

# SUPREME COURT

## Media Release



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**NOTICE: EFFECTIVE JULY 1, 2010, ORAP 5.05, 9.05, 9.10, and 12.10 are amended.** For cases in the Supreme Court in which the petition for review (or other initiating document) is filed on or after July 1, 2010:

- Briefs must use 14-point type (for proportionally spaced fonts).
- Opening or answering briefs may not exceed 14,000 words, while reply briefs may not exceed 4,000 words. On automatic and direct review of a death sentence, briefs may not exceed 28,000 words. (The limits for opening and answering briefs and briefs on direct review of a death sentence are roughly equivalent to the prior page limits under the previously acceptable 13-point type size.)
- Briefs must include a certificate of compliance with the brief length and type size requirements.

For more information, including alternative brief length limits for those without access to word processing systems and a sample of the required certificate, please visit “Temporary amendments to ORAP 5.05 et al” at <[www.tinyurl.com/ORAPpage](http://www.tinyurl.com/ORAPpage)>.

- PLEASE ALSO NOTE: Proposed permanent amendments to the ORAP would impose similar requirements on petitions for review beginning January 1, 2011.

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On July 8, 2010, the Supreme Court:

1. Allowed petitions for review in<sup>1</sup>:

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<sup>1</sup> These summaries of cases are prepared for the benefit of members of the media to assist them in reporting the court's activities to the public. Parties and practitioners should not rely on the summaries, or the statement of issues to be decided in the summaries, as indicating the questions that the Supreme Court will consider. Regarding the questions that the Supreme Court may consider, see Oregon Rule of Appellate Procedure 9.20.

*Richard Abraham v. T. Henry Construction, Inc.* (S058073) (S058101) (A136228) (appeal from Clackamas County Circuit Court; opinion reported at 230 Or App 564, 217 P3d 212 (2009)).

Defendants Keith Lucas, dba Keith Lucas Development Properties, and Kevin Mayo, dba KGM Construction, seek review of a Court of Appeals decision that reversed and remanded a limited judgment entered in defendants' favor on a negligence claim brought by plaintiffs Richard and Janice Abraham.

Plaintiffs (Richard and Janice Abraham, as trustees of a trust) own a house that was built for them by several contractors and subcontractors. Defendant Keith Lucas, dba Keith Lucas Development Properties, (petitioner in S058073), was the general contractor. Defendant Kevin Mayo, dba KGM Construction, (petitioner in S058101), was the framing contractor. More than eight years after the construction of the house was substantially complete, plaintiffs discovered damage to the property allegedly caused by water leakage. Plaintiffs brought an action against various defendants, alleging various claims, including breach of contract, negligence, and negligence *per se*.

Defendants Lucas and Mayo (collectively, defendants) successfully moved for summary judgment on plaintiffs' claims for breach of contract, negligence, and negligence *per se*. The trial court determined that, under ORS 12.080, the appropriate statute of limitations was six years and was not subject to a discovery rule, therefore plaintiffs' breach of contract claim was untimely. Likewise, the trial court determined that plaintiffs lacked a "special relationship" with defendants, which prevented them from recovering on their negligence claims, because a party to a contract generally cannot bring a tort claim against the other party unless the claim arises from the breach of some standard of care that is independent of the terms of the contract. Accordingly, the trial court entered a limited judgment against plaintiffs as to defendants.

Plaintiffs appealed, and the Court of Appeals affirmed in part and reversed in part. The Court of Appeals first agreed that the contract claims were barred by the six-year statute of limitations in ORS 12.080(1), and that the statute does not incorporate a discovery rule. The court also rejected plaintiffs' claim of a "special relationship" with defendants. However, the court looked more favorably on a different argument -- that the Oregon Residential Building Code (Building Code) provided a standard of care independent of the contract. The court agreed with plaintiffs' characterization of the Building Code -- that the purpose of the Building Code is, among other things, to protect people in plaintiffs' position from the effects of substandard construction. The court then compared the requirements for stating a negligence claim based on negligence *per se* to the pleadings in the case, and concluded that plaintiffs had made the necessary allegations. Finally, the court concluded that there was a genuine issue of material fact as to whether defendants had breached that independent standard of care. Accordingly, the court reversed and remanded the summary judgment in defendants' favor on plaintiffs' claim for negligence.

On review, the issues are:

**Petition for review in S058073 (*defendant Lucas*):**

(1) Whether an allegation of negligence *per se* gives rise to a claim for negligent performance of a contract when the parties are not in a "special relationship."

