

## ORAP COMMITTEE 2020

PROPOSAL NO.: 5

PROPOSER: Office of Public Defense Services, Appellate Division

AMENDING RULE(S): ORAP 5.70, 5.80 Brief Time Chart 1, 10.15 -- Allow Reply Briefs as Matter of Right in Several Classes of Cases -- Public Comment Subcommittee Report

DATE: September 22, 2020

**WORKGROUP:** *Josh Crowther, Ben Gutman, Julie E Smith, Daniel Parr, Judge Lagesen*

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### EXPLANATION:

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[Email from Ben Gutman dated September 22, 2020:]

Attached is a report from the ORAP 5.70 subcommittee. We propose no changes to ORAP 5.70 itself but we do propose a minor edit to the briefing chart attached to ORAP 5.80.

As a reminder, our proposed amendment to ORAP 5.70 removed some categories of appeals (criminal, post-conviction, juvenile dependency) from the list of cases where reply briefs are not allowed as of right. Here were the two questions raised by the comments:

1. Do we need to clarify that the appellant in a juvenile dependency case does not need to file a motion for leave to file a reply brief but instead is encouraged to file a notice of intent not to file one if the appellant does not intend to do so?

We do not see the need to make a change; in our view the rule is clear enough as is, and if appellants forget to file a notice of intent the consequences are low.

2. Do we need to clarify the briefing chart attached to ORAP 5.80, which sets forth a rule for “Juvenile” cases that in fact applies only to dependency but not delinquency cases?

We think we should, although the ambiguity preexisted the change to ORAP 5.70. We propose adding a line for “Juvenile Delinquency” cases to the entry with other criminal appeals and substituting “Juvenile Dependency” for “Juvenile” in the entry for cases covered by ORAP 10.15. A revised amended version of the chart is attached.

[Additional note from Stephen Armitage: The subcommittee also asked for a line to be inserted between the violations/habeas/etc. category and the civil/criminal/etc. category. I have made that change on the attached copy, but it cannot be shown with track changes.)

**BRIEF TIME CHART 1**

CASE TYPE	Opening Brief	Answering and Cross-Opening Brief	Reply Brief	Answering Brief to Cross-Assignment of Error	Cross-Respondent's Answering Brief	Cross-Appellant's Reply Brief	<b>DATE FROM WHICH SCHEDULE IS CALCULATED</b> 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.
Criminal <sup>+</sup> Probation Revocation Violations Habeas Corpus Post-Conviction Civil Commitment Forcible Entry and Detainer	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.
Civil Appeal from Circuit Court not listed above Criminal <sup>1</sup> Probation Revocation Post-Conviction Juvenile Delinquency Tax Court	49	49	21*	21*	49*	21	ORS 19.380. [or] Date notice of appeal filed if no transcript has been designated.
	<del>49</del>	<del>49</del>	<del>21</del>	<del>21</del>	<del>21</del>	<del>21</del>	
Adoption Juvenile Dependency <sup>2</sup>	28	28	<del>07</del>				
Land Use Board of Appeals (LUBA) Land Conservation and Development Commission (LCDC) <sup>3</sup>	21	21	0				Date petition for judicial review filed.

<sup>1</sup> Regarding death sentence cases, see ORAP 12.10(6); regarding certain pretrial appeals when the defendant is in pretrial custody on felony charges, see ORAP 10.25 and ORAP 12.07.

<sup>2</sup> See ORAP 10.15.

<sup>3</sup> Those LCDC orders specified in ORAP 4.60(1)(b).

\* Can be one brief.

## ORAP COMMITTEE 2020

PROPOSAL NO.: 12 A & B

PROPOSER: Lisa Norris-Lampe, Appellate Legal Counsel

AMENDING: ORAP 9.05 -- Petition for Supreme Court Review of Court of Appeals Decision

DATE: September 22, 2020

*Workgroup: Bill Kabeiseman, Lisa Norris-Lampe*

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### EXPLANATION:

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#### *Proposed Amendment, Summary:*

The proposed amendment concerns 9.05(2) and **FN 2** of that rule.

