



COURT OF APPEALS

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FOR IMMEDIATE RELEASE

Notice of Change to Oregon Rules of Appellate Procedure to Provide for Issuance of Nonprecedential Memorandum Opinions

On behalf of the Oregon Court of Appeals, I am pleased to announce the adoption of temporary changes to the Oregon Rules of Appellate Procedure to provide for the issuance of nonprecedential memorandum opinions. A draft of the proposed changes was shared for public comment in January. Following an extended comment period, I have now issued a Chief Judge Order adopting temporary rule changes regarding nonprecedential memorandum opinions. These rule changes will be in effect through December 31, 2024, unless amended or superseded by the adoption of other rules.

The court's intent in adopting the rules allowing for nonprecedential decisions is to create a new tool for resolving the cases presented to it in a timely way that best meets the needs of the parties to the case and best serves the interests of the public. Like other intermediate appellate courts, the Oregon Court of Appeals performs two primary functions. First, and most often, the court reviews for errors in trial court and agency proceedings and corrects errors that prejudice a party's rights. Second, in cases that call for it, the court announces law, for example, when it issues an opinion interpreting a rule or statute or defining the scope of a constitutional guarantee.

Allowing for the issuance of nonprecedential opinions will bring the court in line with similar state and federal intermediate appellate courts, which reserve precedential opinions for cases involving the court's law-announcing function, and which use nonprecedential opinions in cases that call for the court to perform its error-correcting function. Without the option for nonprecedential opinions, each of our opinions operates as law that binds the entire state,

requiring them to be drafted with an eye toward how they might be used by the bench and the bar in other cases. That has often required extensive recitations of the facts, procedural history, and legal landscape, to ensure that an opinion does not affect future litigants in unintended ways. In cases that call upon the court to review and correct for error only, the option to designate an opinion as nonprecedential will allow us to issue decisions more efficiently because we can write the opinions with a targeted audience in mind: the parties, their lawyers (when represented), and the trial court or agency that issued the decision, all of whom will be familiar with the facts and legal issues in the case and just need a timely decision from this court resolving the claims of error raised.

This new form of written disposition does not change our approach to deciding cases. We will continue to review the briefs, prepare for argument, and discuss and analyze each case with the same focus on reaching a just decision. What it changes is how we will articulate that decision in cases that do not implicate our law-announcing function. As the provisions of new ORAP 10.30(2) set forth, we will continue to issue precedential opinions when it will be of benefit to the bench, the bar, and the public, but we will no longer do so by default. By being more intentional in identifying which cases call upon us to perform our error-correcting function and which cases call upon us to perform our law-announcing function, and then selecting the appropriate form of disposition, we hope to improve not only our body of precedent but also our overall efficiency as a court in a way that will allow us to improve transparency by reducing the number of times in which our resource limitations require us to affirm without written opinion (AWOP).

Although we are hopeful about this process and its potential to help us better serve the people who come before our court and the people of Oregon, these are temporary rule changes. After we have had some experience issuing nonprecedential memorandum opinions and a chance to evaluate how they are working, we will decide whether it makes sense to pursue a permanent rule change. Your feedback will be an important part of our decision in that regard, and we plan to solicit your feedback early next year and again before we implement any permanent change through the ORAP amendment process.

--Erin C. Lagesen, Chief Judge

The order adopting these amendments is available online at:

https://www.courts.oregon.gov/rules/ORAP/COA_CJO_22-02.pdf

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