(2) If a property owner alleges that his or her contractor violated the "building code," whether the property owner has a negligence claim when the contract between the parties expressly required the contractor to follow all building codes.

(3) If a property owner may bring a claim for negligence *per se* against a contractor in the absence of a special relationship, whether the property owner, in response to a motion for summary judgment, is required to specify the legal obligation that the contractor allegedly violated, or instead may rely on an undisclosed opinion from an unnamed expert under ORCP 47 E.

**Petition for review in S058101 (*defendant Mayo*):**

(1) Whether the Oregon Residential Building Code sets forth a standard of care independent from the contract between a property owner and a contractor or subcontractor, and thus permits imposition of negligence liability, when the parties' contract expressly requires compliance with all building codes.

*State of Oregon v. Royce Francis Speedis* (S058310) (A138616) (appeal from Umatilla County Circuit Court; affirmed without opinion at 233 Or App 297, 225 P3d 152 (2010)) (order allowing review issued July 7, 2010).

Defendant Royce Francis Speedis seeks review of a Court of Appeals decision that affirmed without opinion his sentences for burglary I, assault II, and assault III.

A jury convicted defendant of burglary I, assault II, and assault III, for an incident in which he and a cohort pushed their way into the victim's home, punched the victim in the face, and hit the victim in the back of the head with a beer bottle. After the jury returned its verdict, the trial court, over the objections of defendant, submitted additional questions to the jury that would, if answered affirmatively, authorize the trial court to impose on defendant sentences greater than the sentences that otherwise would be available under the sentencing guidelines. Four factors were submitted to the jury: that defendant was on supervision at the time of his current crime; that criminal justice system sanctions have failed to deter defendant; that the crime was committed while defendant was on release status with other criminal charges pending; and that defendant demonstrated a disregard for laws and rules, making successful probation unlikely. None of those factors are specifically enumerated as departure factors under the sentencing

guidelines. The jury found all four factors to be present. Accordingly, the trial court departed upwardly in sentencing defendant.

Defendant appealed, and the Court of Appeals affirmed without opinion.

On review, the issues are:

(1) Does the concept of nonenumerated aggravating sentencing factors violate separation of powers provisions of the Oregon Constitution?

(2) Do nonenumerated aggravating sentencing factors violate Article I, sections 20 and 21, of the Oregon Constitution, or the Due Process Clause of the Fourteenth Amendment to the United States Constitution?

*State ex rel Conrad R. Engweiler v. Aaron Felton* (S058311) (A139059) (appeal from Marion County Circuit Court; opinion reported at 232 Or App 214, 221 P3d 818 (2009)).

*Shane I. Sopher v. Board of Parole and Post-Prison Supervision* (S058327) (A128108) (appeal from Board of Parole and Post-Prison Supervision; opinion reported at 233 Or App 178, 225 P3d 836 (2010)).

*State ex rel Shane I. Sopher v. Michael Washington* (S058373) (A134157) (appeal from Marion County Circuit Court; opinion reported at 233 Or App 228, 225 P3d 142 (2010)).

*Background:* The Supreme Court allowed review of three cases that raise questions concerning how and when the Board of Parole and Post-Prison Supervision (the Board) might be authorized to release on parole certain inmates who had committed aggravated murder when they were juveniles (under the age of 17), during a point in time when certain statutes and rules were in effect. Further details about the history of the pertinent statutes and rules can be found in *Engweiler v. Board of Parole*, 343 Or 536, 175 P3d 408 (2007).

Before 1985, the maximum penalty for aggravated murder was life imprisonment, with a mandatory minimum sentence of 20 or 30 years, depending on circumstances. The Board was prohibited from releasing on parole any person convicted of aggravated murder, except as provided in the statute that provided those minimum terms. No provision exempted juveniles from those minimum terms. After the death penalty was reinstated, the legislature enacted ORS 161.620 (1985), which prohibited a trial court from imposing a death sentence or mandatory minimum sentence on any remanded juvenile under the age of 17. Shortly after those changes took effect, the Board created a new set of rules for persons convicted of aggravated murder that took those persons outside the matrix rules and required them to serve the mandatory minimum term before becoming eligible for a hearing in which a parole date would be considered. No board rule specifically addressed juveniles convicted of aggravated murder or made any

other provision for them.

