

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

In the Matter of the Adoption of) Chief Justice Order 16-051
Amendments to the Oregon Rules) Chief Judge Order 16-08
of Appellate Procedure

ORDER ADOPTING TEMPORARY AMENDMENTS

Pursuant to ORAP 1.10(3), the Supreme Court and Court of Appeals may, from time to time, adopt temporary rules and temporary amendments to the Oregon Rules of Appellate Procedure. By this order, the courts adopt temporary amendments to rules 1.15, 1.30, 3.40, 5.05, 6.15, 7.10, and 16.05, and adopt new temporary rule 8.47.

Amended rules are shown in the attached pages with material to be deleted in ~~strikeout~~ print and material to be added in **bold double underline** print. The amendments adopted by this order are effective January 1, 2017, and shall expire on December 31, 2018, if not previously adopted as permanent amendments.

Dated this 21st day of November, 2016.



Thomas A. Balmer, Chief Justice

Dated this 17th day of November, 2016.



Erika L. Hadlock, Chief Judge

Rule 1.15
TERMINOLOGY

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

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

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

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

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

(c) "Appeal" includes judicial review.

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

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

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

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

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

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

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

(k) **"Conventional filing" means the filing of a paper document with an appellate court in accordance with these rules.**

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

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

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

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

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

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

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

(~~sf~~) "Optical disk" means compact disk (CD), digital versatile disk (DVD), or comparable medium approved by the Administrator for use in filing an electronic version of a transcript.²

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

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

(~~vt~~) "Petitioner" means a party who files a petition.

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

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

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

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

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

² The appellate courts anticipate that rules and procedures related to the electronic transmission of transcripts may change between publication dates of the Oregon Rules of Appellate Procedure. For current rules and procedures, consult <<http://tinyurl.com/eTransmissionpage>>.

Rule 1.30 LITIGANT CONTACT INFORMATION

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

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

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

Rule 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 either the date that the certificate of preparation of the transcript is filed with the Administrator or the date that any order holding the appeal in abeyance for the appellate settlement program expires.¹ The party must serve ~~mail~~ a copy of the motion on ~~to~~ the Administrator and the transcript coordinator. When multiple parts of the oral record have been designated as part of the record on appeal or if more than one court reporter or transcriber is preparing the transcript, the transcript is not deemed filed until the last part of the transcript due on appeal is filed.

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

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

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

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

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

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

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

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

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 5.05 SPECIFICATIONS FOR BRIEFS

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

(b) (i) In the Supreme Court:

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

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

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

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

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

(ii) In the Court of Appeals:

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

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

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

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

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

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

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

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

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

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

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

five pages.

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

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

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

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

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

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

(b) Legibility and Readability Requirements

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

(ii) Briefs ~~may~~ **must** be prepared using ~~either monospaced type (such as Courier or Courier New) or proportionally spaced type, (such as Times New Roman). Monospaced type may not exceed 10 characters per inch (cpi) for both the text of the brief and footnotes. If proportionally spaced type is used, t~~**T**~~he style must be Arial, Times New Roman, or Century Schoolbook, and t~~**T**~~he size may not be smaller than 14 point for both the text of the brief and footnotes. Reducing or condensing the typeface in a manner that would increase the number of words in a brief is not permitted.~~

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

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

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

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

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

(f) If filed in paper form:⁵

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

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

(iii) The brief must be bound by binderclip and must not contain staples.

(4) 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's answering/cross-appellant's opening brief, a combined appellant's reply/cross-respondent's answering brief, and a brief that includes an answer to a cross-assignment of error.

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

³ See ORAP 5.50 regarding the excerpt of record generally.

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

⁵ See ORS 7.25 and ORAP 1.35(5) regarding use of recycled paper and printing on both sides of a page.

See Appendix 5.05-1.

Rule 6.15
PROCEDURE AT ORAL ARGUMENT

(1) In all cases in the Supreme Court:

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

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

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

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

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

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

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

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

(6) It is the general policy of Oregon appellate courts to prohibit reference at oral argument to any authority not cited either in a brief or in a pre-argument memorandum of additional authorities.¹ If a party intends to refer in oral argument to an authority not previously cited, counsel shall inform the court at the time of argument and shall make a good faith effort to inform opposing counsel of the authority at the earliest practicable time. The court may, in its discretion, permit reference at argument to that authority and may give other parties leave to file a post-argument memorandum of additional authorities or a memorandum in response.

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

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

¹ See ORAP 5.85 regarding memoranda of additional authorities.

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

Rule 7.10 PREPARATION, FILING, AND SERVICE OF MOTIONS

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

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

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

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

(~~i~~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, excluding appendices or exhibits, longer than 20 pages shall contain an index of contents, an index of appendices or exhibits, and an index of authorities, each with page references.²

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

(~~3~~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.

(~~4~~5) If a party files a motion for leave to file another document and submits the other document with the motion, then:

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

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

(~~5~~6) A motion or response that is confidential, filed under seal, or otherwise exempt from disclosure³ must include:

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

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

(~~6~~7) A motion or response that includes an attachment consisting of material that is confidential, sealed, or otherwise exempt from disclosure⁴ must comply with the requirements of ORAP 8.52.

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

² See ORAP 5.35(3).

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

confidential or otherwise exempt from disclosure.

⁴ See footnote 3 to subsection (~~56~~) of this rule.

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

Rule 8.47
NOTIFICATION OF RELATED CASES

When a party files a brief in the Court of Appeals, if the party is aware of another case pending in an appellate court that arises out of the same case or consolidated case, or that involves the same transaction or event, the party must file a notice with the Court of Appeals identifying the related case by case title and appellate case number. The notice must be a separate document from the party's brief. A party may likewise notify the Court of Appeals if the party is aware of another case pending in an appellate court that raises the same or a closely related issue. A party need not notify the Court of Appeals of a related case if another party has already done so.

Rule 16.05
DEFINITIONS

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

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

(~~23~~) "Electronic filing" or "eFiling" means the process whereby a user of the eFiling system transmits a document directly from the user's computer to the electronic filing system to file that document with the appellate court.

(~~34~~) "Electronic filing system" or "eFiling system" means the system provided by the Oregon Judicial Department for the electronic filing of a document in the appellate courts via the internet. The system may be accessed at <<http://tinyurl.com/eFilepage>> (<<http://courts.oregon.gov/OJD/OnlineServices/eFile/index.page?>>>).

(~~45~~) "Electronic payment system" means the system provided by the Oregon Judicial Department for paying filing fees and associated charges electronically in the

appellate court.

| (56) An "eFiler" means a person registered with the eFiling system who submits a document for electronic filing with the appellate court.

| (67) "Electronic service" or "eService" means the process for a user of the eFiling system to accomplish service via the electronic mail function of the appellate court eFiling system.

| (78) "Hyperlink" means a navigational link in the electronic version of a document to another section of the same document or to another electronic document accessible via the internet.

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

| (940) "PDF" means Portable Document Format, an electronic file format.

| (1044) "Username" means the identifying term assigned to an eFiler by the court, used to access the appellate court eFiling system.