ORAP 9.05(2) governs the filing of petitions for review (PTRVs) in the Supreme Court; paragraph (b) provides that the Supreme Court may grant an extension of time to file a PTRV. This proposal would clarify the rules that govern the filing of such a motion for extension of time (MOET), including clarifying which Court of Appeals reconsideration efforts are subject to certain timing requirements:

- **Agenda Item 12 A:** Clarifies, in ORAP 9.05(2)(b), that any MOET to file a PTRV must be filed in the Supreme Court.
- **Agenda Item 12 B:** Eliminates, from ORAP 9.05(2)(c), current FN 2 (which excludes ORAP 6.25(5) (motions for reconsideration) from timing rules), replacing it with an inclusive reference in the text to ORAP 6.25(2) (petitions for reconsideration).

#### *Comment Received:*

The ORAP Committee received one comment on the proposal, from Christa Obold Eshleman (dated 8/21/20). The comment, though, concerns subsection **(3)** of ORAP 9.05 (form and service of PTRV) and **FN 1** of that rule (statutory and ORAP cross-references). Specifically, the comment **(1)** requests clarity regarding the service requirement for a MOET on a PTRV; and **(2)** asserts that "the proposed deletion of footnote **1**" adds to the

confusion to that question (FN 1 cross-references ORS 2.520 (establishing Supreme Court jurisdiction via petition for review) and ORAP 7.25(2) (MOET rule)). (As noted above, however, the proposal would delete footnote 2, not footnote 1.)

***Workgroup Response:***

Both aspects of the comment -- regarding ORAP 9.05(3) and **FN 1** -- concern parts of ORAP 9.05 that are not within the scope of the proposed amendment -- which, again, simply clarifies, in ORAP 9.05(2) and **FN 2**, in which court a MOET on a PTRV must be filed and which Court of Appeals reconsideration efforts are subject to timing provisions of the rule.

Because the comment concerns aspects of ORAP 9.05 that are not the subject of the proposed amendment, we understand it to be coming too late in this cycle's ORAP amendment process for any action to be taken. For that reason, we do not offer any substantive input on the comment, and we recommend that the ORAP Committee take no action on it. We do recommend, though, that the commenter be notified that she can request or propose an amendment to ORAP 9.05(3) during the next ORAP cycle, if she continues to think that rule should be amended.

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# **RULE AS AMENDED (as originally proposed, no change):**

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**Edited version** (new text in **{braces/boldface/underscore}**; omitted text in *[brackets/italics]*):

## **Rule 9.05**

### PETITION FOR SUPREME COURT REVIEW OF COURT OF APPEALS DECISION

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

- (a) Except as provided in ORS 19.235(3) and ORAP 2.35(4), 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 after the date of the decision of the Court of Appeals.*[FNI, Or, alternatively, edit FN 1]*

- {(b)}** **A party seeking additional time to file a petition for review shall file a motion for extension of time in the Supreme Court, which that court may grant.***[The Supreme Court may grant an extension of time to file a petition for review.]*

- {(c)}***[b]*(i) If a timely petition for reconsideration of a decision of the Court of Appeals is filed **{under ORAP 6.25(2)}** 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.[FN 2]

- ~~(d)~~[c] (i) If a party files a petition for review after the appellate judgment has issued, the party must file with the petition a motion to recall the appellate judgment. The petition and the motion must be filed within a reasonable time after the appellate judgment has issued. The motion to recall the appellate judgment must explain why the petition for review was not timely filed. The party need not file a separate motion for relief from default.
- (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.

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



**Clean Version:**

**Rule 9.05**

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

\* \* \* \* \*

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

- (a) Except as provided in ORS 19.235(3) and ORAP 2.35(4), 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 after the date of the decision of the Court of Appeals. [Alternative, edit FN 1]
- (b) A party seeking additional time to file a petition for review shall file a motion for extension of time in the Supreme Court, which that court may grant
- (c)
  - (i) If a timely petition for reconsideration of a decision of the Court of Appeals is filed under ORAP 6.25(2) 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.
- (d)
  - (i) If a party files a petition for review after the appellate judgment has issued, the party must file with the petition a motion to recall the

appellate judgment. The petition and the motion must be filed within a reasonable time after the appellate judgment has issued. The motion to recall the appellate judgment must explain why the petition for review was not timely filed. The party need not file a separate motion for relief from default.

