No matter claimed as error will be considered on appeal unless the claimed error was preserved in the lower court and is assigned as error in the opening brief in accordance with this rule, provided that the appellate court may consider an error of law apparent on the face of the record.

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

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

(4) (a) Each assignment of error shall demonstrate that the question or issue presented by the assignment of error timely and properly was raised and preserved in the lower court. Under the subheading "Preservation of Error":

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

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

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

(b) An assignment of error for a claimed error apparent on the face of the record shall comply with the requirements for assignments of error generally by identifying the precise ruling, specifying the state of the proceedings when the ruling was made, and setting forth pertinent quotations of the record where the challenged ruling was made.¹

(c) The court may decline to consider any assignment of error that requires the court to search the record to find the error or to determine if the error properly was raised and preserved.

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

applicable standard or standards of review, supported by citation to the statute, case law, or other legal authority for each standard of review.²

(6) Each assignment of error shall be followed by the argument. If several assignments of error present essentially the same legal question, the argument in support of them may be combined so far as practicable. The argument in support of a claimed error apparent on the face of the record shall demonstrate that the error is of the kind that may be addressed by the court without the error having been preserved in the record.

¹ See *State v. Brown*, 310 Or 347, 355-56, 800 P2d 259 (1990).

² Standards of review include but are not limited to *de novo* review and substantial evidence for factual issues, errors of law and abuse of discretion for legal issues, and special statutory standards of review such as those found in the Administrative Procedures Act, ORS 183.400(4), and ORS 183.482(7) and (8).

Rule 5.50 **THE EXCERPT OF RECORD**

(1) After the conclusion of the substance of the brief, the appellant shall set forth an excerpt of record.*

(2) When preparing an excerpt of record, the appellant shall be guided by the following considerations:

(a) The excerpt of record shall include the pleadings relevant to the issue or issues raised on appeal, any written opinion or findings of fact issued by the trial judge addressing a ruling to which error is assigned, any order disposing of the claim to which an assignment of error relates, and the judgment document or order being appealed.

(b) The excerpt of record shall include any other document and part of a document that either is essential to or significantly helpful in understanding the arguments developed in the brief, particularly for purposes of assisting the court in advance of oral argument. The issues on appeal and the procedural posture of the case should determine the contents of the excerpt of record. The full record is available to and used by the court after submission of a case; therefore, the appellant should exercise judgment regarding the content of the excerpt of record, rather than merely duplicate the entire trial court file.

(c) It generally is not necessary to include in the excerpt of record memoranda of law filed in the trial court, unless the fact that a particular argument was or was not made in a memorandum has independent significance (*e.g.*, a dispute over preservation of an issue).¹

(3) (a) In criminal, civil commitment, and juvenile cases, the excerpt of record shall contain the judgment document or order being appealed, and such other parts of the record as are appropriate to include.

(b) In criminal cases in which the defendant appealed after entering a conditional plea of guilty or no contest under ORS 135.335(3), the defendant shall include in the excerpt of record the writing in which the defendant reserved for review on appeal the trial court's adverse determination of a pretrial motion.

(4) In agency review cases, including workers' compensation and Land Use Board of Appeals cases, the excerpt of record shall include the order of the administrative law judge, the agency, and other administrative tribunal, if part of the lower tribunal's record, together with such other parts of the record as are appropriate to include.²

(5) If the appellant has failed to prepare an excerpt of record, the respondent may move the court to require appellant to do so. If the excerpt of record prepared by the appellant does not include materials that the respondent believes to be essential to or significantly helpful in the court's preparation for oral argument, the respondent may prepare a supplemental excerpt of record. The respondent shall set forth the supplemental excerpt of record after the conclusion of the substance of the respondent's brief.*

(6) The excerpt of record shall be in the following form:

(a) All documents or parts of documents shall be copies of documents included in the record, rather than summarized or paraphrased. Omissions, if not apparent, shall be noted. No matter shall be omitted if to do so would change the meaning of the matter included.

(b) Contents shall be set forth in chronological order. The excerpt shall be consecutively paginated, with the first page being page ER-1. The excerpt shall begin with an index organized chronologically, describing each item and identifying where the item may be found in the trial court or agency record, and the page where the item may be found in the excerpt.

(c) The materials included shall be reproduced on 8-1/2 x 11 inch white paper by any duplicating or copying process that produces a clear, black, legible image.

(d) The excerpt of record shall comply with the applicable requirements, including page limitations, of ORAP 5.05.

**But see* ORAP 5.05(3)(b) relating to separately binding an excerpt of record in excess of the page limit prescribed in ORAP 5.05(2)(b).

¹ *See* Appendix 5.50, which sets forth examples of documents that a party should consider including in the excerpt of record depending on the nature of the issues raised in the briefs.

² For other requirements for the excerpt of record in Land Use Board of Appeals cases, see ORAP 4.67.

Rule 5.52

APPENDIX

The purpose of an appendix to a brief is to provide, for the convenience of the reader, materials that would be helpful in understanding and resolving an issue raised on appeal. A party appropriately may include in an appendix, for instance, copies of a statute or statutes at issue in the appeal, or copies of cases that are not readily available from standard research sources. A party should not include in the appendix materials from the record of the tribunal from which the appeal is taken that should be in the excerpt of record.¹

¹ For other requirements for appendices to briefs in Land Use Board of Appeals cases, see ORAP 4.67.

Rule 5.55 RESPONDENT'S BRIEF

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

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

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

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

Rule 5.57 RESPONDENT'S BRIEF: CROSS-ASSIGNMENTS OF ERROR

(1) A respondent must cross-assign as error any trial court ruling described in subsection (2) of this rule in order to raise the claim of error in the appeal.¹

(2) A cross-assignment of error is appropriate:

(a) If, by challenging the trial court ruling, the respondent does not seek to reverse or modify the judgment on appeal; and

(b) If the relief sought by the appellant were to be granted, respondent would desire reversal or modification of an intermediate ruling of the trial court.

(3) The appellant's answer to a cross-assignment of error shall be in the form prescribed by ORAP 5.55 for a respondent's brief and shall be:

(a) Contained in a separate section of the reply brief, if a reply brief is permitted under ORAP 5.70, and designated "response to cross-assignment of error;" or

(b) Filed within 21 days after the filing of the respondent's brief, if a reply brief is not permitted under ORAP 5.70, and entitled "appellant's response to cross- assignment of error."

(4) A respondent may file a reply to an appellant's answer to a cross-assignment of error only if the nature of the case is one in which a reply brief is permitted under ORAP 5.70 and ORAP 5.80(4). The reply shall be no longer than 15 pages and shall be filed within 21 days after the filing of the appellant's answer to a cross-assignment of error.²

¹ This rule does not apply to a respondent who also is a cross-appellant and is assigning error as a cross-appellant.

² A brief under this rule is required to have a gray brief cover. ORAP 5.05(4)(a)(iv).

Rule 5.60 FAILURE OF RESPONDENT TO FILE BRIEF

If the respondent files no brief, the cause will be submitted on the appellant's brief and appellant's oral argument, and the respondent shall not be allowed to argue the case.

Rule 5.65 CROSS-APPELLANT'S BRIEF

(1) When a respondent has cross-appealed,¹ the brief on cross-appeal shall be presented in a separate part of the respondent's answering brief immediately following the body of the answering brief. The cross-appeal brief shall be appropriately indexed at the front of the answering brief. Pages of the brief on cross-appeal shall be numbered consecutively following the numbering of the answering brief.

(2) A cross-appellant's brief shall be in the form of an appellant's brief.

¹ See ORAP 5.55(3) regarding abandoned cross-appeals.

Rule 5.70
REPLY BRIEF

(1) (a) Except as provided in subsection (3) of this rule, a party may file a reply brief to a respondent's brief or an answering brief of a cross-respondent.

(b) A reply brief shall be confined to matters raised in the respondent's brief or the answering brief of a cross-respondent; reply briefs that merely restate arguments made in the opening brief are discouraged.

(c) The court encourages a party who decides not to file a reply brief, as soon as practicable thereafter, to notify the court in writing to that effect.

(2) The form of a reply brief shall be similar to a respondent's brief. A reply brief shall have an index and shall contain a summary of argument.

(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:

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

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

(iii) juvenile court;

(iv) mental commitment;

(v) forcible entry and detainer; and

(vi) judicial review of orders of the Land Use Board of Appeals, as provided in ORAP 4.66(3).

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

Rule 5.75
ANSWERING BRIEF ON CROSS-APPEAL

When an appellant files an answering brief on cross-appeal, that party may file the brief separately or as a separate part of a reply brief, if a reply brief is filed. The answering brief on cross-appeal shall follow the form of a respondent's brief. If filed as part of a reply brief, it shall be presented in a separate part of the reply brief and be shown in the index of the reply brief as "Answering Brief on Cross-Appeal." An answering brief on cross-appeal and a reply brief, whether filed as one brief or as separate briefs, shall be subject to the length limitations

prescribed in ORAP 5.05 and the brief cover shall be gray.

Rule 5.77
JOINT AND ADOPTED BRIEFS

(1) In a case involving more than one party on the same side, including cases consolidated on appeal, the court discourages the filing of briefs that duplicate arguments made in another brief in the same case and encourages parties to file joint briefs or to adopt to the extent practicable a brief filed by another party in the same case.¹

(2) A party may join or adopt a brief submitted in the same case or consolidated case but shall not join or adopt a brief in another case.

(3) Joint Briefs

(a) If two or more parties join in a brief by signing the brief and have not previously appeared and paid a filing fee, only one filing fee need be paid.

(b) A party who has not signed a brief filed by another may join that brief provided that the party:

(i) Obtains the consent of the party who filed the brief;

(ii) Pays a filing or first appearance fee; and

(iii) Submits a letter to the court copied to all parties on appeal stating that the party joins in the brief filed by another party and has the consent of the other party.

(4) Adopted Briefs

(a) A party who concurs with all or part of a brief filed by another party and who has no other position to assert may adopt the other party's brief by filing a brief adopting in whole or in part the brief of another party. If a party adopts only part of the brief of another, the brief shall identify the part of the brief of the other party being adopted.

(b) A party who concurs with all or part of a brief submitted by another party but who wishes to argue additional matters may submit a brief adopting by reference the part of the other party's brief in which the party concurs.

¹ As used in this rule, "party" includes *amicus curiae*.

Rule 5.80
TIME FOR FILING BRIEFS

(1) Unless otherwise provided by statute or these rules, the appellant's opening brief and excerpt of record shall be served and filed within 49 days after:

- (a) the entry of the trial court order settling the transcript; or
- (b) the filing of an agreed narrative statement with the trial court; or
- (c) the transcript is deemed settled under ORS 19.370(7) or ORAP 3.40(5); or
- (d) the appellate court enters an order waiving a transcript under ORAP 3.05(2); or
- (e) if a transcript or narrative statement is not designated, the filing of the notice of appeal;
or
- (f) in a judicial review case, the agency record has been settled.

(2) The respondent's brief shall be served and filed within 49 days after the filing of the appellant's brief. If the court has given an appellant leave to file a supplemental brief after the respondent's brief has been filed, the respondent's supplemental brief shall be served and filed within 21 days after the filing of the appellant's supplemental brief.

(3) A reply brief, if any, shall be served and filed within 21 days after the filing of the respondent's brief or after a motion to file a reply brief is allowed, unless otherwise provided in the order allowing the motion.

(4) An appellant's answering brief on cross-appeal shall be served and filed within 21 days after the filing of the brief on cross-appeal.

(5) When a party other than an appellant is made a cross-respondent, that party shall have 21 days after the filing of the brief on cross-appeal to serve and file an answering brief on cross-appeal.

(6) A cross-appellant shall have 21 days from the date of the filing of an answering brief on cross-appeal in which to serve and file a reply brief, if permitted to do so by these rules or by order of the court.

(7) In cases in which the appellant is represented in the Court of Appeals by the Legal Services Division of the Office of Public Defense Services, the appellant's brief shall be served within a period of time established by the Chief Judge in consultation with the Legal Services Division.

BRIEF TIME CHART 1

	Opening Brief	Cross-Opening Brief	Reply	Assignment of Error	Cross-Respondent	Cross-Appellant Reply					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.
Location	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.
From Circuit and above	49	49	21*	21*	21*	21					
	49	49	21	21	21	21					
	28	28	0								
End of (BA)	21	21	0								Date petition for judicial review filed.

¹Regarding death sentence cases, see ORAP 12.10(6)

² See ORAP 10.15

*Can be one brief

BRIEF TIME CHART 2

CASE TYPE	Opening Brief	Cross-Opening Brief	Reply	Assignment of Error		Petition for Review	for Review	on the Merits	on the Merits	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 opponents's brief was filed. See ORAP 1.35(1)(d) regarding the date of filing.
Judicial Review of all other agency action	49	49	21	21							Date agency record filed if no motion to correct the record or transcript is filed. [or] Date transcript has been deemed settled if a motion to correct the record or transcript has been filed. ORAP 4.22.
Petition for Review Response Petitioner's Brief on the Merits Respondent's Brief on the Merits Petition for Reconsideration						35	14	28	28	14	Date of Court of Appeals decision. Date petition for review was filed. Date petition for review allowed by Supreme Court. Date petitioner's brief on the merits filed. Date of Supreme Court decision.
Bar Discipline Judicial Discipline and Disability Certified Questions of Law	28 28	28 28	14 0								Date of acknowledgment of receipt of record.
Mandamus Habeas Corpus Quo Warranto Energy Facility Siting Counsel Reapportionment Review Legislative Secretary of State	28 14 8/1 9/15	28 14 10*	0 0 5*								Date that the case is at issue Date petition for review is filed. Legislative Assembly enacts reapportionment. Secretary of State adopts reapportionment.

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

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.

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

(a) Shall include citations to relevant cases and statutes and shall identify the issue that has been previously briefed to which the new citations apply;

(b) Shall not exceed two pages, without leave of the court;

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

(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.

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

Rule 5.90
"BALFOUR" BRIEFS FILED
BY COURT-APPOINTED COUNSEL

(1) If counsel appointed by the court to represent an indigent defendant in a criminal case on direct appeal has thoroughly reviewed the record, has discussed the case with trial counsel and the client, and has determined that the case does not raise any arguably meritorious issues, counsel shall file a brief with two sections:

(a) Section A of the brief shall contain:

(i) A statement of the case, including a statement of the facts of the case. If the brief contains a Section B with one or more claims of error asserted by the client, the statement of facts shall include facts sufficient to put the claim or claims of error in context.

(ii) A description of any demurrer or significant motion filed in the case, including, but not limited to, a motion to dismiss, a motion to suppress and a motion *in limine*, and the trial court's disposition of the demurrer or motion.

(iii) A statement that the case is being submitted pursuant to this rule, that counsel has thoroughly reviewed the record and discussed the case with trial counsel and the client, and

that counsel has not identified any arguably meritorious issue on appeal. If the brief does not contain a Section B, counsel also shall state that counsel contacted the client, gave the client reasonable opportunity to identify a claim or claims of error, and that the client did not identify any claim of error for inclusion in the brief.

(iv) Counsel's signature.

(b) (i) Section B of the brief is the client's product and may contain any claim of error that the client wishes to assert. The client shall attempt to state the claim and any argument in support of the claim as nearly as practicable in proper appellate brief form. Section B of the brief shall not exceed 48 pages in length. The last page of Section B of the brief shall contain the name and signature of the client.

(ii) Counsel's obligation with respect to Section B of the brief shall be limited to correcting obvious typographical errors, preparing copies of the brief, serving the appropriate parties, and filing the original brief and the appropriate number of copies with the court.

(2) A case in which appellant's brief is prepared and filed under this rule shall be submitted without oral argument, unless otherwise ordered by the court.

(3) On reviewing the record and the briefs filed by the parties, if the court identifies one or more arguably meritorious issues in the case, the court shall notify appellant's counsel of the issue or issues so identified. Appellant's counsel shall have 28 days from the date of the court's notice to file a supplemental opening brief addressing those issues. In addition to addressing the issue or issues identified by the court, counsel may address any other arguably meritorious issue counsel has identified. Respondent shall have 28 days after appellant files a supplemental opening brief to file a response or supplemental response brief addressing the issues raised in the supplemental opening brief.

(4) In a case other than a criminal case on direct appeal, court-appointed counsel who determines that there are no meritorious issues on appeal may submit a brief under this rule, in which case the matter will be submitted without oral argument, unless otherwise ordered by the court.

(5) In any case in which the appellant is represented by court-appointed counsel on appeal and counsel filed a brief in the Court of Appeals under subsection (1) of this rule, counsel may submit a petition for review that contains a Section A that complies with ORAP 9.05(3)(a) and a Section B that complies with paragraph (1)(b) of this rule.

See generally State v. Balfour, 311 Or 434, 451-53, 814 P2d 1069 (1991).

Rule 5.92

SUPPLEMENTAL *PRO SE* BRIEFS

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

proposed supplemental *pro se* brief along with the motion.

(2) The client shall attempt to prepare a supplemental *pro se* brief as nearly as practicable in proper appellate brief form. The last page of the brief shall contain the name and signature of the client. Unless the court orders otherwise, the statement of the case, including the statement of facts, and the argument together shall be limited to five pages.

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

Rule 5.95
BRIEFS CONTAINING CONFIDENTIAL MATERIAL

(1) If a brief contains matter that is, by statute or court order, confidential or exempt from disclosure,¹ the party submitting the brief shall file two original briefs:

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

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

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

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

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

or exempt from disclosure.

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

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

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 418.135 and ORS 419B.035 regarding abuse investigation records; ORS 426.160 and ORS 426.370 regarding records in mental commitment cases; and ORS 430.399(5) regarding alcohol and drug abuse records.

* See Appendix 5.95.

**6. SUBMISSION OF CASES
AND ORAL ARGUMENT;
RECONSIDERATION IN COURT OF APPEALS**

**Rule 6.05
SUBMISSION WITHOUT ARGUMENT**

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

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

(3) When a respondent submits a 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.

(2) An *amicus curiae* may present oral argument only if permitted by the court on motion or on its own motion.

(3) An attorney who was a witness for a party, except as to merely formal matters such as attestation or custody of an instrument, shall not argue the cause without leave of the court.