A few years later, in 1989, the legislature abolished Oregon's indeterminate sentencing system and replaced it with a sentencing guidelines system that requires imposition of a determinate sentence, which the inmate must serve without eligibility for parole. Before that change, the Board had used the matrix rules to determine, in an initial parole release decision, the actual duration of imprisonment. (The Board continued to apply the matrix rules to inmates who committed their offenses before 1989). None of the Board's rules, however, contained provisions specifically for juveniles convicted of aggravated murder; the rules assumed that all persons convicted of aggravated murder were required to serve a mandatory minimum sentence under ORS 163.105(1) (1989). That was the situation when petitioners Conrad Engweiler and Shane Sopher committed their crimes -- Engweiler in 1990 at age 15, and Sopher in 1992 at age 16.

In 1999, the Board promulgated new rules to establish procedures and standards by which the Board would consider whether and when to grant parole to juvenile aggravated murderers (the "JAM" rules). The Board then applied those rules to petitioners. In Engweiler's case, the board entered an order that gave him a 480-month prison term and a corresponding murder review date in 2030. In effect, the Board has not established an initial parole date for Engweiler; instead, the Board has determined that, after 480 months, Engweiler will be eligible for consideration for parole. Similarly, the Board established a 400-month prison term for Sopher and a murder review date of 2025. Over the years, both petitioners have sought to challenge the effect of those Board decisions in a number of ways. The following three cases involve their most recent efforts.

*State ex rel Conrad R. Engweiler v. Aaron Felton:*

Petitioner Conrad R. Engweiler seeks review of a Court of Appeals decision that reversed and remanded a trial court's issuance of a peremptory writ of mandamus, with instructions to vacate the writ and dismiss petitioner's petition.

Petitioner brought a mandamus proceeding in Marion County Circuit Court, seeking an order that would compel the Board to conduct an initial parole hearing under ORS 144.120(1)(a) (1989). The trial court agreed that the statute created a mandatory duty to hold the parole hearing, at which an initial parole release date would be set. Accordingly, the trial court issued a peremptory writ of mandamus directing the Board to do so.

The Board appealed, arguing that ORS 144.120 is a procedural statute and that it was free to apply a later version of the statute, enacted in 1991, which excluded those sentenced for aggravated murder from the initial parole hearing requirement. The Board also argued that ORS 144.110(2)(b) does not allow aggravated murderers to be paroled except under the procedures of ORS 163.105. Although certain aspects of ORS 163.105 could not be applied to petitioner because of the prohibition in ORS 161.620 against mandatory minimums for juveniles under the age of 17, the Board asserted that it had

established the JAM rules to fill that void.

The Court of Appeals reversed and remanded, with instructions to vacate the writ and dismiss the writ petition. The court agreed with the Board's argument that ORS 144.110(2)(b) prevented petitioner from relying on ORS 144.120. Although the court admitted that the fit between all of the relevant statutes was not "comfortable," the court distinguished between a *court's* inability to sentence a juvenile to a mandatory minimum term (ORS 161.620) and *the Board's* ability to require a minimum term of imprisonment before allowing a parole hearing. Because the court held that ORS 144.120 does not apply to petitioner, it did not address whether that statute is procedural or substantive for *ex post facto* purposes.

On review, the issues are:

(1) Does ORS 144.120(1)(a) (1989) require the Board to conduct a hearing and set an initial release date for a prisoner convicted of aggravated murder within one year after his admission to a correctional facility?

(2) Do ORS 144.110(2)(b) (1989) and ORS 163.105(2)-(4) (1989) govern the Board's authority to release juveniles convicted of aggravated murder and sentenced to life imprisonment?

*State ex rel Shane I. Sopher v. Michael Washington:*

Petitioner Shane I. Sopher seeks review of a Court of Appeals decision that affirmed in part and reversed in part a trial court's dismissal of petitioner's petition for a writ of mandamus.

Petitioner petitioned the Marion County Circuit Court for a writ of mandamus directing the Board to hold an initial parole hearing and set an initial parole release date under ORS 144.120(1)(a) (1991). He also challenged the Board's application of the JAM rules. The Board moved to dismiss the writ on the grounds that the Board had no duty to give petitioner a hearing under ORS 144.120, and that mandamus was not a proper remedy for petitioner's rule-based claim. The trial court granted the Board's motion.

