

# Changes to Oregon Rules of Appellate Procedure

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# Background

- **ORAPs:** Joint Product of Oregon Supreme Court and Oregon Court of Appeals
- **ORAP Committee:**
  - Recommends amendments
  - Members appointed by Chief Justice and Chief Judge

# Background

- **ORAP Committee – 11 Voting Members:**
  - Supreme Court Justice (chair)
  - Two Court of Appeals Judges
  - Solicitor General, Chief Public Defender
  - Five Appellate Practitioners in Private Practice
  - Trial Court Administrator

# **Process for Amendments**

- **Amendment Proposals Submitted**
  - Judges, committee members, attorneys, court staff
  - Email: [stephen.p.armitage@ojd.state.or.us](mailto:stephen.p.armitage@ojd.state.or.us)
- **ORAP Committee Meets**
  - Even years
  - Reviews proposals, prepares package
- **Public Notice and Comments**
  - Final changes
- **Appellate Courts Adopt**
  - Effective January 1

# **2017 Amendments**

# **ORAP 1.35 – Filing and Service Requirements**

# **ORAP 1.35 – Filing**

- Requires active OSB members to file documents electronically via the eFiling system.
- Exception still exists for notices of appeal and other “case initiating documents.”

# ORAP 1.35 – Filing

- Notices of appeal and other “initiating documents” may be filed via eFiling.
  - **BUT** service of those documents still must be done conventionally.
- Notices of appeal and other “initiating documents” also still may be filed conventionally.



# **ORAP 5.05 – Briefs**

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- New font – **Century Schoolbook**.
  - **Times New Roman** and **Arial** still allowed.
  - Other changes made to reflect switch to e-briefs, but kept important rules like:
    - “Briefs may not be prepared entirely or substantially in uppercase.”

**ORAP 5.45 –  
Assignments of Error**

# **ORAP 5.45 – Assignments of Error**

- **Caution #1: Tell the Court where to find stuff in the record.**
- “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 was properly raised and preserved.”

# **ORAP 5.45 – Assignments of Error**

- **Caution #2 : Tell the Court why it should exercise plain-error review.**
- To request plain-error review, a party must “identify the precise error” and identify where in the record the error was made.
- “The court may decline to exercise its discretion to consider plain error absent a request explaining the reasons that the court should consider the error.”

**ORAP 5.50 –  
Excerpts of Record**

# **ORAP 5.50 – Excerpts of Record**

- **No page limit for excerpts of record.**
- **Appendix limited to 25 pages.**

# **ORAP 5.50 – Excerpts of Record**

- The excerpt “need include only those parts of the record that will be helpful to the court and the parties in preparing for and conducting oral argument.”



# **ORAP 5.50 – Excerpts of Record**

## **Certain documents must be included:**

- Judgment or order on appeal.
- Any written or oral rulings addressing issues in assignments of error.
- Any part of the record necessary for reviewing and understanding the assignments of error.
- Any part of the record relevant to preservation if preservation disputed.
- OEI case register.

# **ORAP 5.50 – Excerpts of Record**

- **Some documents must be omitted:**
- “The excerpt of record must not contain memoranda of law filed in the trial court unless such memoranda are pertinent to a disputed or likely to be disputed issue of preservation.”

# **ORAP 5.50 – Excerpts of Record**

- **Conferral on excerpt of record:**
  - “Encourages” parties to confer on the content of the excerpt of record, including whether to file a joint excerpt of record to be included with the opening brief.
- **Preserves right of respondents to file supplemental excerpt of record.**

**ORAP 8.47 –  
Notice of Related Cases**

# **ORAP 8.47 – Notice of Related Cases**

- Court of Appeals Only
- Notice Separate from Brief
- “Must” and “May”

# **ORAP 8.47 – Notice of Related Cases**

- **“Must” File Notice of Related Cases:**
  - “Aware” of Pending Appellate Case From:
    - Same case
    - Consolidated case
    - Same transaction or event

# **ORAP 8.47 – Notice of Related Cases**

- **“May” File Notice of Related Cases:**
  - “Aware”
  - Same or closely related issue

**ORAP 9.17 –  
Replies in Supreme Court**



# **ORAP 9.17 – Replies in Supreme Court**

- Reply Briefs Allowed
  - Limit: 4,000 words
- *Only* Merits Briefing on Review
  - Not original mandamus proceedings
  - Not in support of petition for review
  - Parties may seek leave to file

# **ORAP 7.05 – Motions**

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- Statement of Opposing Counsel's Position
  - Whether to expect written objection
- Exception:
  - First motion to extend time, 28 days or less

# **ORAP 8.15 – Amicus Curiae**

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- Add'l Requirements for *Amicus Curiae* Application:
  - Party alignment
    - Petitioner, respondent, unaligned
  - Timeliness:
    - Relevant deadline
    - Explanation

**APPENDIX 5.05.2 –  
Model Certificate**

# **APPENDIX 5.05.2 – Model Certificate**

- Model of Combined Certificate
  - Brief length
  - Type size requirements
  - Certificate of filing
  - Certificate of service

**Questions**