(4) Only active members of the Oregon State Bar shall argue unless the court, on motion filed not less than 21 days before the date for argument orders otherwise. If the court has allowed a lawyer from another jurisdiction to appear on appeal *pro hac vice* (for a particular case) under ORAP 8.10(4), the lawyer does not need leave of the court to participate in oral argument of the case.

(5) (a) After the Administrator has given notice of the date of oral argument, 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.

(b) If a party fails to appear at oral argument, the court may deem the cause submitted without oral argument as to that party. A party's failure to appear shall not preclude oral argument by any other party.

(c) The respondent shall be entitled to recover from counsel for appellant costs and attorney

fees related to preparation for and attendance at oral argument, if counsel for appellant fails to appear without having provided at least 48 hours' notice to respondent, unless good cause is shown for such failure.

Rule 6.15
PROCEDURE AT ORAL ARGUMENT

- (1) In all cases in the Court of Appeals and Supreme Court, except as provided in subsection (2) of this rule:
 - (a) The appellant, petitioner, or petitioner on review shall have not more than 30 minutes to argue; and the respondent or respondent on review shall have not more than 30 minutes to argue.
 - (b) the appellant, petitioner, or petitioner on review shall argue first and may reserve not more than 10 minutes of the time allowed for argument in which to reply.
 - (c) If there are two or more parties on one side, they shall divide their allotted time among themselves, unless the court orders otherwise.
 - (2) (a) Unless the court otherwise orders, on oral argument in the Court of Appeals in the following cases the appellant or petitioner shall have not more than 15 minutes and the respondent shall have not more than 15 minutes to argue:
 - (i) traffic, boating, wildlife, and other violations;
 - (ii) criminal, probation revocation, habeas corpus, and post-conviction;
 - (iii) mental commitment;
 - (iv) domestic relations, juvenile, and adoption;
 - (v) judicial review of administrative agency action;¹
 - (vi) appeals from circuit court review of any agency action under the Administrative Procedures Act (ORS chapter 183) or ORS 813.450(3) (relating to suspension of driver licenses); and
 - (vii) forcible entry and detainer.
 - (b) The appellant or petitioner may reserve not more than five minutes of the time allowed for argument in which to reply.
- (3) A motion for additional time for argument shall be filed at least seven days before the time set for argument.
 - (4) No point raised by a party's brief shall be deemed waived by the party's failure to present that point in oral argument.

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

(6) It is the general policy of Oregon appellate courts to prohibit reference at oral argument to any authority not cited either in a brief or in a preargument memorandum of additional authorities.² If a party intends to refer in oral argument to an authority not previously cited, counsel shall inform the court at the time of argument and shall make a good faith effort to inform opposing counsel of the authority at the earliest practicable time. The court may, in its discretion, permit reference at argument to that authority and may give other parties leave to file a post-argument memorandum of additional authorities or a memorandum in response.

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

(8) If counsel desires to have present at oral argument an exhibit that has been retained by the trial court, it is counsel's responsibility to arrange to have the exhibit transmitted to the appellate court.³

¹ Agencies subject to this provision include but are not limited to the Workers' Compensation Board, the Land Use Board of Appeals, and the Board of Parole and Post-Prison Supervision.

² See ORAP 5.85 regarding memoranda of additional authorities.

³ See ORAP 3.25 regarding arranging to have exhibits transmitted to the appellate court.

Rule 6.20 **ARGUMENT IN SALEM AND OTHER LOCATIONS**

The Court of Appeals will set most cases for oral argument in Salem, but, pursuant to Chief Justice Order 98-007, dated January 12, 1998, the court may set cases for oral argument in other locations throughout the state.

See ORS 2.560(1) and ORS 1.085(2).

Rule 6.25 **RECONSIDERATION BY COURT OF APPEALS**

(1) As used in this rule, "decision" means an opinion, per curiam opinion, affirmance without opinion, and an order ruling on a motion or an own motion matter that disposes of the appeal. A party seeking reconsideration of a decision of the Court of Appeals shall file a petition for reconsideration. A petition for reconsideration shall be based on one or more of these contentions:

- (a) A claim of factual error in the decision;
- (b) A claim of error in the procedural disposition of the appeal requiring correction or clarification to make the disposition consistent with the holding or rationale of the decision or the posture of the case below;

- (c) A claim of error in the designation of the prevailing party or award of costs;
- (d) A claim that there has been a change in the statutes or case law since the Court of Appeals' decision; or
- (e) A claim that the Court of Appeals erred in construing or applying the law. Claims addressing legal issues already argued in the parties' briefs and addressed by the Court of Appeals are disfavored.

(2) A petition for reconsideration shall be filed within 14 days of 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 copies, if the case was decided by the full court, and
- (b) The petition shall have a title page printed on plain white paper and containing the following information:
 - (i) The full case caption, including appropriate party designations for the parties as they appeared in the court from which the appeal was taken and as they appear on appeal, and the trial and appellate court case numbers;
 - (ii) A title designating the party filing the petition, such as "Appellant's Petition for Reconsideration" or "Respondent's Petition for Reconsideration"; and
 - (iii) The names, bar numbers, addresses, and telephone numbers of counsel for the parties, and the names, addresses, and telephone numbers of parties appearing without an attorney.

(3) The filing of a petition for reconsideration is not necessary to exhaust remedies or as a prerequisite to filing a petition for review.

(4) If a response to a petition for reconsideration is filed, the response shall be filed within seven days after the petition for reconsideration was filed. The court will proceed to consider a petition for reconsideration without awaiting the filing of a response, but will consider a response if one is filed before the petition for reconsideration is considered and decided.*

(5) A request for reconsideration of any other Court of Appeals' order ruling on a motion or an own motion matter shall be entitled "motion for reconsideration." A motion for reconsideration is subject to ORAP 7.05 regarding motions in general.

* See ORAP 9.05(2) regarding the effect of a petition for reconsideration by the Court of Appeals on the due date and consideration of a petition for review by the Supreme Court.

7. MOTIONS

Rule 7.05 MOTIONS IN GENERAL

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

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

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

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

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

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

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

(5) 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.

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

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

Rule 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. The motion or response shall note the names, bar numbers, addresses, and telephone numbers of counsel for all parties or names, addresses, and telephone numbers of parties appearing without counsel, either on the first page of the motion or response, on the signature page, or on the proof of service. The first page of the motion or response shall contain the following information:

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

(b) For a motion other than a motion for extension of time, a title designating the party filing the motion and one of the motion titles listed in the "Motion Titles" section of Appendix 7.10-1.¹ For example, the motion of a respondent on appeal to dismiss the appeal for lack of jurisdiction should be titled "Respondent's Motion–Dismiss - Non-Appellant/Non-Petitioner" and the motion of the state for summary affirmance should be titled "Respondent's Motion–Summary Affirmance." If more than one motion is contained in a single document, the title of each motion shall be listed. If none of the motion titles listed in Appendix 7.10-1 fairly describes the motion, select the title option of "Motion–Other" and add a title that accurately describes the motion. "Motion–Other" should be used only in circumstances in which the party has carefully reviewed the motion titles listed in Appendix 7.10-1 and does not find a title that describes the motion; or

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

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

(2) A motion or response, 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) Except as otherwise provided in this rule, a moving or responding party shall file with the Administrator the original motion or response with proof of service and nine copies, if in the Supreme Court, or one copy, if in the Court of Appeals. Parties need not file copies of motions for extension of time, consolidation, permission to file reply briefs or extended briefs, appellant's motions to dismiss, or stipulated motions to dismiss.

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

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).

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 7.15 **DECISIONS ON MOTIONS**

(1) The Chief Justice or the Chief Judge may determine any motion made before submission of a case to the court or after the date of the decision or may refer the motion to any other judge or judges of the court for decision.

(2) Any motion filed after submission of a case, but before decision, shall be decided by the court or, in the Court of Appeals, may be decided by the department to which the case has been submitted.

(3) If any motion other than a challenge to the court's jurisdiction is denied before submission of the case, the motion may not be resubmitted without leave of the court in the order on the motion.

(4) Except for a ruling on an oral motion for extension of time under ORAP 7.27, the court will rule on a motion by written order.

Rule 7.25 **MOTION FOR EXTENSION OF TIME**

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

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

- (a) The date the notice of appeal was filed (or in the case of a petition for review;
 - (b) The date of the decision of the Court of Appeals for which review is being sought);
 - (c) The date the brief or other action is due;
 - (d) The date to which the extension is requested;
 - (e) Whether it is the first or other request;
 - (f) The specific circumstances which caused the act not to be completed in the allotted time;
- and

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

(3) A statement whether opposing counsel objects to, concurs in or has no position regarding the extension of time requested is required for any motion other than a first motion for 28 days or less to file a brief.

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

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

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

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

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

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

Rule 7.27
ORAL REQUEST FOR EXTENSION OF
TIME TO FILE BRIEF

(1) For good cause shown, the Administrator's designee may grant an oral request for an extension of time of no more than 14 days to file an opening, response, or reply brief, provided that:

(a) The party making the request for an extension of time under this rule shall give prior notice to the other parties to the appeal, except that such notice need not be given to a person confined in a state institution and not represented by counsel; and

(b) The party previously has not obtained written extension or extensions of time of more than 28 days.

(2) A party may request an oral extension of time under this rule, and the Administrator's designee may grant or deny the motion, by telephone.

(3) The Administrator's designee acting on an oral request for an extension of time shall enter the grant or denial of the request in the appellate case register.

(4) The grant of an extension of time under this rule will bar any further motion for time to file the brief unless such motion, made in writing, demonstrates extraordinary and compelling circumstances.

Rule 7.30
MOTIONS THAT TOLL TIME

Unless the court otherwise orders, any motion that must be ruled on before the next event in the appellate process occurs, including but not necessarily limited to a motion to hold the appeal in abeyance, a motion to amend a designation of record, to dismiss, to determine jurisdiction, for summary affirmance under ORS 34.712, ORS 138.225, or ORS 138.660, to remand, to strike a brief, to supplement the record, or for leave to present additional evidence under ORS 183.482(5),¹ tolls the time for the next event in the appellate process as established in these rules, until the court disposes of the motion. The motions listed in this rule do not toll the running of any period of time established by statute.

¹ See ORAP 4.25.

Rule 7.35
MOTIONS SEEKING EMERGENCY RELIEF

(1) If a party files a motion for substantive relief and requires relief in less than 21 days, the party shall include in the caption of the motion a statement that the motion is an "EMERGENCY MOTION UNDER ORAP 7.35."

(2) Before filing the motion, the movant shall make a good faith effort to notify the opposing counsel or opposing party, if the party is not represented by counsel. The motion shall state whether the other party has been notified and served.

(3) A motion seeking emergency relief, other than a motion for an extension of time, and any response to a

motion seeking emergency relief may be served and filed by telephonic facsimile communication device,¹ provided that the material being transmitted does not exceed 10 pages and subject to the following conditions:

(a) Filing shall not be deemed complete until the entirety of the motion or response being transmitted has been received by the Administrator, but, as so filed, the facsimile transmission shall have the same force and effect as filing of the original.

(b) The party or attorney being served maintains a telephonic facsimile communication device at the party's address or at the attorney's office and the device is operating at the time service is made. The proof of service shall contain the facsimile number of any party or attorney served by facsimile transmission.²

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

² See ORCP 9 F.

Rule 7.40
DISMISSAL OF APPEAL FOR LACK OF AN
UNDERTAKING FOR COSTS ON APPEAL

(1) A motion to dismiss an appeal for lack of an undertaking for costs on appeal shall not be filed without at least seven days' notice to the appellant.¹ Notice may be written or oral. The notice shall not be filed with the court.

(2) A motion to dismiss an appeal for lack of an undertaking for costs on appeal shall state that the movant has given the notice required by subsection (1) of this rule or explain why it has not. If written notice was given, a copy of the notice shall be attached to the motion.

(3) The filing of an undertaking in response to a motion to dismiss shall not, in and of itself, be a sufficient response to the motion. Appellant shall file an answer to the motion explaining whether there was good cause for the failure to comply with the notice or the statutory deadline for filing and shall append a copy of the undertaking filed in the trial court.

(4) The movant may, but is not required to, assert that the movant has been prejudiced by appellant's failure to file timely an undertaking for costs on appeal. If, however, the motion is based on an assertion that appellant's failure to meet the statutory filing deadline should result in dismissal, even though appellant complied with a later filing deadline stated in the notice provided under subsection (1) of this rule, the movant must establish that substantial prejudice resulted from appellant's failure to meet the statutory filing deadline.

¹ See ORS 19.300 regarding filing an undertaking for costs on appeal.

Rule 7.45
APPELLANT'S MOTION TO
DISMISS OWN APPEAL

If a party moves to dismiss an appeal filed by that party, the motion shall state whether the dismissal is the

result of a negotiated settlement or compromise of the matter.

Rule 7.50
MOTION FOR SUMMARY AFFIRMANCE IN
COURT-APPOINTED COUNSEL CASES

(1) Except as provided otherwise by statute,¹ in any case in which one of the parties is represented by court-appointed counsel,² the court on motion of the respondent may summarily affirm the judgment if the court concludes, after submission of the appellant's brief and without submission of the respondent's brief, that the appeal does not present a substantial question of law. The Chief Judge may deny a motion for summary affirmance and may grant an unopposed motion for summary affirmance. Only the court may grant, in the manner provided by ORS 2.570, a motion for summary affirmance to which the appellant has filed written opposition. A summary affirmance under this rule constitutes a decision on the merits of the appeal.

(2) If a motion for summary affirmance is filed under ORS 138.225, ORS 138.660, or ORS 34.712, or subsection (1) of this rule and counsel has filed a *Balfour* brief under ORAP 5.90 with a Section B or, with leave of the court, counsel's client has filed a supplemental *pro se* brief, counsel forthwith shall forward a copy of the motion for summary affirmance to the client. The client shall have 35 days from the date the motion for summary affirmance was filed to file an answer to the motion.

¹ See, e.g., ORS 138.225 (relating to appeals in criminal cases), ORS 138.660 (relating to appeals in post-conviction relief cases), and ORS 34.712 (relating to appeals in habeas corpus cases).

² For example, appeals in mental commitment cases under ORS chapters 426 or 427 and appeals arising from juvenile court under ORS 419A.200.

8. MISCELLANEOUS RULES

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

(1) Oregon Rule of Civil Procedure (ORCP) 34, relating to substitution of parties in civil cases, is adopted.

(2) (a) Any party who learns of the death of a defendant in a criminal case that is pending on appeal shall notify the court and all other parties of the death within 28 days of learning of the death. Any party may move to dismiss the appeal.

(b) If the appeal is from a judgment of conviction and sentence, the party filing the notice also may, concurrently with filing the notice of the defendant's death, file a memorandum addressing whether the court should dismiss the appeal or vacate the judgment, or both. Within 28 days of the filing of the notice of the defendant's death, any other party or interested person may file a memorandum addressing the same issues.

(c) The following are presumptive dispositions under this subsection:

(i) For a state's appeal, the court will dismiss the appeal.

(ii) For a defendant's appeal, if the defendant has made an assignment of error that, if successful, would result in reversal of the conviction, the court will vacate the judgment and dismiss the appeal.

(iii) For a defendant's appeal, if the defendant has assigned error only to a part of the sentence other than a monetary provision, the court will dismiss the appeal but will not vacate the judgment. If the defendant has assigned error to a monetary provision of the sentence, the court will dismiss the appeal and vacate the challenged monetary provision, but will not vacate the remainder of the judgment.

(iv) Notwithstanding subparagraphs (ii) and (iii) of this paragraph, if the defendant dies after issuance of a Court of Appeals decision affirming the judgment and after all right to petition for review has expired, the court will dismiss the appeal but will not vacate the judgment.

(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 appellant has not surrendered at the time 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 has not surrendered when the court considers and decides the motion.

Rule 8.10
WITHDRAWAL, SUBSTITUTION, AND ASSOCIATION
OF ATTORNEYS ON APPEAL

(1) During the pendency of an appeal, an attorney may not withdraw from or substitute new counsel in a case except on order of the appellate court. A motion to withdraw or substitute new counsel must be filed and served on the client and every other party to the appeal, and is subject to ORS 9.380(2) and ORS 9.390.

(2) Except as provided in ORAP 8.12, unless it appears otherwise from the record, the court will presume that good and sufficient cause exists for substitution of counsel if both attorneys sign the motion for substitution of counsel. On filing of the motion for substitution of counsel in proper form and bearing the signatures of both attorneys, the substitution shall be deemed to have been ordered by the appellate court.

(3) An attorney who associates another attorney from a different firm on appeal shall file a notice of association with the appellate court, accompanied by proof of service on every other party to the appeal.

(4) An attorney admitted to the practice of law in another jurisdiction, but not in Oregon, may appear by brief and argue the cause in a proceeding before an appellate court in the manner prescribed in UTCR 3.170.¹

¹ See ORS 9.241; see also ORAP 6.10(4) concerning appearing for oral argument only.

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

(1) (a) During the pendency of an appeal, withdrawal or substitution of court-appointed counsel is subject to subsection (1) of ORAP 8.10.

(b) A court-appointed attorney shall have no obligation to move to withdraw or substitute counsel at the client's request unless the attorney has a good faith basis for the motion.

(2) (a) If court-appointed counsel of record wishes to substitute another court-appointed attorney as counsel for a party, counsel of record first must consult with the Office of Public Defense Services regarding the need for a substitution and who should be substituted as new counsel. Thereafter, if counsel of record files a motion for substitution, in addition to satisfying the service requirements provided in subsection (1) of ORAP 8.10, counsel of record shall serve a copy of the motion on the Office of Public Defense Services. Upon expiration of seven days from the date of filing the motion, unless it appears otherwise from the record, the court will presume that good and sufficient cause exists for substitution of counsel and the substitution shall be deemed to have been ordered by the court if:

(i) Counsel of record has signed the substitution;

(ii) The new attorney to be substituted as counsel for a party has been determined by the

Office of Public Defense Services to be qualified for the type of case in which the motion for substitution is filed; and

(iii) No objection is filed to the proposed substitution.