Petitioner appealed, and the Court of Appeals affirmed in part, reversed in part, and remanded. The court determined that ORS 144.120(1)(a) (1991) was not the mechanism by which the Board was to assess petitioner's entitlement to the possibility of parole, because the statute expressly excepted from its application offenders sentenced to life in prison for aggravated murder, and related statutes did not prevent that exception from applying to juvenile offenders. Accordingly, the court concluded that petitioner was not entitled to a hearing or the establishment of an initial parole release date under that statute. However, the court agreed that the trial court had improperly dismissed petitioner's challenge to the Board's application of the JAM rules to him.

On review, the issues are:

(1) Does the Board have a duty under the matrix system to conduct a parole hearing and to set an initial release date under ORS 144.120(1)(a) (1991) for juveniles who were convicted of aggravated murder and sentenced to life imprisonment?

(2) Does the Board have a duty to set the release date for juveniles who committed aggravated murder in 1992 under the policy and practice in effect at that time?

(3) Does the Board's refusal to conduct a parole hearing and set an initial release date under ORS 144.120(1)(a) (1991) for petitioner violate his due process rights under the Fourteenth Amendment to the United States Constitution?

(4) Does the Board's refusal to conduct a parole hearing and set an initial release date for petitioner violate Article I, section 20 of the Oregon Constitution and the Fourteenth Amendment of the United States Constitution?

*Shane I. Sopher v. Board of Parole and Post-Prison Supervision:*

Petitioner Shane I. Sopher seeks review of a Court of Appeals decision that rejected his challenges to certain rules promulgated by the Board.

Petitioner brought a challenge under ORS 183.400 to the validity of the JAM rules. Petitioner argued that the JAM rules, by implementing the parole release policy of ORS 144.110(2)(b) and ORS 163.105(1), exceeded the statutory authority of the Board embodied within ORS 161.620 (no mandatory minimums for juveniles under 17). The Court of Appeals rejected the legal premise underlying that argument, citing to its decision in the Engweiler case, *State ex rel Engweiler v. Powers*, 232 Or App 214, 221 P3d 818 (2009). Accordingly, the court held the JAM rules valid.

On review, the issues are:

(1) Do the JAM rules violate ORS 161.620?

(2) Do the JAM rules exceed the Board's authority set out in ORS 144.780?

(3) Does ORS 144.140(1) authorize the Board to promulgate rules for setting a review date rather than a projected parole release date for juvenile offenders convicted of aggravated murder?

(4) Do the JAM rules conflict with ORS 144.120(1)?

(5) Do the JAM rules violate Article 1, section 16 of the Oregon Constitution or the Eighth Amendment to the United States Constitution?

(6) Do the JAM rules violate Article I, section 20 of the Oregon Constitution and the Fourteenth Amendment to the United States Constitution?

(7) Do the JAM rules violate the proscriptions against *ex post facto* laws under Article I, section 21 of the Oregon Constitution and Article I, section 10 of the United States Constitution?

*Department of Human Services v. F. W.* (S058430) (A143523) (appeal from Linn County Circuit Court; affirmed without opinion at 234 Or App 365, 228 P3d 736 (2010)).

Petitioner F.W. (mother) seeks review of a Court of Appeals decision that affirmed without opinion a trial court judgment changing the permanency plan for child from permanent guardianship to adoption.

Child, K.W., was born in 2006. In 2008, child and her half-brother, J.W., were found to be within the jurisdiction of the juvenile court because of neglect and exposure to drugs. Initially, mother made substantial progress toward reunification. However, mother later was involved in an automobile accident, and was imprisoned after being convicted of driving under the influence of intoxicants, vehicular manslaughter, and assault. Her expected release date is in 2016.

In 2009, the juvenile court held a permanency hearing. At the time of the hearing, K.W. and J.W. were in the care of their maternal grandmother, who took the children to visit mother at Coffee Creek Correctional Facility. The children asked about their mother frequently and had no negative effects after the visits. With respect to J.W., all parties were in agreement that the permanency plan of "return to parent" should be retained, because J.W.'s father was making sufficient progress toward reunification. With respect to K.W., mother acknowledged that as a result of her incarceration, the permanency plan could not remain "return to parent." Mother advocated for a change in J.W.'s plan to permanent guardianship with child's maternal grandmother, because mother wanted to parent her children upon her release from prison and wanted to ensure contact between child and her half-brother. The Department of Human Services (DHS) urged that child's plan be changed to adoption. The DHS caseworker testified that adoption would provide a "greater level of stability and permanence" than legal guardianship. He also noted that child was not IV-E eligible (meaning that her guardian would not be eligible for financial assistance). Child's Court Appointed Special Advocate (CASA) also supported adoption, as did the child's attorney. The child's attorney expressed concern that K.W.'s father -- who had a history of domestic violence -- might seek return of K.W. to his care if child was placed in a guardianship rather than adopted.