(b) If, after consultation by counsel of record with the Office of Public Defense Services, the Office of Public Defense Services does not concur with the need for substitution of counsel or does not approve the attorney to be substituted into the case, counsel of record may file a motion for substitution of counsel. Any such motion must satisfy the service requirements of subsection (1) of ORAP 8.10, must include proof of service on the Office of Public Defense Services, and is subject to ORAP 7.05 and any other rule relating to motions generally.¹

(3) (a) If the client of a court-appointed attorney moves to appoint new counsel based on the client's dissatisfaction with professional services rendered by the attorney, the client shall file the motion in the appellate court.

(b) If a party has a statutory or constitutional right to be represented by court-appointed counsel, the filing of any motion that would result in the party proceeding on appeal or review without counsel constitutes an attempt to waive the right to counsel.²

(c) If the court declines to accept a party's attempt to waive counsel, the court shall give the party an opportunity to file a supplemental *pro se* brief as provided in ORAP 5.92(2) and (3).

(4) To the extent practicable, the provisions of this rule are applicable to a legal advisor appointed under ORS 135.045(1)(d).³

¹ See ORS 138.500(2)(d) regarding substitution of counsel pursuant to the policies and procedures of the Public Defense Services Commission; Public Defense Payment Policies and Procedure 1.7 (Substitution of Appointed Counsel).

² See ORS 135.045(1)(c) regarding waiver of counsel in criminal cases generally and in death sentence cases. See ORS 138.504 regarding waiver of court-appointed counsel on appeal in criminal cases. See also *Hendricks v. Zenon*, 993 F2d 664, 668-71 (9th Cir 1993), regarding waiver of the right to counsel on appeal in criminal cases.

³ See ORS 135.045(1)(d) regarding appointment of a legal advisor for a defendant in a criminal case who waives the right to counsel.

Rule 8.15 ***AMICUS CURIAE***

(1) A person¹ may appear as *amicus curiae* in any case pending before the appellate court only by permission of the appellate court on written application setting forth the interest of the person in the case. The application shall state whether the applicant intends to present a private interest of its own or to present a position as to the correct rule of law that does not affect a private interest of its own. The application shall not contain argument on the resolution of

the case.

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

(3) In the Court of Appeals, the application to appear *amicus curiae* may, but need not, be accompanied by the brief the applicant would file if permitted to appear. In the Supreme Court, the application shall be accompanied by the brief sought to be filed. The form of an *amicus* brief and the number of copies of the brief shall be subject to the same rules as those governing briefs of parties.²

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

(5) With respect to review in the Supreme Court:

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

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

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

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

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

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

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

(6) If a party obtains an extension of time to file a petition for review, a response to a petition for review or a

brief on the merits and if an *amicus curiae* brief was due on the same date as the petition, response or brief on the merits, the time for filing the *amicus curiae* brief is automatically extended to the same date.

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

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

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

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

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

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

⁴ See ORAP 6.10 concerning oral argument.

Rule 8.20 **EFFECT OF BANKRUPTCY PETITION**

(1) Whenever a party by motion shows that a case on appeal is subject to the stay provisions of 11 USC § 362(a)(1)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.

(2) If a petition in bankruptcy is filed after entry of a judgment or final order but before a notice of appeal or petition for judicial review is filed and the adverse party desires to appeal, the notice or petition must nonetheless be filed within the time provided by statute or rule.

(3) If an appellant believes that a pending bankruptcy proceeding involving a party to the judgment being appealed should stay the appeal pending disposition of the bankruptcy proceeding, the notice of appeal or petition for judicial review shall contain, in addition to all other requirements under a statute or these rules, a statement identifying the party that has filed a petition in bankruptcy and a request to hold the appeal in abeyance on account of the bankruptcy proceeding.

(4) (a) Whether the petition in bankruptcy is filed after judgment or final order but before a notice of appeal or petition for judicial review is filed, or after a notice or petition is filed, the appellate court will not exercise jurisdiction as to the debtor party as long as the stay under 11 USC § 362 remains in effect.

(b) If more than one creditor and debtor are parties to the case on appeal and the presence of the debtor subject to the bankruptcy petition is necessary to resolve on appeal the claims of the other parties, then the appellate court will not exercise jurisdiction of the entire cause as long as the stay under 11 USC § 362 remains in effect.

¹ The filing of a petition in bankruptcy under 11 USC §§ 301, 302, or 303 operates as a stay as to all entities, of:

"the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title * * *." 11 USC § 362(a)(1).

Rule 8.25
MOTION UNDER ORCP 71 FOR
RELIEF FROM JUDGMENT

(1) If the copy of a motion for relief from judgment under ORCP 71 A or ORCP 71 B required to be served on the appellate court¹ is not entitled "MOTION FOR RELIEF FROM JUDGMENT UNDER ORCP 71," it shall be accompanied by a letter of transmittal identifying the motion as a motion for relief under ORCP 71 A or ORCP 71 B.

(2) When a party has filed a motion for relief from judgment under ORCP 71 A or ORCP 71 B while the judgment is on appeal, the appellate court will decide whether to hold the appeal in abeyance pending disposition of the motion or to allow the appeal to go forward. Any party to the appeal may move the court to hold the appeal in abeyance or to allow the appeal to go forward. In the absence of a motion from a party, the court on its own motion will review the motion for relief from judgment, decide whether to hold the appeal in abeyance and notify the parties if it decides to do so. If the court does not order the appeal to be held in abeyance, the appeal will go forward.

(3) A party wishing to appeal an order deciding a motion filed under ORCP 71 A or ORCP 71 B during the pendency of an appeal shall file a notice of appeal within the time and in the manner prescribed in ORS chapter 19. The notice of appeal as filed shall bear the same appellate case number assigned to the original notice of appeal.

(4) If the appellate court holds an appeal in abeyance pending disposition of a motion under ORCP 71 A or ORCP 71 B and subsequently receives a copy of the trial court's order deciding the motion, the appellate court shall decide whether to reactivate the case or take other action after expiration of the period within which an appeal from the order may be filed.

¹ See ORCP 71 B(2).

Rule 8.27
MODIFICATION OF JUDGMENT OF
DISSOLUTION OF MARRIAGE DURING
PENDENCY OF APPEAL

(1) During the pendency of an appeal from a judgment of dissolution of marriage, if it comes to the attention of

the court that a party has filed a motion under ORS 19.275(1) to modify the judgment of dissolution of marriage, including a motion to reconsider spousal or child support provisions of a judgment pursuant to ORS 107.135, the appellate court may hold the appeal in abeyance pending disposition of the motion or to allow the appeal to go forward. Any party to the appeal may move the court to hold the appeal in abeyance or to allow the appeal to go forward. In the absence of a motion from a party, the court on its own motion may review the motion filed in the trial court, decide whether to hold the appeal in abeyance and notify the parties if it decides to do so. If the court does not order the appeal to be held in abeyance, the appeal will go forward.

(2) A party wishing to appeal the trial court's final decision on a motion under ORS 19.275 during the pendency of an appeal shall file a notice of appeal within the time and in the manner prescribed in ORS chapter 19. The notice of appeal as filed shall bear the same appellate case number assigned to the original notice of appeal.

(3) If the appellate court holds an appeal in abeyance pending disposition of a motion under ORS 19.275(1) and subsequently receives a copy of the trial court's final decision, the appellate court shall decide whether to reactivate the appeal or take other action after expiration of the period within which an appeal from the final decision may be filed. If a timely appeal from the final decision on a motion under ORS 19.275 is filed, the court may direct that both appeals be heard at the same time or may allow the appeals to be proceed independently of one another.

Rule 8.28
MODIFIED, AMENDED, OR NEW
JUDGMENTS IN CRIMINAL CASES AFTER
NOTICE OF APPEAL FILED

(1) After a notice of appeal is filed in a criminal case, if either the state or the defendant files a motion in the trial court for entry of a modified, corrected, or amended judgment, the party filing the motion shall transmit a copy of the motion to the appellate court.¹

(2) (a) If the trial court enters a modified, corrected, or amended judgment on motion of a party or on its own motion, a party wishing to appeal the modified, corrected, or amended judgment shall file a notice of appeal within the time and in the manner prescribed in ORS chapter 138 and shall use the appellate case number assigned to the appeal from the original judgment.

(b) If the trial court enters a modified, corrected or amended judgment and the appellant does not wish to appeal the judgment, the appellant shall file a motion to dismiss the appeal.

(c) If the trial court denies a motion to modify, correct, or amend a judgment subject to subsection (1) of this rule, the party who filed the motion shall notify the Administrator in writing and within seven days of the date of entry of the trial court's order and shall attach a copy of the order denying the motion.

(3) When a party has filed a motion subject to subsection (1) of this rule, pending a final ruling on the motion by the trial court, the appellate court, on motion of a party or on its own motion, may order that the appeal be held in abeyance. If an order is entered holding the appeal in abeyance, when the court receives notice under subsection (2) of this rule that the trial court has entered a modified, corrected, or amended judgment or a final order disposing of

the motion, the appellate court shall reactivate the appeal or issue such other order as may be appropriate.

¹ See, e.g., a motion in the trial court under ORS 138.083(1) for entry of a modified judgment to correct arithmetic or clerical errors or to delete or modify any erroneous term in the judgment; a motion in the trial court under ORS 138.083(2) for entry of an amended judgment specifying the amount of restitution to be paid by the defendant; and a motion for a modified judgment under ORS 137.754.

Rule 8.30 DISQUALIFICATION OF JUDGE

(1) If a party or counsel for a party discovers that a sitting Court of Appeals or Supreme Court judge participated in the case in the proceedings being appealed or reviewed, the party or counsel shall notify the Administrator by letter of the judge's participation as soon as possible after discovering the judge's participation.

(2) The duty of a party or counsel to notify the Administrator of a sitting appellate judge's previous participation in the proceeding includes, in post-conviction relief and habeas corpus cases, the underlying criminal proceeding.

(3) (a) In addition to the notice required by subsection (1) of this rule, a party or attorney for a party in a case before the Supreme Court or Court of Appeals may move to disqualify a judge of the Supreme Court or Court of Appeals for one or more of the grounds specified in ORS 14.210, or upon the ground that the judge's participation in the case would violate the Oregon Code of Judicial Conduct. The motion shall be filed as soon as practicable after the party or attorney learns of the ground for disqualification.

(b) (i) The Administrator shall forward a copy of the motion to the judge against whom the motion is directed without waiting for an answer to the motion. The judge may grant the motion with or without an answer having been filed. If the judge does not believe that the motion is well taken, the judge shall refer the motion to the presiding judge for decision. The judge's referral may be accompanied by any written response the judge may wish to make. If the judge accompanies the referral with written response, the judge shall provide the parties with a copy of the written comments. The presiding judge may rule on the motion or may refer the motion to the full court for a decision.

(ii) In the Court of Appeals, "presiding judge" means the Chief Judge, unless the motion to disqualify is directed at the Chief Judge, in which case "presiding judge" means the next senior judge available to rule on the motion. In the Supreme Court, "presiding judge" means the Chief Justice, unless the motion to disqualify is directed at the Chief Justice, in which case "presiding judge" means the next senior judge available to rule on the motion.

Rule 8.35 MEDIA COVERAGE OF APPELLATE COURT PROCEEDINGS

(1) As used in this rule, "judge presiding in a proceeding" means the Chief Justice of the Supreme Court, the Chief Judge of the Court of Appeals, or the justice or judge presiding in a public proceeding in the Supreme Court or Court of Appeals, as appropriate.

(2) The judge presiding in a proceeding shall have the authority and responsibility to control the conduct of proceedings before the court, insure decorum and prevent distractions, and insure the fair administration of justice in proceedings before the court. Subject to that authority and responsibility, radio, television, and still photography coverage of public judicial proceedings in the appellate courts shall be allowed in accordance with this rule.

(3) Where available, audio pickup for all media purposes shall be accomplished from existing audio systems present in the courtroom, except if the audio pickup is attached to and operated as part of a television or videotape camera. If no technically suitable audio system exists in the courtroom, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance of the proceeding by the judge presiding in the proceeding.

(4) One still photographer, utilizing not more than two still cameras and related equipment, and one television or videotape camera operator shall be permitted to cover any public proceeding in an appellate court. The judge presiding in the proceeding shall designate:

(a) Where in the courtroom the photographer or television or videotape camera operator shall be positioned; and

(b) Where outside the courtroom videotape recording equipment that is not part of the television or videotape camera shall be positioned.

(5) Microphones and cameras shall be placed in the courtroom before proceedings each day or during a recess and, once positioned, shall not be moved during the proceeding. Microphones and cameras shall be removed only after adjournment of proceedings each day or during a recess. Broadcast media representatives shall not move about the courtroom while proceedings are in session.

(6) (a) Audio and photographic equipment that produces distracting sound or light shall not be used, nor shall artificial lighting device of any kind be used. Broadcast media representatives shall eliminate all excessive noise while in the courtroom; *e.g.*, any equipment coverings or cassette cases should be removed or opened before being brought into the courtroom and may not be replaced or closed inside the courtroom. Television film magazines (as distinct from videotape) and still camera film or lenses shall not be changed in the courtroom except during a recess.

(b) The judge presiding in the proceedings may require any media representative intending to cover the proceeding to demonstrate adequately in advance of the proceeding that the equipment that will be used meets the light and sound standards of this rule.

(7) "Pooling" arrangements required by the limitations of this rule on media equipment and personnel shall be the sole responsibility of the media without calling on the judge presiding in the proceeding to mediate any dispute as to the appropriate representative or equipment authorized to cover a particular proceeding. In the absence of advance

media agreement on disputed equipment or personnel issues, the judge presiding in the proceeding shall exclude all radio, television and still photography coverage.

(8) Media representatives attending an appellate court proceeding shall be dressed so as not to detract from the dignity of the court and may be removed from the courtroom for failure to wear appropriate attire.

Rule 8.40
REVIEW OF TRIAL COURT RULINGS
AFFECTING APPEAL

During the pendency of an appeal, if the trial court rules on a matter affecting the appeal,¹ any party aggrieved by the trial court's ruling may request, by motion filed within 14 days of the date of entry of the trial court's ruling, that the appellate court review the trial court's ruling and grant appropriate relief. The appellate court may review the ruling of the trial court on a matter affecting an appeal as necessary to decide a matter before the court.

¹ *See, e.g.*, ORS 19.235(1) and (2) (trial court summary determinations of appealability); ORS 19.370(4) and (5) (correction of, addition to, and settling of transcripts); ORS 19.375(2) (designating party responsible for preparation of additional parts of transcript); ORS 138.500 (determinations of indigency and preparation of a transcript at state expense and appointment of counsel on appeal).

With respect to undertakings and stays on appeal, *see* ORS 19.360 (providing for appellate review and prescribing time within which to move for appellate review of trial court orders relating to undertakings and stays on appeal, prescribing the standard of the court's review, and prescribing the scope of relief the appellate court may grant generally); ORS 19.300 (amount of undertaking for costs on appeal); ORS 19.305 (qualifications of sureties and objections to sufficiency of an undertaking); ORS 19.310 (approval of stipulations dispensing with undertaking requirements and waiver, reduction, or limitation of undertaking for good cause); ORS 19.335 (supersede as undertakings); ORS 19.340 (sale of perishable property); ORS 19.350 (discretionary stays); and ORS 19.355 (stays in domestic relations cases).

Rule 8.45
DUTY TO SERVE NOTICE OR
FILE MOTION ON OCCURRENCE OF EVENT
RENDERING APPEAL MOOT

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

¹ For example, the death of the defendant in a criminal case, the release from custody of the plaintiff in a habeas

corpus case, or settlement of a civil case.

Rule 8.50
SEGREGATION OF
PROTECTED PERSONAL INFORMATION

(1) For purposes of this rule, "protected personal information" is information that:

(a) Identifies a person beyond that person's name (*e.g.*, social security number, maiden name, driver license number, birth date and location) or identifies a person's financial activities (*e.g.*, credit card number, credit report, bank account number or location); and

(b) The appellate court is permitted to maintain as confidential and not subject to public inspection.

(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 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 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

(3) If the court grants the motion, then the court will segregate the document containing protected personal information from the appellate court file. The motion will remain in the appellate court file. Any request for public inspection of such a document containing protected personal information must be made in writing, filed with the appellate court, and served on all other parties to the appeal, review, or other proceeding.

¹ Chief Justice Order No. 06-050, issued October 31, 2006, under authority of ORS 1.002(1)(a) and ORS 21.020(2), and effective January 1, 2007, prescribes a fee of \$25.00 per case and \$1.00 per existing appellate file page replaced with redacted entries.

See Oregon Laws 2003, chapter 380, adopting ORS 107.840 and amending other statutes and protecting the confidentiality of Social Security numbers.; see also ORAP 1.35(1)(b) concerning requirement that parties with contact information that is shielded by law or court order provide appellate courts with alternative contact information that may be made available for public inspection.

**9. PETITION FOR REVIEW AND
RECONSIDERATION IN SUPREME COURT**

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

(1) Reviewable Decisions

As used in this rule, "decision" means a decision of the Court of Appeals in the form of an opinion, per curiam opinion, or affirmance without opinion, or an order ruling on a motion, own motion matter, petition for attorney fees, or statement of costs and disbursements.

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

(a) Any party seeking to obtain review of a decision of the Court of Appeals shall file a petition for review in the Supreme Court within 35 days from the date of the Court of Appeals' decision. The Supreme Court may grant an extension of time to file a petition for review.¹

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

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

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

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

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

(3) Form and Service of Petition for Review

(a) The petition shall be in the form of a brief, prepared in conformity with ORAP 5.05, except that the petition shall not exceed 15 pages in length, and ORAP 5.35. The cover of the petition shall:

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

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

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

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

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

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

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

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

(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.

(4) Contents of Petition For Review

The petition shall contain in order:

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

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

- (c) A statement of specific reasons why the legal question or questions presented on review have importance beyond the particular case and require decision by the Supreme Court.⁵
- (d) If desired, and space permitting, a brief argument concerning the legal question or questions presented on review.
- (e) A copy of the decision of the Court of Appeals, including the court's opinion and any concurring and dissenting opinions.

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

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

³ See Appendix 9.05.

⁴ See ORAP 9.17 regarding briefs on the merits.

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

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

Rule 9.07
CRITERIA FOR GRANTING
DISCRETIONARY REVIEW

The Supreme Court considers the items set out below to be relevant to the decision whether to grant discretionary review. These criteria are published to inform and assist the bar and the public. They are neither exclusive nor binding. The court retains the inherent authority to allow or deny any petition for review. A petition for review may refer to those items that are relevant to the case and need not address each listed item.¹

- (1) Whether the case presents a significant issue of law. A significant issue of law may include, for example:
 - (a) The interpretation of a constitutional provision;
 - (b) The interpretation of a statute,
 - (c) The constitutionality of a statute,
 - (d) The legality of an important governmental action,
 - (e) The use or effect of a rule of trial court procedure,

- (f) The jurisdiction of the Court of Appeals or the trial court, or
 - (g) The application or proposed modification of a principle of common law.
- (2) Whether the issue or a similar issue arises often.
 - (3) Whether many people are affected by the decision in the case. Whether the consequence of the decision is important to the public, even if the issue may not arise often.
 - (4) Whether the legal issue is an issue of state law.
 - (5) Whether the issue is one of first impression for the Supreme Court.
 - (6) Whether the same or a related issue is pending before the Supreme Court.
 - (7) Whether the legal issue is properly preserved, and whether the case is free from factual disputes or procedural obstacles that might prevent the Supreme Court from reaching the legal issue.
 - (8) Whether the record does, in fact, present the desired issue.
 - (9) Whether present case law is inconsistent (among Court of Appeals cases, between Court of Appeals cases and Supreme Court cases, or among Supreme Court cases).
 - (10) Whether it appears that trial courts or administrative agencies are inconsistent or confused in ruling on the issue that the case presents.
 - (11) Whether the Court of Appeals published a written opinion.
 - (12) Whether the Court of Appeals was divided on the case.
 - (13) Whether the Court of Appeals decided the case en banc.
 - (14) Whether the Court of Appeals decision appears to be wrong. If the decision appears to be wrong:
 - (a) Whether the error results in a serious or irreversible injustice or in a distortion or misapplication of a legal principle.
 - (b) Whether the error can be corrected by another branch of government, such as by legislation or rulemaking.
 - (15) Whether the issues are well presented in the briefs.
 - (16) Whether an *amicus curiae* has appeared, or is available to advise the court.

¹ A party may include in an appendix to a petition for review materials in support of criteria under this rule that are

not otherwise part of the record on appeal, such as materials demonstrating how the case may affect persons other than the parties to the immediate case or how the case is important to the public.

Rule 9.10
RESPONSE TO PETITION FOR REVIEW

(1) A party to an appeal or judicial review in the Court of Appeals may, but need not, file a response to a petition for review. In the absence of a response, the party's brief in the Court of Appeals will be considered as the response.

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

(3) A response shall conform to ORAP 5.05, except that the response shall not exceed 15 pages in length, and ORAP 5.35. The cover of a response shall be orange. Any party filing a response shall file with the Administrator one response, marked as the original, and 12 copies, serve two copies of the response on every other party to the review, and file proof of service.

Rule 9.17
BRIEFS ON THE MERITS ON REVIEW

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

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

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

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

(ii) A concise statement of:

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

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

(iii) A summary of the argument.

(iv) The argument.

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

(c) The brief on the merits of the petitioner on review shall conform to ORAP 5.05, ORAP 5.35, and ORAP 9.05(2), except that the cover of the brief shall be white.

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

(i) If petitioner on review files a brief on the merits on review, respondent's brief is due within 28 days thereafter;

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

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

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

(c) The brief on the merits of respondent on review shall conform to ORAP 5.05 and ORAP 5.35, except that the cover of a brief shall be tan.

(4) 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.

Rule 9.20
ALLOWANCE OF REVIEW
BY SUPREME COURT

(1) A petition for review of a decision of the Court of Appeals shall be allowed if one less than a majority of the judges eligible to vote on the petition vote to allow it.

(2) If the Supreme Court allows a petition for review, the court may limit the questions on review. If review is not so limited, the questions before the Supreme Court include all questions properly before the Court of Appeals that the petition or the response claims were erroneously decided by that court. The Supreme Court's opinion need not address each such question. The court may consider other issues that were before the Court of Appeals.

(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 or by additional memoranda. If addressed by additional memoranda, the original and 12 copies of such additional memoranda shall be served and filed not less than seven days before argument or submission of the case.

(4) The parties' briefs in the Court of Appeals will be considered as the main briefs in the Supreme Court, supplemented by the petition for review and any response, brief on the merits, or additional memoranda that may be filed.¹

(5) The record on review shall consist of the record before the Court of Appeals.

¹ See ORAP 9.10 regarding responses to petitions for review; see ORAP 9.17 regarding briefs on the merits.

Rule 9.25
RECONSIDERATION IN SUPREME COURT

(1) A party seeking reconsideration of a decision of the Supreme Court shall file a petition for reconsideration within 14 days from the date of the decision. The petition shall be in the form of a brief, prepared in conformity with ORAP 5.05, insofar as it is applicable. The petition shall include a copy of the court's decision. A petitioner shall identify on the cover which party is the petitioner, the date of the decision, and, if there is an opinion or if there are opinions, the judges who joined therein.

(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.

(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 9.30
AUTHORITY OF COURT OF APPEALS
TO DECIDE ANCILLARY MATTERS
AFTER PETITION FOR REVIEW FILED

(1) Except as provided in subsection (2) of this rule, the Court of Appeals retains jurisdiction over an appeal filed in that court until the appellate judgment issues.¹

(2) If a petition for review of a decision of the Court of Appeals is filed, the Court of Appeals shall retain jurisdiction over the case until the later of these two events occurs: The time for filing a petition for reconsideration pursuant to ORAP 6.25 expires or, if a timely petition for reconsideration is filed, the Court of Appeals disposes of the petition for reconsideration. Thereafter, the case is considered pending in the Supreme Court until it finally disposes of any petition for review. In the event a dispute arises concerning which court should rule on a motion filed after a petition for review is filed, the Chief Justice of the Supreme Court and the Chief Judge of the Court of Appeals

may confer and decide which court will rule on the motion.

(3) The Court of Appeals shall retain jurisdiction to decide claims for attorney fees, costs and disbursements, and damages² in a case, notwithstanding that the case is pending in the Supreme Court.

(4) If a party petitions for review of any action of the Court of Appeals other than a decision that disposes of an appeal, in its discretion the Court of Appeals may proceed with the case.

¹ See ORS 19.270, ORS 19.450, and ORAP 14.05.

² See, e.g., ORS 19.445 and ORS 20.105.

10. SPECIAL COURT OF APPEALS RULES

Rule 10.05 APPLICATION FOR INTERLOCUTORY APPEAL IN CLASS ACTION

The practice and procedure governing applications to appeal from certain court orders involving questions of law under ORS 19.225 shall be as follows:

(1) An application to file an interlocutory appeal under ORS 19.225 shall be entitled "Appellant's Application for Interlocutory Appeal Pursuant to ORS 19.225." The applicant shall be entitled "Appellant" and the opposing party "Respondent." The application shall be accompanied by the appellant's filing fee.

(2) The application shall consist of:

(a) A statement not exceeding three pages formally applying for leave to file notice of appeal and informing the court of the nature of the cause or causes of action involved, the specific order desired to be appealed and its effect on the litigation, and the controlling question of law pertinent to the application.

(b) A memorandum not exceeding 10 pages explaining why the application should be allowed, accompanied by a copy of any exhibits necessary to the explanation.

(c) A notice of appeal in the form provided in ORAP 2.05.

(3) An applicant shall file with the Administrator the original and five copies of the application and all accompanying papers, together with proof of service on all other parties to the case and the trial court judge.

(4) The opposing party shall be allowed 14 days within which to file an answer, which shall be entitled, "Respondent's Memorandum in Response to Application for Interlocutory Appeal Pursuant to ORS 19.225." The answering memorandum shall not exceed 10 pages and shall be accompanied only by the exhibits necessary to support the explanation why the application should not be allowed.

(5) The respondent shall file with the Administrator the original and five copies of the answering memorandum and all accompanying papers, together with proof of service on all other parties to the case and the trial court judge. The answering memorandum shall be accompanied by the respondent's appearance fee.

(6) If the respondent seeks to appeal from an order under ORS 19.225 independently of the appellant, the respondent shall accompany the answering memorandum with an application in the form required by this rule and an appellant's filing fee. If the respondent seeks to cross-appeal from the same order that the appellant seeks to appeal only if the court allows the appellant's application, respondent shall tender a notice of cross-appeal but need not comply with subsections (2), (3), and (5) of this rule.

(7) An applicant shall be allowed seven days within which to file a reply, consisting of no more than seven pages, which shall be entitled "Appellant's Reply to Memorandum in Response to Application for Interlocutory

Appeal Pursuant to ORS 19.225." The applicant shall file the reply and five copies together with proof of service on all other parties to the case and the trial court judge.

(8) If the Court of Appeals allows an application under ORS 19.225, the notice of appeal and notice of cross-appeal are deemed filed as of the date of the order allowing the application. The appeal shall then proceed in accordance with the statutes and rules governing civil appeals.

Rule 10.10
CERTIFICATION OF APPEAL TO
SUPREME COURT BY COURT OF APPEALS

(1) Certification of an appeal to the Supreme Court pursuant to ORS 19.405 shall be through the Chief Judge by a majority of the judges of the Court of Appeals not disqualified to consider the appeal to be certified.

(2) Written notice of certification shall be given to the parties to the appeal by the Administrator, but failure to give or receive the notice shall not affect the validity of the certification.

(3) Certification shall have the same effect as a motion subject to ORAP 7.30, except that the Court of Appeals may consider any motion, petition or other matter presented by a party pending the acceptance or denial of acceptance of the certification, on a showing that the matter presented should be considered during the pendency of the certification.

(4) If the Supreme Court denies acceptance of a certification, or if the Supreme Court fails to accept or deny certification within the time provided by ORS 19.405, the Administrator shall notify the Court of Appeals and the parties to the appeal in writing; the case shall thereafter proceed in due course in the Court of Appeals.

(5) The Court of Appeals may not certify an appeal more than one time.

(6) To accept a certification, a majority of the judges of the Supreme Court considering the certification must vote in favor of acceptance. The court shall file an order accepting or denying the certification within 20 days after the date of receiving the certification, except that the court, by order entered within that 20-day period, may extend by not more than 20 days the time for acceptance or denial of the certified appeal. If the court does not file an order accepting or denying the certification within that time, the certification is deemed denied. If the court accepts or denies a certification by written order, the Administrator shall send a copy of the order to the parties and to the Court of Appeals.

(7) If the Supreme Court accepts a certified appeal, the Court of Appeals shall transmit the record of the case and the briefs of the parties to the Supreme Court, and the Supreme Court shall thereafter have jurisdiction of the case, and it shall be considered pending in the Supreme Court without additional notice of appeal, filing fee, undertaking or, except as the Supreme Court may require, briefs. The case shall then proceed in the Supreme Court as directed in its notification of acceptance.

See ORS 250.044 regarding special provisions for certifying certain appeals arising from cases filed in Marion County Circuit Court challenging the constitutionality of a state statute or an amendment to the Oregon Constitution by a ballot measure.

Rule 10.15
JUVENILE DEPENDENCY AND ADOPTION CASES

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

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

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

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

(b) In an adoption case, within seven days after filing the notice of appeal, appellant shall make arrangements for preparation of the transcript.

(c) In a permanency proceeding pursuant to ORS 419B.470 to 419B.476, or a termination of parental rights proceeding, respecting the record of oral proceedings in the trial court, the appellant shall designate as part of the record on appeal only the transcripts of the permanency or termination of parental rights proceedings. The appellant may move to include as part of the record on appeal a transcript of a hearing that preceded the permanency or termination of parental rights proceeding only based on a showing that the trial judge took judicial notice of or otherwise considered the record of the earlier hearing in the course of deciding the permanency or termination of parental rights proceeding.

(4) (a) The court shall not extend the time for filing the transcript under ORAP 3.30 or for filing of an agreed narrative statement under ORAP 3.45 for more than 14 days.²

(b) Except on a showing of exceptional circumstances, the court shall not grant an extension of time to request correction of the transcript.³

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

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

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

(c) No reply brief may be filed.

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

(7) The court will set the case for oral argument within 56 days after the filing of the opening brief.

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

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

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

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

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

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

¹ See Appendix 10.15.

² See ORS 19.270(2).

³ See ORS 19.270(5).

Rule 10.20
ARBITRATION OF DISPUTES OVER
PROVISION OF PUBLIC SERVICES
FOR PRISON SITES

- (1) When a motion is filed under ORS 421.628(7) seeking selection of an arbitrator:
 - (a) The case title shall identify the moving party as the petitioner and the adverse party as the respondent.
 - (b) The motion shall be entitled "MOTION FOR SELECTION OF ARBITRATOR UNDER ORS 421.628(7)."
 - (c) The motion may nominate one or more arbitrators and shall suggest rules and procedures for the arbitration proceeding.
 - (d) The moving party shall serve a copy of the motion on the adverse party and the motion shall contain proof of service on the adverse party.
 - (e) The adverse party shall have 14 days from the date the motion was filed to file an answer to the motion. The adverse party may nominate one or more arbitrators and may suggest alternative rules and procedures for the arbitration proceeding.
 - (f) When the Chief Judge of the Court of Appeals selects an arbitrator and decides the rules and procedures to be followed in the proceeding, the Administrator shall so inform the parties. Thereafter, the parties will be responsible for contacting the arbitrator and making arrangements for the arbitration proceeding, including sharing the expense of the arbitration proceeding and the arbitrator's fee.
- (2) Following the arbitration proceeding, if either party files exceptions to the arbitrator's decision and award:
 - (a) The case caption shall contain the same case title and appellate case number as the motion for selection of arbitrator and the exceptions shall have attached to it a copy of the arbitrator's decision and award.
 - (b) The arbitrator shall have 14 days from the date of being served with a copy of the exceptions to submit to the Court of Appeals the original of the arbitration decision together with any exhibits, memoranda or other written materials made part of the record by the arbitrator.
 - (c) No later than 14 days after the arbitrator's record is submitted to the Court of Appeals, any party wishing to have a special master appointed shall file a motion demonstrating the need for a special master. The adverse party shall have 14 days to file an answer to the motion. If the court appoints a special master, the court's order will prescribe the rules and procedure for the proceeding before the special master.

- (d) If no party requests appointment of a special master, the party filing objections shall have 14 days after the arbitrator submits the record to the court to serve and file a memorandum in support of the objections.
- (e) If a special master is appointed, the party filing objections shall have 14 days after the special master submits the special master's findings to the court to file a memorandum in support of the objections.
- (f) The adverse party shall have 14 days after being served with the memorandum in support of the objections to file an answer to the objections.
- (g) The court in its discretion will hear oral argument on the objections to the arbitrator's decision.

**11. ORIGINAL PROCEEDINGS IN
THE SUPREME COURT**

**Rule 11.05
MANDAMUS:
INITIATING A MANDAMUS PROCEEDING**

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

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

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

(3) (a) The petition shall have a title page with a caption containing the title of the proceeding, a heading indicating the type of writ requested (*e.g.*, "petition for alternative writ of mandamus" or "petition for peremptory writ of mandamus"), and, if the mandamus proceeding arises from a matter before a lower court or administrative agency, the identifying number, if any, assigned to the matter below. 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."⁴

(b) The title page also shall contain:

(i) In a mandamus proceeding challenging the action of a judge in a particular case in the circuit court, the Tax Court, or the Court of Appeals, the name, bar number, mailing address, and telephone number of the attorney for the relator and the attorney for the adverse party.

(ii) In any other mandamus proceeding, the name, bar number, mailing address, and telephone number of the attorney for the relator and the defendant. If the mandamus proceeding arises from a matter before an administrative agency, the title page also shall contain the name, bar number, mailing address, and telephone number of the attorney for the adverse party in the matter below.

(iii) In any mandamus proceeding, the name, mailing address, and telephone number of any party not represented by an attorney.

(4) In addition to any matters required by law, the petition shall contain:

- (a) A concise but complete statement of facts material to a determination of the question or questions presented and the relief sought;
- (b) A statement why the petition is timely.⁵
- (c) A statement why application was not made to the circuit court for relief; and
- (d) A statement why appeal or any other applicable potential remedy is not a plain, speedy and adequate remedy in the ordinary course of law, precluding issuance of the writ.⁶

(5) The relator shall accompany the petition with:

- (a) A copy of the order or decision, if the mandamus proceeding challenges a written order or decision, which shall be attached to the petition.
- (b) An excerpt of 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, if the mandamus proceeding arises from a matter in which a record has been made.
- (c) A memorandum of law with supporting arguments and citations. The form of the memorandum shall comply with ORAP 7.10(1) and (2).
- (d) In a mandamus proceeding that challenges the action of the Court of Appeals, the Tax Court, or a judge in a particular case in the circuit court, the relator need not accompany the petition with a proposed form of writ of mandamus; in any other mandamus proceeding, the relator shall do so.

(6) The form of a petition shall comply with ORAP 5.05(4)(c) through (h). Relator shall assemble and submit the petition, the record (if a record was made in the matter from which the mandamus proceeding has arisen), and the memorandum in support of the petition as separate documents, and file the original and nine copies with the Administrator. The excerpt of record shall be prepared in compliance with ORAP 5.50(6)(a), (b), and (c). If the excerpt of record is more than 50 pages, relator need file only two copies of the record.

- (7) (a) In a mandamus proceeding that challenges the action of a judge in a particular case in the circuit court, the Tax Court, or the Court of Appeals, the relator shall accompany the petition with proof of service on the adverse party, any other party (if any) to the proceeding in the lower court, and the judge or court whose action is challenged in the mandamus proceeding.
- (b) In any other mandamus proceeding, the relator shall accompany the petition with proof of service on the defendant and, if the mandamus proceeding arises from another proceeding or controversy, proof of service on any other party to the proceeding or controversy.
- (c) If the state, a state officer, or a state agency is a party to the case, proceeding, or

controversy from which the mandamus proceeding arises, the relator shall include proof of service on the Attorney General.⁷

(8) If the relator seeks a stay in the proceedings from which the mandamus proceeding arises, the relator shall show that the relator requested a stay from the court, judge, or administrative agency or official whose order or decision is being challenged and that the request for a stay was denied, or that it would be futile to request a stay from the court, judge, or administrative agency or official.