The juvenile court approved adoption as the appropriate permanency plan. The court noted the legislative preference for adoption over legal guardianship, and explained that "the court cannot find that another plan is better suited to the needs of this child than adoption."

Mother appealed, and the Court of Appeals affirmed without opinion.

On review, the issues are:

(1) Does the ultimate responsibility to determine which permanent plan should be chosen for the child lie with the juvenile court or with the Department of Human Services?

(2) Is a determination about whether it is in the child's best interest to terminate parental rights a consideration at the permanency hearing, or must it await the termination trial?

(3) If it appears imminent that the current relative placement would be selected as the permanent placement for the child, and the child has extensive ongoing contact and attachments with her mother and half-brother, may the court determine that a plan of permanent guardianship is more appropriate than a plan of adoption?

(4) On appeal, what standard of review should be applied to judicial determinations under ORS 419B.476(5)(b) and 419B.498(2)?

2. Allowed a petition for reconsideration in:

*State of Oregon v. Edward Harvey Stokes* (S057751) (A129130) (appeal from Multnomah County Circuit Court; affirmed without opinion at 229 Or App 97, 211 P3d 381 (2009)).

Defendant Edward Harvey Stokes seeks review of a Court of Appeals decision that affirmed without opinion his convictions for two counts of sodomy I and two counts of sexual abuse I.

In 1996, defendant was arrested after being charged with kidnapping I, sodomy I, and unlawful sexual penetration I, with respect to incidents that occurred when the victim, T.M., visited defendant's home to do laundry. Victim called 911. A rape kit was used to obtain evidence, and photographs of victim were taken. The charges were presented to a grand jury, which returned an indictment indorsed "not a true bill." The charges were dismissed. The prosecutor in the case made notes that the grand jurors had expressed "extreme reservation" about the victim's credibility.

Soon after submission of the case to the grand jury, a Portland police detective learned of two new complainants, victim's brother, M.M., and H.V., who both alleged that defendant had sexually assaulted them. During the investigation of the new complainants, the prosecutor learned that defendant had criminal charges pending against him in California. The prosecutor believed the California case was strong and that defendant likely would spend the rest of his life in prison. Also, the prosecutor believed that the continuing investigation would cost a lot of money. The prosecutor told the

detective to stop pursuing the matter. Believing that the case was over, the detective shredded the reports he had written, erased tape recordings (including the one of the victim's 911 call), and destroyed the rape kit, the victim's clothing, and a towel and shirt seized from defendant's residence. The photos, however, were not destroyed.

In 2004, the chief deputy in charge of felony prosecutions learned that defendant was released from custody in California and had returned to Oregon. In response, the District Attorney's office filed an *ex parte* motion that sought a court order permitting the charges involving victim to be resubmitted to a grand jury. Under ORS 132.430(2),

"[w]hen an indictment indorsed 'not a true bill' has been filed with the clerk of the court, the effect thereof is to dismiss the charge; and the same cannot be again submitted to or inquired of by the grand jury unless the court so orders."

The motion was granted. Defendant subsequently moved to dismiss the charges involving T.M., claiming that the court had erroneously allowed the charges to be resubmitted to a grand jury. Defendant also moved for dismissal of all the charges (those involving T.M. and new charges involving M.M.), contending that the prosecution would violate his constitutional right to a speedy trial. The trial court denied the motions.

At trial, two witnesses were permitted to testify, over defendant's objection, that defendant had sexually assaulted them. Ultimately, a jury convicted defendant on all charges, and the trial court sentenced defendant to 200 months in prison.

Defendant appealed, and the Court of Appeals affirmed without opinion.

On review, the issues are:

(1) Did the trial court err in denying defendant's motion to dismiss counts that had been submitted to a previous grand jury more than eight years before and that the grand jury had indorsed as "not a true bill," when the district attorney chose not to resubmit the charges at the time he learned of new evidence, based on an assumption that defendant would serve a lengthy prison sentence elsewhere, and in reliance on that decision, police destroyed evidence?