¹ See Illustration 1a in Appendix 11.05.

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

³ See Illustrations 2 and 3 in Appendix 11.05.

⁴ See Illustration 1b in Appendix 11.05.

⁵ See *State ex rel Redden v. Van Hoomissen*, 281 Or 647, 576 P2d 355 (1978), and *State ex rel Fidanque v. Paulus*, 297 Or 711, 717-18, 688 P2d 1303 (1984), regarding timeliness.

⁶ See ORS 34.110; *State ex rel Automotive Emporium v. Murchison*, 289 Or 265, 611 P2d 1169 (1980).

⁷ See footnote 1 to ORAP 1.35 for the service address of the Attorney General.

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

See ORS 21.040 regarding filing fees.

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 nine copies of the memorandum shall be filed within 14 days from the date the petition was filed.

(2) The petition and any memoranda in opposition to the petition shall be considered by the court without oral

argument unless otherwise ordered. If the court determines to accept jurisdiction, it shall issue an order allowing the petition. Otherwise, the petition shall be denied by order of the court.

(3) If the court issues an alternative writ of mandamus in a mandamus proceeding that challenges the action of a judge in a particular case in the circuit court, the Tax Court, or the Court of Appeals, the Administrator shall mail copies of the order allowing the petition and the alternative writ of mandamus to the relator, to the adverse party, to any intervenor, and to the judge or court whose action is challenged in the petition. Proof of service of an alternative writ of mandamus need not be filed with the court. Unless the alternative writ of mandamus specifically requires that a return, answer, or responsive pleading be filed, the judge or court to which the writ is issued need not file a return, answer, or responsive pleading.

(4) If the court issues an alternative writ in any other mandamus proceeding, the court shall set a return date in the writ, and the Administrator shall mail copies of the order allowing the petition and the alternative writ of mandamus to the relator, to the defendant, and to any intervenor. On or before the return date in the writ, the defendant shall either file a certificate of compliance or show cause by answer or motion to dismiss as provided by ORS 34.170. If the defendant fails to file a certificate of compliance or show cause by answer or motion to dismiss on or before the return date set in the writ, the court, without further notice to the parties, may issue a peremptory writ of mandamus, as provided in ORS 34.180. When the case is at issue on the pleadings,² the court will notify the parties to that effect.

(5) At any time after the filing of a petition for writ of mandamus or the issuance of an alternative writ of mandamus, if the defendant, judge, or court performs the act sought in the petition or required in the alternative writ, the relator shall notify, and the defendant, judge, court, or any other party to the lower court case may notify, the court of that compliance. After receiving notice of the compliance, the court on motion of any party or on its own motion may dismiss the mandamus proceeding.

¹ See ORS 34.130(4) regarding an attorney for a party in an underlying proceeding appearing on behalf of a judge who is the defendant in a mandamus proceeding. See ORS 34.250(4) regarding a judge who is not the named defendant in a mandamus proceeding but whose action is challenged in the proceeding moving to intervene as a party.

² See ORS 34.170, ORS 34.180, and ORS 34.190.

See generally ORS 34.110 through 34.250 and Article VII (Amended), section 2, of the Oregon Constitution.

Rule 11.15
MANDAMUS:
BRIEFS AND ORAL ARGUMENT

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

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

Court, or the Court of Appeals; or

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

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

(3) 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.

(4) 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.

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

Rule 11.17
MANDAMUS: ISSUANCE OF COMBINED
PEREMPTORY WRIT OF MANDAMUS
AND APPELLATE JUDGMENT

If the court has determined that the relator is entitled to a peremptory writ of mandamus, the court shall direct the Administrator to issue the writ. The peremptory writ may be combined with the appellate judgment and issued together as a single document. If the peremptory writ and the appellate judgment are combined, the relator need not file proof of service of the writ with the court, and the judge or court to which the writ is issued 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 need not file a return showing compliance with the writ.

See ORS 34.250(8).

Rule 11.20
HABEAS CORPUS AND
QUO WARRANTO PROCEEDINGS

(1) With respect to a habeas corpus or quo warranto proceeding under Article VII (Amended), section 2, of the Oregon Constitution, the procedure for filing a petition (including a statement in the petition why application was not made to the circuit court), the defendant's appearance in opposition thereto, the court's consideration of the petition, and briefing and oral argument shall be the same insofar as practicable as for a writ of mandamus.

(2) A petition for a writ of habeas corpus shall be entitled "_____, Plaintiff, v. _____, Defendant." A petition for a writ of quo warranto shall be entitled "_____, Petitioner, v. _____, Respondent."

See ORS 34.310 through 34.730 and Article VII (Amended), section 2, of the Oregon Constitution, *see* also ORS 30.510 through ORS 30.640 relating to actions for usurpation of an office or of a franchise.

Rule 11.22
LENGTHY MEMORANDA

A memorandum longer than 20 pages, exclusive of appendices and exhibits, in support of or in opposition to a petition invoking the Supreme Court's original jurisdiction in a mandamus, habeas corpus, or quo warranto case, or any other original proceeding in the Supreme Court shall contain an index of contents, an index of appendices or exhibits, and an index of authorities, each with page references.¹

¹ *See* ORAP 5.35.

Rule 11.25
BAR ADMISSION, REINSTATEMENT,
AND DISCIPLINARY PROCEEDINGS

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

- (a) The Oregon State Bar in a disciplinary, contested admission or contested reinstatement proceeding.
- (b) The accused in a disciplinary proceeding.
- (c) The applicant in a contested admission proceeding.

(d) The applicant in a contested reinstatement proceeding.

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

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

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

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

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

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

See ORS 9.536, and Oregon State Bar Rules of Procedure, which are found on the Oregon State Bar's website (www.osbar.org) and in Thomson/West's *Oregon Rules of Court*.

Rule 11.27
JUDICIAL DISABILITY AND
DISCIPLINARY PROCEEDINGS

(1) Involuntary Retirement for Disability under ORS 1.310.

(a) On receipt of notice from the Secretary of State of a judge's appeal of a determination of disability by the Commission, the Commission shall, within 14 days, transmit the record to the Supreme Court. The Administrator shall inform the judge of the date of receipt of the record from the Commission.

(b) The judge shall have 28 days from the date of the notice from the court of receipt of the record to file a petition for review of the Commission's determination of disability, together with a brief in support of the petition. The Commission shall have 28 days from the date of filing of the judge's brief to file an answering brief. The judge may file a reply brief, which shall be due 14 days after the date of filing of the Commission's answering brief.

(c) If the case is argued orally, the judge shall argue first, followed by the Commission.

(d) If the court remands the matter to the Commission for additional findings of fact, the review will be held in abeyance pending receipt from the Commission of notice of its action on remand.

(e) The decision of the Supreme Court to affirm, reverse or annul the Commission's determination is subject to a petition for reconsideration under ORAP 9.25. If no petition for reconsideration is filed or if a petition for reconsideration is filed, on disposition of the petition, the Administrator shall issue the appellate judgment and shall provide a copy of the appellate judgment to the Secretary of State.

(2) Disciplinary Proceedings under ORS 1.420.

(a) Appointment of Masters

Under ORS 1.420(1)(b), if the Commission requests appointment of three masters to hold a hearing, the request shall be made in the form of a petition and the Commission shall serve a copy of the petition on the judge. The Commission may nominate three or more candidates for appointment as masters. The judge shall have 14 days after being served with the Commission's request to file a response, which response may include nominations for three or more candidates for appointment as masters.

(b) Review of Commission's Recommendations¹

(i) Under ORS 1.420(4), if the Commission recommends to the court the censure, suspension, or removal from office of a judge, the Commission shall accompany its recommendation with the record of proceedings before the commission. The Administrator shall inform the judge of the date of receipt of the record from the Commission.

(ii) A request for receipt of additional evidence shall be filed as a motion in the manner provided in ORAP 7.05 and ORAP 7.10.

(iii) The judge shall have 28 days from the date of the notice from the court of receipt of the record to file a brief concerning the Commission's recommendation. The Commission shall have 28 days from the date of filing of the judge's brief to file an answering brief. The judge may file a reply brief, which shall be due 14 days after the date of filing of the Commission's answering brief. If the judge fails to file an opening brief, the Commission may file an opening brief and thereafter the judge may file an answering brief.

(iv) If the case is argued orally, the judge shall argue first, followed by the Commission, unless the judge did not file any brief, in which case the Commission alone may orally argue the matter.

(v) If the court remands the matter to the Commission for additional findings of fact, the review will be held in abeyance pending receipt from the Commission of notice of its action on remand.

(vi) The decision of the Supreme Court to affirm, reverse, or annul the Commission's determination is subject to a petition for reconsideration under ORAP 9.25. If no petition for reconsideration is filed or if a petition for reconsideration is filed, on disposition of the petition, the Administrator shall issue the appellate judgment. If the decision is for removal of the judge from office, the Administrator shall provide a copy of the appellate judgment to the Secretary of State.

(vii) The decision of the Commission after hearing or upon review of the record and report of the masters under ORS 1.425 shall be a public record, together with the recommendations,

if any, of the Commission to the Supreme Court.*

(c) Temporary Suspension Under ORS 1.420(5)

(i) If the Supreme Court on its own motion proposes to suspend a judge during the pendency of disciplinary proceedings under ORS 1.420, the Administrator shall provide written notice thereof to the judge.

(ii) If the Commission files a recommendation that a judge be suspended during the pendency of a disability determination proceeding, the Commission shall serve a copy of the recommendation on the judge.

(iii) The judge shall have 14 days from the date of the court's notice of proposed suspension or from the date of the Commission's recommendation that the judge be suspended during the pendency of a disability determination to file a memorandum regarding the proposed or recommended suspension.

(iv) When the court on its own motion proposes to suspend a judge during the pendency of disciplinary proceedings, the Commission shall have 14 days after the date of filing of the judge's memorandum to file a memorandum regarding the proposed suspension.

(v) The matter of a proposed or recommended temporary suspension will not be subject to oral argument unless oral argument is requested by the judge or the Commission.

(d) Consent to Discipline Under ORS 1.420(1)(c)

(i) On receipt of a judge's consent to censure, suspension, or removal, the court may request briefing and oral argument before the consent is submitted to the court for decision.

(ii) If the court accepts the stipulation of facts part of a consent, but rejects the disciplinary action agreed to by the judge and Commission and remands the matter to the Commission for further proceedings, the review will be held in abeyance pending receipt of notice of the Commission's decision on remand.

(iii) A judge's consent to censure, suspension, or removal shall not be a public record until the consent or stipulation is submitted to the Supreme Court for a decision. On submission to the court, the consent shall be a public record.*

(3) Temporary Disability Proceedings Initiated by Chief Justice Under ORS 1.425.

(a) Review of Commission's Recommendation

(i) Under ORS 1.425(1)(a), if the Commission elects to proceed as provided in ORS 1.420, the procedure in the Supreme Court shall be the same as provided in subsection (2) of this rule.

(ii) Under ORS 1.425(4)(b), if the Commission finds that the judge has a temporary disability and recommends to the court that the judge be suspended, the Commission shall accompany its recommendation with the record of proceedings before the Commission. The Administrator shall inform the judge of the date of receipt of the record from the Commission.

(iii) A request for receipt of additional evidence shall be filed as a motion in the manner provided in ORAP 7.05 and ORAP 7.10.

(iv) The judge shall have 28 days from the date of the notice from the court of receipt of the record to file a brief concerning the Commission's recommendation. The Commission shall have 28 days from the date of filing of the judge's brief to file an answering brief. The judge may file a reply brief, which shall be due 14 days after the date of filing of the Commission's answering brief. If the judge fails to file an opening brief, the Commission may file an opening brief and thereafter the judge may file an answering brief.

(v) If the case is argued orally, the judge shall argue first, followed by the Commission, unless the judge did not file any brief, in which case the Commission alone may orally argue the matter.

(vi) The decision of the Supreme Court is subject to a petition for reconsideration under ORAP 9.25. If no petition for reconsideration is filed or if a petition for reconsideration is filed, on disposition of the petition, the Administrator shall issue the appellate judgment and shall provide a copy of the appellate judgment to the Secretary of State.

(vii) The decision of the commission after hearing or upon review of the record and report of masters under ORS 1.425 shall not be a public record, except for a decision and recommendation for suspension under ORS 1.425(4)(b).*

(b) Temporary Suspension Under ORS 1.425(5)

(i) If the Supreme Court on its own motion proposes to suspend a judge during the pendency of disability, the Administrator shall provide written notice thereof to the judge.

(ii) If the Commission files a recommendation that a judge be suspended during the pendency of a disability determination proceedings, the commission shall serve a copy of the recommendation on the judge.

(iii) The judge shall have 14 days from the date of the court's notice of proposed suspension, or the commission's recommendation that the judge be suspended, during the pendency of a disability determination to file a memorandum regarding the proposed or recommended suspension.

(iv) When the court on its own motion proposes to suspend a judge during the pendency of disability proceedings, the Commission shall have 14 days after the date of filing of the

judge's memorandum to file a memorandum regarding the proposed suspension.

(v) The matter of a proposed or recommended temporary suspension will not be subject to oral argument unless oral argument is requested by the judge or the Commission.

(c) Consent to Treatment Under ORS 1.425(4)(a)

(i) On receipt of a judge's consent to counseling, treatment or other assistance or to comply with other conditions in respect to the future conduct of the judge, the court may request briefing and oral argument before the consent is submitted to the court for decision.

(ii) A judge's consent to counseling, treatment, or assistance or compliance with other conditions shall not be a public record until the consent is accepted by the Supreme Court.

(4) As used in this rule, "Commission" means the Commission on Judicial Fitness and Disability.

¹ See generally ORS 1.430.

* See ORS 1.440(1).

Rule 11.30 BALLOT TITLE REVIEW

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

(1) Any elector dissatisfied with a ballot title provided by the Attorney General under ORS 250.067 or ORS 250.075(2), or by the Legislative Assembly under ORS 250.075(1), may file with the Administrator a petition to review ballot title.

(2) The petition must be filed within 10 business days after the day upon which the Attorney General certifies the ballot title to the Secretary of State, or the Legislative Assembly files the ballot title with the Secretary of State. If a petition is mailed to the Administrator in compliance with ORAP 1.35(1)(c), then the petition is deemed filed when mailed; otherwise, a petition is deemed filed when actually received by the Administrator.

(3) The form of the petition shall comply with ORAP 7.10 governing motions. The petition shall have a title page containing:

(a) A case title in which the party petitioning for review is designated as the petitioner and the Attorney General is designated as the respondent.

(b) The title "Petition to Review Ballot Title Certified by the Attorney General" or "Petition to Review Ballot Title Certified by the Legislative Assembly," as the case may be.

(c) The date the ballot title was certified.

(d) The chief petitioner or petitioners referred to in ORS 250.045.

(4) The body of the petition shall be no longer than 10 pages and:

- (a) Shall state the petitioner's interest in the matter, whether the petitioner is an elector, and whether the petitioner timely submitted written comments on the draft ballot title.
- (b) Shall include the reason the ballot title does not substantially comply with the requirements of ORS 250.035, and a request that the Supreme Court certify to the Secretary of State a ballot title that complies with the requirements of ORS 250.035 in lieu of the ballot title challenged by petitioner or refer the ballot title to the Attorney General for modification.
- (c) May include under the heading "Arguments and Authorities" legal arguments and citation of legal authorities.

(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.

(b) The petition shall show proof of service on the Secretary of State and the Attorney General,* and the chief petitioner or petitioners.

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

(6) The respondent or respondents shall be allowed five business days after the filing of the petition, unless a shorter time is ordered by the court, to file an answering memorandum. Any answering memorandum shall be in the form prescribed by ORAP 7.10 for answers to motions and shall not be longer than 10 pages, except that when the court has consolidated review of more than one petition to review a ballot title in one proceeding, the length of the answering memorandum may be increased by five pages per each additional petition. The original and nine copies of the answering memorandum shall be filed, with proof of service on counsel for the petitioner.

(7) The Attorney General may submit a letter waiving appearance in lieu of filing an answering memorandum. In either event, the Attorney General shall include the draft ballot title, the certified ballot title, the Attorney General's letter of transmittal to the Secretary of State and, if not overly lengthy, written comments received by the Secretary of State concerning the draft ballot title. In addition, the Attorney General may provide the court with the text of the certified ballot title, and any subsequent modified ballot title, by electronic mail. If the Attorney General claims that text as contained in the petition is in error, the Attorney General shall file an answering memorandum pointing out the discrepancy. The answering memorandum may set forth concisely the reasons why the Attorney General believes the ballot title filed with the Secretary of State substantially complies with the requirements of ORS 250.035 or, alternatively, may suggest alterations that in the Attorney General's judgment would make the ballot title substantially comply. The answer may also contain under separate heading legal arguments and citation to legal authorities.

(8) Intervention of other persons in ballot title review proceedings is not permitted. Any person who is interested in a ballot title that is the subject of a petition, including the chief proponent or proponents of a measure, may instead file a motion in the form prescribed by ORAP 7.10, asking leave of the Supreme Court to submit a

memorandum as an *amicus curiae*. The motion, together with the memorandum that the proposed *amicus curiae* intends to submit, shall be filed on or before the date that the answering memorandum is due. Unless otherwise ordered by the court, an *amicus curiae* may not participate in oral argument.

(9) The petitioner or petitioners shall be allowed five business days after the filing of the answering memorandum, unless a shorter time is ordered by the court, to file a reply memorandum. Any reply memorandum shall be in the form prescribed by ORAP 7.10 for answers to motions and shall not be longer than five pages. The original and nine copies of the reply memorandum shall be filed, with proof of service on counsel for the respondent.

(10) After the filing of all memoranda permitted, the Supreme Court will consider the matter without the filing of briefs or presentation of oral argument unless otherwise ordered by the court, either on its own motion or on request of the petitioner or respondent. If the court orders oral argument, the petitioner shall argue first.

(11) For proceedings in which the Attorney General has filed a modified ballot title after referral from the Supreme Court, the petitioner in the ballot title review proceeding may file an objection to the modified ballot title within five business days from the date of filing of the modified ballot title. The objection must be filed with and actually received by the Administrator and must be served on and actually received by the Attorney General within five business days from the date of filing of the modified ballot title. The objection may be filed and served by telephonic facsimile communication as provided by ORAP 7.35(3).** The Attorney General may file a response to the objection within five business days of the date of filing of the objection, unless the court otherwise directs. If the petitioner does not file a timely objection, then the court shall certify the modified ballot title, and the Administrator shall issue the appellate judgment on the next judicial day after the time for filing an objection expires.

(12) A party to a ballot title review proceeding may seek reconsideration of the court's decision as follows:

(a) For proceedings on review in which the court (1) certifies the Attorney General's certified ballot title either with or without modification, or (2) certifies the Attorney General's modified ballot title either with or without modification, the petition for reconsideration must be filed with and actually received by the Administrator within five business days after the filing of the decision. A timely petition for reconsideration will toll issuance of the appellate judgment until the court acts on all timely petitions for reconsideration. If the court denies reconsideration, the Administrator shall issue the appellate judgment the next judicial day after the denial of all timely petitions for reconsideration. If the petitioner does not file a timely petition for reconsideration, then the Administrator shall issue the appellate judgment seven judicial days after the filing date of the decision.

(b) For proceedings on review in which the court (1) refers the Attorney General's certified ballot title to the Attorney General for modification, or (2) refers the Attorney General's modified ballot title to the Attorney General for further modification, the petition for reconsideration must be filed with and actually received by the Administrator within 10 business days after the filing of the decision. A timely petition for reconsideration will toll issuance of the appellate judgment until the court acts on all timely petitions for reconsideration. If the court denies reconsideration and no party has filed an objection to the Attorney General's modified ballot title, then the Administrator shall issue the appellate judgment on the next business day after the denial of all

timely petitions for reconsideration.

(c) The court's decision shall become effective in accordance with ORAP 14.05(2)(c).

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

** The facsimile transmission number for the Administrator is (503) 986-5560. The facsimile transmission number for the Attorney General (Appellate Division) is (503) 378-6306.

Rule 11.32
VOTERS' PAMPHLET EXPLANATORY
STATEMENT REVIEW

(1) Any elector dissatisfied with a voters' pamphlet explanatory statement for which suggestions were offered at the Secretary of State's hearing under ORS 251.215 may file with the Administrator a petition to review the explanatory statement. The petition must be filed within five calendar days after the deadline for filing a revised statement with the Secretary of State.

(2) The provisions of ORAP 11.30(2), (3), (4), (5), (7), (8), and (9) shall apply, except that:

(a) The citizens committee appointed to prepare the explanatory statement shall be designated "Respondents," the Attorney General shall not be designated as a respondent, and the title of the proceeding shall be "Petition to Review Explanatory Statement"; and

(b) The petition shall show proof of service on each member of the "committee of five citizens" referred to in ORS 251.205(1) and the Attorney General.*

(3) The petition shall inform the court of the petitioner's interest in the matter, the full text of the explanatory statement as filed with the Secretary of State or as revised under ORS 251.215(3), the alleged insufficiency or unclarity of the explanatory statement challenged, and a proposed explanatory statement that in the judgment of the petitioner would be sufficient and clear and that the petitioner desires the Supreme Court to certify to the Secretary of State in lieu of the explanatory statement challenged by the petitioner.

(4) The answering memorandum shall set forth concisely the reasons why the explanatory statement challenged is sufficient and clear or, alternatively, may suggest alterations that would make the explanatory statement sufficient and clear. The answering memorandum is due within seven calendar days after the petition is filed.

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

See ORS 251.235.

Rule 11.34
ESTIMATE OF FINANCIAL IMPACT REVIEW

(1) Any person entitled to petition under ORS 250.131 for review of an estimate of financial impact may file

with the Administrator a petition to review the estimate. The petition must be filed not later than 85 calendar days before the election at which the measure is to be voted on. The petition shall not concern the amount of the estimate or whether an estimate should be prepared.

(2) The provisions of ORAP 11.30(2), (3), (4), (5), (7), (8), and (9) shall apply, except that:

(a) The officials named in ORS 250.125(8) shall be designated "Respondents," the Attorney General shall not be designated as a respondent, and the title of the proceeding shall be "Petition to Review Estimate of Financial Impact"; and

(b) The petition shall show proof of service on each official named in ORS 250.125(8) and the Attorney General.

(3) The petition shall inform the court of the petitioner's interest in the matter, the full text of the estimate of financial impact as filed by the Secretary of State, and the reasons the estimate was prepared, filed or certified in violation of the procedures specified in ORS 250.125 or ORS 250.127.

(4) The answering memorandum shall set forth concisely the reasons why the estimate challenged was prepared, filed or certified in compliance with the procedures specified in ORS 250.125 or ORS 250.127. An answering memorandum shall include the complete estimate as filed with the Secretary of State or as revised under ORS 250.127, if the respondent claims that the estimate as contained in the petition is in error.

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:

(1) Any qualified elector of the state seeking review of reapportionment shall file a petition on or before August 1 of the year in which the Legislative Assembly enacts the reapportionment.¹

(2) The petition shall be prepared in compliance with ORAP 7.10, governing motions, and shall contain:

(a) A title page containing a caption identifying the person or persons seeking review of reapportionment as the petitioner or petitioners, and the Legislative Assembly as the respondent and the name, address, and telephone number of each petitioner, or the name, bar number, address, and telephone number of each petitioner's attorney if the petitioner is represented by counsel.

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

(c) A prayer for specific relief.

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

(3) The petition shall be accompanied by two copies 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 nine copies, together with proof of service of a copy of the petition on the Secretary of the Senate, the Chief Clerk of the House, the Secretary of State, and the Attorney General.² The petition shall be accompanied by the filing fee prescribed in ORS 21.040.

(5) A petitioner shall serve and file a brief in support of the petition on the same date that petitioner serves and files the petition.

(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 brief is due, file with the Administrator an original and nine copies of a brief in opposition 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 a brief in opposition shall be known in the review proceeding as a "respondent."

(b) A respondent shall serve the response on the petitioner, and proof of service shall be endorsed on or attached to the brief in opposition. If the brief in opposition responds to a petition by more than one petitioner, service of the brief in opposition need only be made on the petitioner whose name is first identified in the caption as a petitioner or on the attorney for the petitioners.

(7) Reply briefs are discouraged, but, if a petitioner chooses to file a reply brief, the petitioner shall file the reply brief within five business days after the date that a respondent's brief is due.

(8) *Amicus curiae* briefs are discouraged, but, if a person applies for leave to file an *amicus curiae* brief, the person shall file the application, accompanied by the brief tendered for filing, on the date that a respondent's brief is due.

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

(10) Except for a petition for review of a reapportionment filed in the manner provided by ORS 19.260(1), a party may not rely on the date of mailing as the date of filing or service. A brief or other thing required or permitted to be filed under this rule must be physically filed by the prescribed day and must be physically served no later than one calendar day after the brief is filed.

(11) The Supreme Court may invite oral argument from any petitioner or respondent. However, ORAP 6.10 governs who will be allowed to argue.

(12) The Administrator shall not accept for filing, and the court will not consider, a petition for reconsideration tendered for filing after a reapportionment has become operative under Article IV, section 6, of the Oregon Constitution.

(13) Review of a reapportionment made by the Secretary of State under Article IV, section 6, subsection (3), of the Oregon Constitution shall be the same as for a reapportionment enacted by the Legislative Assembly except that:

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

(b) The petition and brief shall be filed and served on or before September 15 of the year of reapportionment.

¹ If the deadline for filing a petition is a Saturday or Sunday, the Oregon Constitution may prohibit extending the deadline to the next business day. *See Hartung v. Bradbury*, 332 Or 570, 595 n 23, 22 P3d 972 (2001).

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

12. SPECIAL SUPREME COURT RULES

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.

(2) Where a statute authorizes direct judicial review of an agency order or a legislative enactment by the Supreme Court,² except as otherwise provided by statute, the judicial review shall be initiated and conducted in the manner prescribed in the rules of appellate procedure relating to judicial review of agency orders generally.

(3) The notice of appeal or petition for judicial review shall state the statutory authority under which a direct appeal or judicial review is taken to the Supreme Court. Filing fees shall be assessed as provided in ORS 21.010.

(4) When required to do so by statute, the court will expedite its disposition of the appeal or judicial review.³

(5) On motion of a party or on the court's own initiative, the court may establish a special briefing schedule for the appeal or judicial review.

¹ See, e.g., ORS 305.445 (tax court judgments and orders), ORS 662.120 (injunctions in labor dispute cases), and ORS 138.060(2) (certain pretrial orders in murder and aggravated murder cases).

² See, e.g., ORS 469.403(3) (nuclear facility siting certificates).

³ See, e.g., ORS 138.060(3) and ORS 138.261(5) (requiring expedited disposition of appeals of certain pretrial orders in criminal cases).

Rule 12.07 EXPEDITED APPEAL OF PRETRIAL ORDER IN CRIMINAL CASE

(1) On appeal by the state under ORS 138.060(2) from an order made before trial in a criminal case dismissing or setting aside the accusatory instrument or suppressing evidence:

(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 brief shall be due 28 days after the record settles. Failure to file the opening brief within the prescribed time will result in automatic dismissal of the appeal.

(c) Respondent's brief shall be due 28 days after appellant's brief is served and filed. If

respondent fails to file a brief within the prescribed time, the appeal will be submitted on appellant's brief and oral argument, and respondent will not be allowed to argue the case.

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

(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.

(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 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) In all cases subject to this rule:

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

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

Rule 12.10
AUTOMATIC REVIEW IN
DEATH SENTENCE CASES

(1) Whenever a defendant is sentenced to death, the judgment of conviction and sentence of death are subject to automatic and direct review by the Supreme Court without the defendant filing a notice of appeal.

(2) If, in addition to a conviction for aggravated murder forming the basis for the death sentence, a defendant is convicted of one or more charges arising from the same charging instrument, the Supreme Court shall have jurisdiction to review any such conviction without the filing of a notice of appeal.

(3) Immediately after entry of the judgment of conviction and sentence of death, the trial court administrator shall prepare a packet consisting of the following:

(a) A copy of the judgment of conviction.

(b) A copy of the order of sentence of death unless that sentence is contained in the judgment of conviction.

- (c) A certificate by the trial court administrator stating:
 - (i) the date of entry of each writing described above.
 - (ii) the names, mailing addresses, and telephone numbers of the attorneys of record for the state and for the defendant at the date of entry of each writing described above.
- (d) A cover sheet captioned "In the Supreme Court of the State of Oregon" and showing the court in which the judgment of conviction and sentence of death were made, the title of the case, the trial court case number, the name of the judge who imposed the sentence of death and the caption: "Automatic Death Sentence Review."

(4) The trial court administrator shall serve a true copy of the packet on the defendant and on each attorney and the transcript coordinator. The trial court administrator shall endorse proof of service on the original of the packet and send the original to the Administrator, who shall immediately notify the Chief Justice of receipt thereof.

(5) (a) Service of a copy of the packet on the transcript coordinator shall be deemed to be authorization for the transcript coordinator to arrange for preparation of a transcript of all parts of the criminal proceeding, including all pretrial hearings but excluding selection of the jury.

(b) If either the state or the defendant desires that the report of the jury selection proceedings be transcribed, that party must apply to the Supreme Court for an appropriate order, which will be made only upon a showing of good cause for preparation of that transcript.

(c) A transcript shall meet the specifications of ORAP 3.35

(d) A transcript shall be filed within 60 days of the date the packet is served on the transcript coordinator. If the court has allowed preparation of a transcript of jury selection, the transcript shall be due 30 days after the date of the order allowing the transcript.

(e) Transcripts shall be settled in the same manner as on an appeal pursuant to ORS 138.185 and ORS 19.370, except that a first extension of time of 30 days to file a motion to correct the transcript or add to the record will be deemed granted if, within 15 days after the transcript is filed, a party files a notice of need for additional time to file such a motion.

(6) (a) If the defendant desires to file a brief on review, the brief is due 180 days after the transcript is settled.

(b) If the state desires to file a brief, the brief is due:

(i) When the defendant does not desire to file a brief on review, 180 days after the transcript is settled.

(ii) When the defendant files a brief, 180 days after the defendant serves and files the

defendant's brief.

(c) If the defendant has filed an opening brief, the defendant may file a reply brief, which shall be due 90 days after the state serves and files its brief.

(d) Specifications for briefs shall be those set forth in ORAP 5.05, except that the maximum length of a brief without obtaining leave of the court for a longer brief is 100 pages.

(7) The trial court administrator shall send the trial court file and exhibits to the Administrator at the request of the Administrator.

(8) Preparation, service, and sending of the packet, the trial court file and exhibits offered, preparation of transcripts, preparation of briefs, and review by the Supreme Court shall be accorded priority over all other cases by all persons concerned.

Rule 12.12
APPOINTMENT OF COUNSEL IN
DEATH SENTENCE CASES

(1) On receipt of notice of a conviction of aggravated murder and sentence of death as provided in ORAP 12.10, the Administrator shall send a letter to the defendant acknowledging receipt of the notice of conviction and sentence of death, and notifying the defendant of the court's automatic and direct review of the conviction and sentence. The letter shall inform the defendant of the right to be represented by counsel and the procedure for notifying the court if the defendant has retained counsel or for requesting court-appointed counsel. The letter shall be copied to the defendant's trial attorney, the Solicitor General of the Department of Justice, the Office of Public Defense Services, and the transcript coordinator.

(2) If the defendant or the defendant's attorney gives notice to the Administrator that the defendant is represented by retained counsel on appeal, the retained attorney shall be shown as the attorney of record.

(3) If the defendant requests appointment of counsel and establishes eligibility for appointed counsel, the court shall appoint the Office of Public Defense Services. If the defendant does not respond within 28 days to the letter informing the defendant of the right to be represented by counsel and it appears from the record that the defendant is indigent, the court shall appoint the Office of Public Defense Services.

(4) (a) Should defendant object at any time to particular court-appointed counsel, a motion for substitution of counsel or appointment of legal advisor shall be made in accordance with ORAP 8.12.

(b) If the court allows the motion for substitution of court-appointed counsel or appointment of legal advisor, the court shall notify the Office of Public Defense Services.¹

¹ See ORS 138.500(2)(d) regarding substitution of counsel pursuant to the policies and procedures of the Public Defense Services Commission; Public Defense Payment Policies and Procedures 1.7 (Substitution of Appointed Counsel).

Rule 12.15
COORDINATION OF CLASS ACTIONS
IN TRIAL COURTS

The practice and procedure for coordination of class actions in circuit court shall be as follows:

(1) A motion filed pursuant to ORCP 32 L shall set forth the grounds for coordination and may be accompanied by an affidavit. Service by mail shall be made on all counsel and the trial court administrators of the courts where the cases are pending. If the motion is filed by a party, the presiding judge shall allow or deny it within 10 days. If the motion is allowed, the presiding judge shall immediately request the Supreme Court to assign a judge to determine whether coordination is appropriate and to forward to the Supreme Court a copy of the motion and of the papers filed in support and in opposition to the motion.

(2) The Supreme Court will assign a judge, pursuant to ORCP 32 L(1)(a), within seven days after receiving a request for the assignment, and shall notify by mail all counsel and trial court administrators of the identity and address of the assigned judge. The Supreme Court shall forward to the assigned judge copies of all papers accompanying the request for appointment.

(3) Within 14 days after the Supreme Court designates the assigned judge, any party may file a memorandum in favor of coordination and serve it on all counsel. Any party may serve and file a memorandum in opposition to coordination within 21 days after the Supreme Court designates the assigned judge. The assigned judge may take testimony and hear oral argument on the issue of coordination. Within 28 days after being designated by the Supreme Court, the assigned judge shall determine which, if any, cases are to be coordinated and, if any are coordinated, recommend the court in which they shall proceed.

(4) In the absence of a stay order, a case which is being considered for coordination may proceed as if no motion for coordination had been filed, but no trial shall be commenced and no judgment shall be entered in that action.

(5) If the assigned judge orders coordination, the judge shall send a copy of the order to the Chief Justice and to all counsel and the trial court administrators of the respective trial courts. The Chief Justice shall sign an order within 14 days designating a trial judge and the court where the coordinated cases will proceed and shall serve all counsel and trial court administrators with a copy of the order. An order coordinating the cases shall operate as a stay of all proceedings in the coordinated cases except as otherwise permitted by the trial judge designated to hear them. If the assigned judge denies coordination, the judge shall send a copy of the order to the Chief Justice and to all counsel and the trial court administrators of the respective trial courts.

(6) The trial judge designated to hear the coordinated cases shall have full power to control pleadings, discovery, notices, conferences, hearings, and the schedule of the trial or trials in any manner the judge deems appropriate with due consideration to the convenience of the witnesses, parties, and counsel, efficient judicial administration, and the ends of justice. The trial judge may decoordinate all or some or one of the cases and may order any issue tried separately. The trial judge shall pass on motions filed under ORCP 32 L(3) to include an additional case or cases.

(7) On a showing of good cause, any time limit in this rule may be extended for a period not exceeding seven

days by the judge before whom the issue of coordination is then pending.

See ORS 1.004 regarding the authority of the Supreme Court to adopt a rule prescribing procedure for coordination of class actions under ORCP 32.

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

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

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

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

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

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

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

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

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

(c) On receipt of a stipulated designation or separate designations of record, the Administrator shall request from the trial court administrator of the certifying court the part or parts of the

record as designated, and shall serve a copy of the request on the parties.

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

(b) The opening brief shall be served and filed within 28 days of the date the Administrator requests the record from the certifying court. The answering brief shall be served and filed within 28 days of the date the opening brief is served and filed. No reply brief will be permitted except upon leave of the court.

(c) As nearly as practicable, briefs shall be prepared as provided in ORAP 5.05 through 5.50, 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.