(2) Did allowing a prosecution to proceed under those circumstances deprive defendant of his right to a speedy trial under the Due Process Clause of the Fourteenth Amendment to the United States Constitution?

(3) Was defendant deprived of his right to a speedy trial under the Due Process Clause of the Fourteenth Amendment to the United States Constitution with respect to other, related charges that were known to the district attorney at the time, when the state was not actively conducting an investigation during the period of delay?

(4) Did the trial court err in admitting evidence regarding defendant's prior, uncharged sexual assaults on two witnesses?

3. Denied petitions for review in:

*Ramon Arturo Escalderon v. Board of Parole and Post-Prison Supervision* (S057552) (A134364)  
*Roy William Wyatt v. Board of Parole and Post-Prison Supervision* (S057990) (A134001)  
*Paul Darwin Rennells v. Board of Parole and Post-Prison Supervision* (S058104) (A136550)  
*Alan Boyd Crain v. Board of Parole and Post-Prison Supervision* (S058164) (A135978)  
*David H. Drenth v. Board of Parole and Post-Prison Supervision* (S058180) (A136620)  
*Angel M. Gomez v. Board of Parole and Post-Prison Supervision* (S058270) (A136703)  
*State of Oregon v. Gregory Buckman* (S058315) (A137848)  
*John Patrick Bolte and Mary Elizabeth Bolte* (S058330) (A139055)  
*Steven George Fair v. Mark Chimienti* (S058334) (A137694)  
*State of Oregon v. Christopher Blayney Olsen* (S058366) (A138952) (A138992)  
*State of Oregon v. Moji Momeni* (S058385) (A134490)  
*Nick Shevchynski v. Jeff Middleton* (S058397) (A138748)  
*State of Oregon v. Phillip Isaac Martin* (S058412) (A136769)  
*State of Oregon v. Christopher Jon Allen* (S058413) (A138813)  
*Morrice Abdul James v. Guy Hall* (S058418) (A139069)  
*State of Oregon v. Michael Vince Tremain* (S058420) (A139515)  
*Robert K. Schuster v. American States Insurance Company* (S058422) (A138894)  
*State ex rel Juvenile Department of Marion County v. L. A. W.* (S058425) (A138346)  
*State of Oregon v. Robert Alan Lee* (S058427) (A136846)  
*State of Oregon v. James Ray Terwilleger* (S058428) (A139236)  
*State of Oregon v. Alexandr V. Lifanov* (S058436) (A141134) (A141135)  
*State of Oregon v. Kevin Allan Couch* (S058437) (A140308)  
*Kristie Paresi and Mark Paresi* (S058438) (A134598) (A140275)  
*Thunderbird Mobile Club, LLC v. City of Wilsonville* (S058441) (A134750)  
*Claude M. Forbes v. Mark Nooth* (S058466) (A140788)  
*Robert C. Looney v. State of Oregon* (S058468) (A141843)  
*State of Oregon v. Gary Frederick Herd* (S058479) (A139267)  
*Willard Bell Jenkins v. Mark Nooth* (S058481) (A138872)  
*State of Oregon v. William Kelly Wippert* (S058499) (A138351)  
*State of Oregon v. Scott Nolan Scott* (S058511) (A138852)  
*Shauntae Deshe Kindred v. Mark Nooth* (S058534) (A143962)  
*Department of Human Services v. S. L. D.* (S058537) (A145614)

*John Patrick Bolte and Mary Elizabeth Bolte* (S058546) (A139055)

4. Dismissed a petition for review in:

*State of Oregon v. Joshua Edward Baker* (S058486) (A138956)

5. Denied petitions for writ of mandamus in:

*State of Oregon v. Scott Que Shupe* (S058347)

*State of Oregon v. Alfred Andrew Nichelson* (S058489)

*State of Oregon v. Theodore Allen Graving* (S058505)

*Atlantic National Trust, LLC v. Mt. Hawley Insurance Company* (S058533)

6. Accepted the resignation of attorney Michael R. Shinn (Bar No. 732709) during the pendency of disciplinary proceedings.

7. Accepted the stipulation for discipline and suspended attorney Scott P. Bowman (Bar No. 032174) from the practice of law for a period of one year, with four months of suspension imposed effective 60 days from July 8, 2010, and eight months of the suspension stayed pending the completion of two years probation pursuant to the terms of the stipulation.

8. Publically reprimanded attorney James R. Eckley (Bar No. 780368).