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

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

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

Rule 12.25
EXPEDITED JUDICIAL REVIEW OF ORDER OF
THE ENERGY FACILITY SITING COUNCIL

On direct judicial review of an order of the Energy Facility Siting Council under ORS 469.403:

(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."

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

(3) (a) Petitioner's brief and excerpt of record shall be served and filed not later than 14 days after the filing of the petition for judicial review. Failure to file the opening brief within the prescribed time will result in automatic dismissal of the petition.

(b) Any respondent's brief shall be served and filed within 14 days after the filing of petitioner's brief. If any respondent fails to file a brief within the prescribed time, the judicial review will be submitted without that respondent's brief and that respondent will not be allowed to argue the case.

(c) No party shall file a reply brief.

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

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

13. COSTS AND DISBURSEMENTS, ATTORNEY FEES, AND DAMAGES

Rule 13.05 COSTS AND DISBURSEMENTS

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

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

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

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

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

(b) A party need only 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, or the original and five copies in the Court of Appeals.

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

(b) If the prevailing party who has been allowed costs has paid for copies of audio or video tapes in lieu of a transcript or incident to preparing a transcript, the party is entitled to recover the cost of the audio or video tapes.

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

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

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

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

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

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

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

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

² See ORS 20.190(4).

Rule 13.10
PETITION FOR ATTORNEY FEES

- (1) This rule governs the procedure for petitioning for attorney fees in all cases except the recovery of compensation and expenses of court-appointed counsel payable from the Public Defense Services Account.
- (2) A petition for attorney fees shall be served and filed within 21 days after the date of decision. The filing of a petition for review or a petition for reconsideration does not suspend the time for filing the petition for attorney fees.
- (3) When a party prevails on appeal or on review and the case is remanded for further proceedings in which the party who ultimately will prevail remains to be determined, the prevailing party on appeal or review may petition the appellate court for attorney fees within the time and in the manner provided in this rule.¹ If the appellate court determines an amount of attorney fees under this subsection, it 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.
- (4) When the Supreme Court denies a petition for review, a petition for attorney fees for preparing the petition for review or a response to the petition for review shall be filed in the Supreme Court.
- (5) (a) A petition shall state the total amount of attorney fees claimed and the authority relied on for claiming the fees. The petition shall be supported by a statement of facts showing the total amount of attorney time involved, the amount of time devoted to each task, the reasonableness of the amount of time claimed, the hourly rate at which time is claimed, and the reasonableness of the hourly rate.
- (b) If a petition requests attorney fees pursuant to a statute, the petition shall address any factors, including, as relevant, those factors identified in ORS 20.075(1) and (2) or ORS 20.105(1), that the court may consider in determining whether and to what extent to award attorney fees.²
- (6) Objections to a petition shall be served and filed within 14 days after the date the petition is filed. A reply, if any, shall be served and filed within 14 days after the date of service of the objections.
- (7) A party to a proceeding under this rule may request findings regarding the facts and legal criteria that relate to any claim or objection concerning attorney fees. A party requesting findings must state in the caption of the petition, objection, or reply that the party is requesting findings pursuant to this rule.³ A party's failure to request findings in a petition, objection, or reply in the form specified in this rule constitutes a waiver of any objection to the absence of findings to support the court's decision.
- (8) The original of any petition, objections, or reply shall be filed with the Administrator, accompanied by five 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.

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

- (a) The entity from whom fees are sought was not a party to the proceeding; or
- (b) The Supreme Court or the Court of Appeals is without authority to award fees.

See Appendix 13.10.

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

² See, e.g., *Tyler v. Hartford Insurance Group*, 307 Or 603, 771 P2d 274 (1989), and *Matizza v. Foster*, 311 Or 1, 803 P2d 723 (1990), with respect to ORS 20.105(1), and *McCarthy v. Oregon Freeze Dry, Inc.*, 327 Or 84, 957 P2d 1200 (1998), *adhered to on recons*, 327 Or 185, 957 P2d 1207 (1998), with respect to ORS 20.075.

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

Rule 13.15
APPEAL OF PUBLIC DEFENSE SERVICES COMMISSION
DECISION REGARDING COURT-APPOINTED COUNSEL
COMPENSATION, COSTS, AND EXPENSES

(1) This rule governs the procedure under ORS 138.500(6) for an appeal from the Public Defense Services Commission executive director's disposition of a payment request.

(2) The person who submitted the payment request shall take an appeal by filing a motion for review of the executive director's decision in the court in which all or a majority of compensation and expenses were incurred. The person shall accompany the motion with a copy of the request for payment as submitted to the Public Defense Services Commission and a copy of the executive director's disposition of the request. The person shall serve a copy of the motion on the executive director of the Public Defense Services Commission and shall include with the motion proof of service on the executive director.

Rule 13.25
PETITIONS AND MOTIONS FOR DAMAGES
AND SANCTIONS

(1) Damages under ORS 19.445, attorney fees under ORS 20.105, and reasonable expenses (including attorney fees) under ORAP 1.40(3) and ORCP 17 D are recoverable only by petition filed within 21 days after the decision deciding the appeal or review in the manner provided in ORAP 13.10. A request for damages, attorney fees, and reasonable expenses should not be included in the party's brief.

(2) A motion for reasonable expenses (including attorney fees) under ORAP 1.40(3) and ORCP 17 D based on

the filing of a motion or thing shall be included in the answer or objection to the motion, statement of costs and disbursements, or petition for attorney fees to which the motion for sanctions relates.

Rule 13.30
REQUESTS FOR JUDGMENT AGAINST SURETIES

(1) A party entitled to judgment against a surety under ORS 19.450(4) shall file with the Administrator and serve on the other parties to the appeal and on the surety a notice requesting entry of judgment as part of the appellate judgment. The notice shall identify the party in whose favor judgment will be entered, the surety against whom judgment will be entered, the amount of the judgment, the rate of interest and the date from which interest will run. In the absence of an indication otherwise, the interest will be simple, at nine percent per annum, from the date of entry of the appellate judgment.

(2) All parties served with the notice shall have 14 days from the date of filing to file objections.

14. APPELLATE JUDGMENT

Rule 14.05 APPELLATE JUDGMENT

(1) As used in this rule,

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

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

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

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

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

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

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

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

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

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

(3) The Administrator shall prepare the appellate judgment, enter the appellate judgment in the register, send a

copy of the appellate judgment with the court's seal affixed thereto to the court or administrative agency from which the appeal or judicial review was taken, and send a copy of the appellate judgment to each of the parties.

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

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

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

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

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

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

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

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

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

concurring, and dissenting opinions).

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

With respect to a motion requesting stay of issuance of the appellate judgment, stay of enforcement of the appellate judgment, or a recall of the appellate judgment pending the filing of and action on an appeal or petition for a writ of certiorari to the Supreme Court of the United States:

(1) The motion shall be addressed to and acted upon by the Court of Appeals when the decision of the Court of Appeals decides a case, including when the Oregon Supreme Court has denied review except as provided in subsection (2) of this rule.

(2) The motion shall be addressed to and acted upon by the Oregon Supreme Court when the decision of that court decides a case and when the Supreme Court has denied review but granted a stay pending a decision on a petition for review.

See ORS 19.270(6)(b) and (c).

**15. APPELLATE SETTLEMENT
CONFERENCE PROGRAM**

**Rule 15.05
APPELLATE SETTLEMENT
CONFERENCE PROGRAM**

(1) Cases Subject

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

(b) (i) A settlement conference shall be held for any case assigned to the program. A person with authority to settle the case must be present at the program settlement conference unless that person's absence or appearance by telephone is approved prior to the conference by the program director. If the absence is approved, a person with authority to recommend settlement must be present.

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

(2) Supervising Judge and Program Director

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

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

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

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

settlement conference.

(3) Neutrals

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

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

(4) Abeyance of Appeal

(a) (i) On assignment of a case to the program, the court will hold preparation of the transcript and the record, and briefing, in abeyance for a period of 120 days from the date of the notice of assignment of the case to the program. During that time, a party to the appeal may file an amended designation of record. A party wishing to hold in abeyance any other aspect of the appeal or seeking an extension of time to complete any other task required by law or by the Oregon Rules of Appellate Procedure must file an appropriate motion with the court.¹

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

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

(c) The Chief Judge may reactivate a case held in abeyance at any time:

(i) At the request of the program director pursuant to the request of a party or on the program director's own motion; or

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

(5) Submission of Information

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

(6) Confidentiality

(a) Program settlement conferences are subject to ORS 36.210 to 36.238.

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

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

(7) Appellate Settlement Conference Program Fees

(a) For the purposes of this paragraph, multiple parties who are represented by the same attorney or attorneys shall be deemed to be a single party. Except as provided in paragraph (d) of this subsection, each party to the appeal who participates in the program shall pay the program fee prescribed in this subsection. Each party shall pay the program fee directly to the neutral or, if instructed by the program director, to the Judicial Department Appellate Settlement Conference Program Account.² Except as provided in paragraph (f) of this subsection, each party shall pay the program fee no later than the date of the first settlement conference. In workers' compensation cases, each party shall pay a fee of \$150; in all other cases, each party shall pay a fee of \$350.

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

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

settlement conference time.

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

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

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

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

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

(8) Actions Are Not Reviewable

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

(9) Sanctions

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

¹ See ORAP 3.40 regarding the due date of a motion to correct a transcript filed while an appeal is being held in abeyance pending mediation under this rule.

² Whenever the program fee is payable directly to the program, the check should be made payable to "A.S.C.P., Or. Judicial Dept." and mailed or delivered to: Appellate Settlement Conference Program, 1163 State Street, Salem, OR 97301-2563.

See ORS 2.560(3).

Rule 15.10
APPELLATE SETTLEMENT CONFERENCE PROGRAM
IN THE SUPREME COURT

(1) Cases Subject

(a) The procedures in this rule apply only to cases filed in the Supreme Court. The court shall determine which pending cases or category of cases, if any, may be included in the Appellate Settlement Conference Program (program).

(b) Cases shall be screened and settlement conferences held in the manner prescribed by ORAP 15.05, unless otherwise stated in this rule.

(2) Abeyance of Case

(a) On assignment of a case to the program, the Chief Justice or his designee shall inform the program director and/or parties whether any abeyance of the case will occur pending the settlement conference.

(b) The court may reactivate a case held in abeyance at any time:

(i) At the request of the program director pursuant to the request of a party or on the director's own motion, or

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

(iii) On the court's own motion.

APPENDICES

Oregon Rules of Appellate Procedure

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]___, by Judge _____, in the _____ County Circuit Court.

2.

The parties to this appeal are:

Appellant(s)	Respondent(s)
_____	_____
_____	_____

3.

The names, bar numbers, addresses, and telephone numbers of the parties [or their attorneys if they are represented by attorneys] are:

Name & Bar Number _____	Representing _____
	Address _____
	Telephone Number _____
Name & Bar Number _____	Representing _____
Address _____	Telephone Number _____

4.

Appellant designates the record in its entirety, including the trial court file, all exhibits, and the record of oral proceedings.

(continued on next page)
[or]

Appellant designates only the following parts of the record: _____ the trial court file; _____ all exhibits; _____ the record of the following oral proceedings: _____; other: _____

5.

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

Appellant intends to rely on the following points: _____

6.

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

7.

[In cases involving an audio record:]

Appellant hereby requests copies at (appellant's/public) expense of the audio record designated in paragraph 4 or 5 of this notice of appeal. Copies are to be served on the parties to the appeal listed in paragraph 3 of this notice of appeal.

8.

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.

9.

CERTIFICATE OF SERVICE

I certify that on ___[date]___, I served a true copy of this notice of appeal on:

[Opposing party(ies) or attorney for opposing party(ies)]

(continued on next page)

[trial court administrator] [transcript coordinator, if a transcript is designated as part of the record on appeal]

by [specify method of service]:

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

10.

CERTIFICATE OF FILING

I certify that on ___[date]___, I filed the original of this notice of appeal with the State Court Administrator at this address:

State Court Administrator
1163 State Street
Salem, Oregon 97301-2563

by [specify method of service]:

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

[Signature of appellant or attorney]

[Typed or printed name of appellant or attorney]

APPENDIX 2.25

Illustration for ORAP 2.25

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of the Estate of John)
Doe, Deceased.)
)
MARY DOE, RICHARD DOE and)
DAVID DOE,)
)
Plaintiffs-Respondents-) _____ County Circuit Court No. _____
Cross-Appellants,)
) CA A _____
NANCY DOE,)
)
Plaintiff,)
)
v.)
)
NATIONAL BANK OF OREGON,)
Trustee of the John Doe Trust,)
)
Defendant-Appellant-)
Cross-Respondent.)
_____)
RICHARD DOE,)
)
Cross-claim Plaintiff,)
)
v.)
)
MARY DOE,)
)
Cross-claim Defendant.)
_____)
NATIONAL BANK OF OREGON,)
)
Third-Party Plaintiff-)
Appellant,)
)
v.)
)
ACME LIFE INSURANCE CO.,)
)
Third-Party Defendant-)
Respondent.)

APPENDIX 2.40

Illustration for ORAP 2.40

The trial court erred when, over objection, it categorized defendant as a criminal history category C offender.

The trial court erred when, over objection, it imposed a condition of probation that requires defendant to undergo drug evaluation and treatment.

The trial court erred when, over objection, it imposed a condition of probation that prohibits defendant from contacting defendant's children.

The trial court erred when, over objection, it imposed a disputed amount of restitution.

APPENDIX 3.30

Illustration for ORAP 3.30

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

[Case title])
)
) _____ County Circuit Court No. _____
)
) CA A _____
)
 _____)

**REPORTER'S REQUEST FOR TIME EXTENSION
FOR PREPARATION OF TRANSCRIPT**

1. I reported all (or a part) of the proceedings identified in the designation of record. 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].

2. I request an extension of time of _____ days, from _____ through _____, within which to prepare, serve, and file the transcript. This is the _____ request for a time extension and is sought because:

I have not received payment for the transcript and a satisfactory arrangement for payment has not been made. [or]

I have now received payment for the transcript [or] a satisfactory arrangement for payment has been made. [or]

[Other reason:] _____

3. On order from me, and undelivered to date, are transcripts in the following cases: [Attach additional sheet(s) if necessary.]

Caption and Court	Date Ordered	Extension Allowed	Date Now Due	Estimated. No. of Pages
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

4. I have served copies of this request on: [List names and complete addresses of all counsel, parties, and, when appropriate, the trial court judge(s)]

_____ [Date]

Court Reporter County Telephone No.

APPENDIX 3.33

Illustration for ORAP 3.33 and ORS 19.370(1)

IN THE COURT OF APPEALS OF THE STATE OF OREGON

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

CERTIFICATE OF PREPARATION, FILING, AND SERVICE

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 [date] _____.

I certify that the original of this Certificate was mailed to the State Court Administrator 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

APPENDIX 4.15-1

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

IN THE COURT OF APPEALS OF THE STATE OF OREGON

[The title should be set up, to the extent possible, as it was before the agency, showing the parties with their appropriate appellate designations]

) _____ Agency Name No. _____
)
) CA A _____
)

PETITION FOR JUDICIAL REVIEW

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

The parties to this review are:

[Set out names and addresses]

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

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

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

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

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

(continued on next page)

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

[Signature of petitioner or attorney]

[Typed or printed name of petitioner or attorney]

APPENDIX 4.15-2

**Illustration for ORAP 4.15
(Workers' Compensation Case)**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of the Compensation)
of _____, Claimant.) WCB Case _____
))
_____,) CA A _____
))
Petitioner,))
))
v.))
_____,))
))
Respondent.))

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

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

Parties to this review are:

[Set out names and addresses]

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

DATED this _____ day of _____, _____.

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

(continued on next page)

CERTIFICATE OF SERVICE

I certify that on _____, I served a true copy of this Petition for Judicial Review on:

Workers' Compensation Board

[address]

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

by [specify method of service]:

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

CERTIFICATE OF FILING

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

State Court Administrator
1163 State Street
Salem, Oregon 97301-2563

by [specify method of service]:

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

[Signature of petitioner or attorney]

[Typed or printed name of petitioner or attorney]

APPENDIX 5.05

Illustration for ORAP 5.05

IN THE COURT OF APPEALS OF THE STATE OF OREGON

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

APPELLANT'S BRIEF AND EXCERPT OF RECORD

Appeal from the judgment (order) of the Circuit Court for _____ County; Honorable
_____, Judge.

Attorney for Appellant
[Mailing address, bar number, and telephone number]

Attorney for Respondent
[Mailing address, bar number, and telephone number]

APPENDIX 5.45

Illustration for ORAP 5.45

Model Complete Assignment of Error; Other Partial Assignments of Error

Illustration 1

(Model Complete Assignment of Error)

FIRST ASSIGNMENT OF ERROR

The trial court erred in declining to give defendant's requested menacing instruction on the ground that menacing is not a lesser included offense of robbery in the first and second degrees.

A. Preservation of Error

At the close of the evidence, defendant submitted a requested instruction on menacing. (ER-____.) By way of memorandum in support of the requested instruction, defendant argued to the trial court that menacing is necessarily included in the statutory definition of robbery in the first degree (the crime with which defendant was charged) and that the record contained evidence from which a jury could find defendant guilty of the lesser charge and not guilty of the greater charge. (ER-____.) The trial court declined to give the instruction, stating:

"I'm not going to give the requested instruction on menacing. Menacing is not expressly included in the charging instrument and, in my view, is not a statutorily lesser-included offense of the crime of robbery because it does not share all of the same elements as robbery. The prosecutor could have charged defendant with menacing, but didn't. And without a match on the elements of the two offenses, a lesser-included instruction isn't proper."

(Tr 142.)

B. Standard of Review

The court reviews the trial court's decision either to give or to decline to give a requested jury instruction pursuant to a combination of standards of review. Regarding review of the record to support such an instruction, the court "review[s] the evidence in the light most favorable to the establishment of facts that would require those instructions" *State v. Boyce*, 120 Or App 299, 302, 852 P2d 276 (1993). Whether the language of the statute defining the lesser offense is necessarily included in the greater offense is a pure question of law, one that the court decides without any particular deference to its resolution below. *See State v. Cunningham*, 320 Or 47, 57, 880 P2d 43 (1994); *State v. Moses*, 165 Or App 317, 319, 997 P2d 251 (2000).

ARGUMENT

(Other Partial Forms for Assignments of Error)

(continued on next page)

Illustration 2

The court erred in denying (or allowing) the following motion:
[Show that the error was preserved, including setting forth verbatim the motion and the ruling of the court.]

Illustration 3

The court on examination of witness _____ erred in sustaining (or failing to sustain) objection to the following question:
[Show that the error was preserved, including setting forth verbatim the question, the objection made, the answer given, if any, offer of proof, if any, and the ruling of the court.]

Illustration 4

The court erred in denying (or sustaining) the motion for dismissal or direct verdict: [Show that the error was preserved, including setting forth verbatim the motion and the ruling of the court.]

Illustration 5

The court erred in giving the following instruction:
[Show that the error was preserved, including setting forth verbatim the instruction (or citing to the excerpt of record, if the instruction is set forth verbatim in the excerpt of record), and the exception made to the instruction.]

Illustration 6

The court erred in holding ORS _____ (or Oregon Laws 19____, chapter _____, section _____) unconstitutional (or unconstitutional):
[Show that the error was preserved, including setting forth verbatim the statutory provision and the manner in which constitutionality was challenged.]

APPENDIX 5.50

Illustration for ORAP 5.50

EXCERPT OF RECORD

In civil cases, the excerpt of record properly might contain:

(1) When a claim or defense is an issue on appeal, the specific parts of the complaint, petition, answer or other pleading that are essential to consideration of the issue on appeal; otherwise, as much of the complaint, petition, answer or other pleading as is essential to frame the issue on appeal;

(2) When an issue on appeal is based on the grant or denial of a written motion, the motion, the response to the motion, those specific parts of any affidavits, exhibits or similar attachments submitted in support of or in opposition to the motion that are essential to consideration of the issue on appeal, and the written order ruling on the motion;

(3) Any opinion, findings of fact or conclusions of law relating to an issue on appeal;

(4) When an issue on appeal is based on a ruling, order, finding of fact or conclusion of law that was delivered orally, that specific part of the transcript containing the ruling, order, finding of fact, or conclusion, together with any discussion of the matter by the judge, counsel or a party;

(5) When an issue on appeal is based on a challenge to the admission or exclusion of evidence, the specific part of the transcript containing any discussion involving the evidence by the court, counsel, or a party, and any offer of proof, ruling or order, and objection;

(6) When an issue on appeal is based on a written exhibit, including an affidavit, the specific part of the exhibit essential to consideration of an issue on appeal;

(7) When an issue on appeal is based on a jury instruction given or refused, the jury instruction and the specific part of the transcript containing any discussion of the jury instruction by the court, counsel or a party, and any ruling and objection;

(8) When an issue on appeal is based on the verdict, the written verdict, if any, or, if the verdict was rendered orally, the specific part of the transcript containing the verdict.

APPENDIX 5.95

Illustration for ORAP 5.95

1. *Sample Brief Caption for Brief Containing Confidential Material*

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,	)	_____ County Circuit Court No.
)	
Plaintiff-Respondent,	)	CA A _____
)	
v.)	
)	
JOHN DOE,)	
	)	CONFIDENTIAL BRIEF UNDER
Defendant-Appellant.	)	ORS 137.077

[or]

**CONFIDENTIAL BRIEF UNDER
TRIAL COURT ORDER DATED JANUARY 1, 1999
APPELLANT'S BRIEF AND EXCERPT OF RECORD**

2. *Sample Brief Caption for Brief With Confidential Material Redacted*

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,	)	_____ County Circuit Court No.
)	
Plaintiff-Respondent,	)	CA A _____
)	
v.)	
)	
JOHN DOE,)	
	)	REDACTED BRIEF UNDER
Defendant-Appellant.	)	ORS 137.077

[or]

**REDACTED BRIEF UNDER
TRIAL COURT ORDER DATED JANUARY 1, 1999
APPELLANT'S BRIEF AND EXCERPT OF RECORD**

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—Allow Oral Argument
Motion—Amend Brief
Motion—Amend Designation of Record
Motion—Appear *Amicus Curiae*
Motion—Appoint Counsel
Motion—Appoint Counsel and for State-Paid Transcript
Motion—Appoint Legal Advisor
Motion—Appoint Special Master
Motion—Assign to Settlement Conference Program
Motion—Authorize Service
Motion—Consolidate Cases
Motion—Correct/Amend Record
Motion—Default Order
Motion—Determine Jurisdiction
Motion—Dismiss - Appellant/Petitioner
Motion—Dismiss - Non-Appellant/Non-Petitioner
Motion—Dismiss - Settlement
Motion—Dismiss - Stipulated
Motion—Disqualify Judge/Justice
Motion—Excerpt of Record Preparation
Motion—File Additional Authorities
Motion—File Additional Evidence
Motion—File Extended Brief/Excerpt/Appendix
Motion—File Extended Petition for Review
Motion—File Extended Memorandum of Additional Authorities
Motion—File Late Appeal
Motion—File Late Brief
Motion—File Late Transcript
Motion—File Reply Brief
Motion—File Supplemental Brief
Motion—Hold In Abeyance
Motion—Hold In Abeyance - Bankruptcy
Motion—Inspect Sealed/Confidential Material
Motion—Intervene
Motion—Issue Appellate Judgment - Stipulated
Motion—Law Student Appearance
Motion—Leave to File Petition for Review
Motion—Leave to Proceed
Motion—Modify Case Title
Motion—Other
Motion—Out-of-State Counsel
Motion—Postpone Oral Argument
Motion—Present Oral Argument
Motion—Reactivate Case

Motion–Reactivate Case from Settlement Conference Program
 Motion–Reactivate Petition for Review
 Motion–Recall Appellate Judgment
 Motion–Reconsider Order
 Motion–Reinstate Case
 Motion–Release Transcript
 Motion–Relief From Default
 Motion–Remand Agency - Other
 Motion–Remand Agency - Take Additional Evidence
 Motion–Remand Non-Agency
 Motion–Remove Court Appointed Counsel and Proceed *Pro Se*
 Motion–Request Appointment of Masters in JFC Proceeding
 Motion–Request Assignment of Judge in Class Action
 Motion–Request Record/Exhibits
 Motion–Restraining Order
 Motion–Review of PDSC Payment Decision
 Motion–Review Under ORAP 8.40
 Motion–Sanctions
 Motion–Seal Case/Make Case Confidential
 Motion–Seal Materials/Make Materials Confidential
 Motion–Settle Transcript
 Motion–Sever Cases
 Motion–Show Cause
 Motion–State Paid Transcript
 Motion–Stay Enforcement of Appellate Judgment
 Motion–Stay Issuance of Appellate Judgment
 Motion–Stay Previous Judgment/Order
 Motion–Stay Trial Court Proceedings
 Motion–Strike
 Motion–Submit on Briefs
 Motion–Submit on Record
 Motion–Substitute Appointed Counsel
 Motion–Substitute Party
 Motion–Substitute Retained Counsel
 Motion–Summary Affirmance
 Motion–Summary Determination of Appealability
 Motion–Summary Reversal
 Motion–Supplement Record
 Motion–Suspending Judge/Lawyer Pending Disability/Disciplinary Proceeding
 Motion–Take Judicial Notice
 Motion–Transmission of Part of Record Not Designated
 Motion–Vacate and Remand - Joint
 Motion–Waive Court Rules
 Motion–Waive Transcript
 Motion–Waive/Defer Filing Fee
 Motion–Waive/Defer Settlement Conference Program Fee
 Motion–Withdraw as Court Appointed Counsel
 Motion–Withdraw as Retained Counsel
 Motion–Withdraw Filing

Motions for Extension of Time (MOET) Titles–ORAP 7.10(1)(c)

MOET–Correct Brief
 MOET–Extend Time in Settlement Conference Program
 MOET–File Agency Record
 MOET–File Agreed Narrative Statement
 MOET–File *Amicus* Brief
 MOET–File Answering Brief
 MOET–File Answering on Cross-Assignment of Error Brief
 MOET–File Answer to Motion
 MOET–File Answer to Petition for Attorney Fees
 MOET–File Combined Answering and Cross-Assignment of Error Brief
 MOET–File Combined Reply and Answering on Cross-Assignment of Error Brief
 MOET–File Cost Bill
 MOET–File Cross-Answering Brief
 MOET–File Cross-Opening Brief
 MOET–File Cross-Reply Brief
 MOET–File Intervenor's Brief
 MOET–File Motion for Leave to File a Reply Brief
 MOET–File Motion for Leave to File an Extended Brief
 MOET–File Motion for Sanctions
 MOET–File Motion to Correct Agency Record
 MOET–File Motion to Correct Transcript
 MOET–File Objection to Cost Bill
 MOET–File Opening Brief
 MOET–File Petition for Attorney Fees
 MOET–File Petition for Reconsideration
 MOET–File Petition for Review (Supreme Court)
 MOET–File Reply
 MOET–File Reply Brief
 MOET–File Reply on Cross-Assignment of Error Brief
 MOET–File Reply to Answer to Petition for Attorney Fees
 MOET–File Reply to Objection for Cost Bill
 MOET–File Respondent's Brief
 MOET–File Response to Order to Show Cause
 MOET–File Response to Status Request
 MOET–File Revised Order on Reconsideration
 MOET–File Supplemental Brief
 MOET–File Transcript
 MOET–Other
 MOET–Pay Filing Fee
 MOET–Provide Copy of Judgment/Order Being Appealed
 MOET–Provide Service of Document

<f5>

¹ The courts may modify this list of commonly used motion titles between publication dates of the Oregon Rules of Appellate Procedure. The updated list will be available on the Judicial Department's website, www.ojd.state.or.us. In the menu bar, select "RULES." From the "Rules" menu box, select "Oregon Rules of Appellate Procedure" and click on "view," then select "Appellate Motion Titles."

APPENDIX 7.10-2

Illustrations for ORAP 7.10(1)(b)–Motions

Illustration 1

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

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

APPELLANT'S MOTION–REACTIVATE CASE
APPELLANT'S MOTION–OUT-OF-STATE COUNSEL

(single document containing a motion to reactivate the case and
a motion to allow the appearance of out-of-state counsel)

(continued on next page)

Illustration 2

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

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

RESPONDENT'S MOTION-RECONSIDER ORDER
RESPONDENT'S MOTION-SUMMARY AFFIRMANCE

(single document containing a motion to reconsider a previous order and
a motion for summary affirmance)

Illustration 3

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

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

RESPONDENT'S MOTION-STRIKE

(document contains single motion to strike appellant's brief)

APPENDIX 7.10-3

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

Illustration 1

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

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

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

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

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

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

Opposing counsel in this case inform me that (counsel) (has no objection to/concurs in/has no comment on) this request for extension of time.

Date _____

Attorney for Petitioner

[Sign and print/type name, bar number, address,
and telephone number]

(continued on next page)

Illustration 2

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

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

RESPONDENT'S MOTION-STRIKE
RESPONDENT'S MOET-FILE RESPONDENT'S BRIEF

(single document containing motion to strike opening brief
and motion for extension of time to file respondent's brief)

APPENDIX 9.05

Illustration for ORAP 9.05

[The case title of a petition for review is to appear as shown on the appellate decision in substantially the following form:]

IN THE SUPREME COURT OF THE STATE OF OREGON

_____,)
 Respondent (or Petitioner))
 on Review,) County Circuit Court No. _____
) CA A _____
 v.)
)
 _____,)
 Petitioner (or Respondent))
 on Review.)

**PETITION FOR REVIEW OF
[NAME OF PARTY]**

Petition for review of the decision of the Court of Appeals an appeal from a judgment of the Circuit Court for _____ County, Honorable _____, Judge (or an order of [name of agency]).

Opinion Filed: [date]

[If the court decided the case by opinion indicating its author]

Author of Opinion: _____

Concurring Judge(s): _____

Dissenting Judge(s): _____

[or]

[If the court affirmed without opinion or decided the case by per curiam opinion]

Before _____, Presiding Judge

(continued on next page)

Attorney for Appellant
[Mailing address, bar number, and telephone number]

Attorney for Respondent
[Mailing address, bar number, and telephone number]

PETITIONER ON REVIEW [INTENDS] [DOES NOT INTEND]
TO FILE A BRIEF ON THE MERITS

APPENDIX 10.15

Illustration for ORAP 10.15

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of _____, a Minor Child)
STATE ex rel DEPARTMENT OF) _____ County Circuit Court No. _____
HUMAN SERVICES,) CA A _____
Respondent (or Appellant),)
v.)
Appellant (or Respondent).)

EXPEDITED TERMINATION OF PARENTAL RIGHTS CASE
NOTICE OF APPEAL

APPENDIX 11.05

Illustrations for ORAP 11.05

Illustration 1a. Sample case title for a peremptory writ of mandamus proceeding challenging the action of a judge in a particular case (Chris Doe, Plaintiff, v. Out of State Business, Inc., Defendant).

CHRIS DOE,)
)
Plaintiff-Adverse Party,) _____ County Circuit Court No. _____
)
v.) SC S _____
)
OUT OF STATE BUSINESS, INC.,)
)
Defendant-Relator.) PETITION FOR PEREMPTORY
) WRIT OF MANDAMUS

Illustration 1b. Sample case title for a motion in a mandamus proceeding challenging the action of a judge in a particular case.

CHRIS DOE,)
)
Plaintiff-Adverse Party,) _____ County Circuit Court No. _____
)
v.) SC S _____
)
OUT OF STATE BUSINESS, INC.,) MANDAMUS
) PROCEEDING
)
Defendant-Relator.) MOTION TO DISMISS

Illustration 2. Sample case title for an alternative writ of mandamus proceeding against an administrative agency.

STATE ex rel TERRY DOE,)
an elector of the State of Oregon,) SC S _____
)
Plaintiff-Relator,)
)
v.)
)
PAT ROE, Secretary of State for)
the State of Oregon,) PETITION FOR ALTERNATIVE
) WRIT OF MANDAMUS
)
Defendant.)

(continued on next page)

Illustration 3. Sample case title for an alternative writ of mandamus proceeding challenging an administrative

action of a judge.

STATE ex rel OREGON	)	Agency Name
ADVOCATES FOR JURORS,)	
	)	Case No. _____
Plaintiff-Relator,)	
)	
v.)	
)	
KELLY BENCH, Presiding Judge	)	SC S _____
for _____ County)	
Court,	)	PETITION FOR ALTERNATIVE
	)	WRIT OF MANDAMUS
Defendant.))	

APPENDIX 13.10

Illustration for ORAP 13.10

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

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

Appellant (Respondent) moves this court for an order allowing appellant (respondent) a reasonable sum as attorney fees in the amount of \$ _____.

This petition is based on [cite authority] and on the following facts.

[Set out facts showing the attorney time involved, the time devoted to each task, the reasonableness of the amount of time claimed, the hourly rate at which time is claimed, and the reasonableness of the hourly rate.]

[If the petition is based on a contractual provision, that provision should be set out verbatim in the petition.]

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

**TABLE OF RULES AND APPENDICES
AMENDED, ADOPTED, AND DELETED**

January 1, 2007

<u>Rule Number</u>	<u>Rule Title</u>	<u>Action Taken</u>
1.10	Citation to Appellate Rules; Effective Date; Temporary Amendments and Rules	Amended
1.40	Verification; Adopting ORCP 17	Amended
2.05	Contents of Notice of Appeal	Amended
2.25	Parties to Appeals; Case Title Change by Administrator	Amended
2.40	Notice of Appeal in Guilty or No Contest Plea, Probation or Sentence Suspension Revocation, and Resentencing Cases	Amended
3.33	Persons Responsible for Preparing Transcript	Amended
4.15	Form, Content, and Service of Petition for Judicial Review	Amended
4.20	Record on Review	Amended
4.35	Agency Withdrawal of Orders	Amended
4.40	Appearance by Agency Not a Party	Amended
4.66	Time for Filing Briefs	Amended
4.67	Local Government Documents	Adopted
5.05	Specifications for Briefs	Amended
5.10	Number of Copies of Briefs; Proof of Service	Amended
5.50	The Excerpt of Record	Amended
5.52	Appendix	Amended
5.95	Briefs Containing Confidential Material	Amended
6	Submission of Cases and Oral Argument; Reconsideration in Court of Appeals	Heading Amended
6.25	Reconsideration by Court of Appeals	Amended
7.10	Preparation, Filing, and Service of Motions	Amended
8.05	Substitution of Parties in Civil Cases; Effect of Death or Absconding of Defendant in Criminal Cases	Amended
8.10	Withdrawal, Substitution, and Association of Attorneys on Appeal	Amended
8.12	Appointment, Withdrawal, and Substitution of Court-Appointed Counsel or Legal Advisor on Appeal	Amended
8.15	<i>Amicus Curiae</i>	Amended
8.20	Effect of Bankruptcy Petition	Amended
8.50	Segregation of Protected Personal Information	Amended
10.15	Juvenile Dependency and Adoption Cases	Amended
11.05	Mandamus: Initiating a Mandamus Proceeding	Amended
11.30	Ballot Title Review	Amended
13.15	Appeal of Public Defense Services Commission Decision Regarding Court-Appointed Counsel Compensation, Costs, and Expenses	Amended
13.25	Petitions and Motions for Damages and Sanctions	Amended
14.05	Appellate Judgment	Amended
15.05	Appellate Settlement Conference Program	Amended

<u>Appendix</u>	<u>Action Taken</u>
A	Renumbered as Appendix 2.05
B	Renumbered as Appendix 2.25
C	Renumbered as Appendix 2.40
D	Renumbered as Appendix 3.30
E	Renumbered as Appendix 3.33
F	Renumbered as Appendix 4.15-1
G	Renumbered as Appendix 4.15-2
H	Renumbered as Appendix 5.05
J	Renumbered as Appendix 5.45
K	Renumbered as Appendix 5.50
L	Renumbered as Appendix 5.95
M	Renumbered as Appendix 7.10-3
N	Renumbered as Appendix 9.05
O	Renumbered as Appendix 10.15
P	Renumbered as Appendix 11.05
Q	Renumbered as Appendix 13.10
R	Deleted
7.10-1	Adopted
7.10-2	Adopted