- (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.

## ORAP COMMITTEE 2020

PROPOSAL NO.: 18

PROPOSER: Chief Justice Martha L. Walters; Lisa Norris-Lampe,  
Appellate Legal Counsel

AMENDING: ORAP 12.05 -- Direct Appeal or Judicial Review in the  
Supreme Court -- Public Comment Subcommittee Report --  
Move Portions into New ORAP 12.40

DATE: September 22, 2020

*Workgroup: Ben Gutman, Aaron Landau, Cody Hoesly, Lisa Norris-  
Lampe, Jason Specht*

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### EXPLANATION:

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#### *Proposed Amendment, Summary:*

ORAP 12.05 sets out several default rules for direct review cases in the Supreme Court that are not governed by other rules. The original proposal addressed a couple of issues relating to that rule, namely:

- General provisions:
  - Updates, including to the title, intended to extend general provisions of the rule to direct review cases that are neither direct "appeals" nor direct "judicial reviews";
  - Removal of the old "expedited by statute" provision, as unnecessary; and
  - Other streamlining updates to the general provisions.
- New provision: Added a new subsection that applies to direct review cases in which the legislature has provided for direct review of one of its own enactments. In those cases, typically, no action was filed in proceeding below and factual record has been developed in a lower tribunal. Accordingly, the new subsection provides a structure for framing allegations and developing a record in the Supreme Court.

Proposal #18 -- ORAP 12.05 -- Direct Appeal or Judicial Review in the Supreme Court --  
Public Comment Subcommittee Report -- Move Portions into New ORAP 12.40

***Comment Received:***

The ORAP Committee received one comment on the proposal -- from Elaine Bensavage - suggesting that aspects of the general provisions in the proposed amended rule were difficult to follow.

***Workgroup Response:***

In considering the Comment, the Workgroup edited the proposal in two key ways:

- As to the general provisions, updated wording throughout, to improve readability (see updated, proposed amended ORAP 12.05); and
- As to the new provision applying to direct review of statutory enactments, moved that provision to appear as a standalone rule, so as to also improve readability (see new ORAP 12.40). **Note:** The text of this provision remains the same as approved by the Committee in the spring.

Set out immediately below is the Workgroup's proposed update, to both ORAP 12.05 and (new) 12.40, set out both showing changes from the current version of ORAP 12.05 and also as a "clean" version. (The version proposed on March 9, as well as the original proposal, are set out *after* the new updates.)

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## RULE AS AMENDED (*Updated 9/22/20*):

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**Edited version** (new text in {braces/boldface/underscore}; omitted text in *[brackets/italics]*):

### Rule 12.05

#### DIRECT APPEAL{,}[ OR] **{DIRECT}** JUDICIAL REVIEW{,} **AND DIRECT REVIEW** IN THE SUPREME COURT

**{(1)} This rule governs the following proceedings in the Supreme Court:**

- (a) Any direct appeal from a court of law<sup>1</sup>;**
- (b) Any direct judicial review of an agency order<sup>2</sup>; and**
- (c) Any other proceeding for which a statute provides for direct review in the Supreme Court.<sup>3</sup>**

**{(2)}[1]{When}***[Where]* a statute authorizes a direct appeal{,} *[from a court of law to the Supreme Court,<sup>1</sup>]* except as otherwise provided by statute or **{another provision of these rules}***[by rule of appellate procedure]*, the appeal shall be taken in the manner prescribed in **{ORAP Chapters 2 and 3,}***[the rules of appellate procedure]* relating to appeals generally.

**{(3)}[2]{When}***[Where]* a statute authorizes direct judicial review{,} *[of an agency order or a legislative enactment by the Supreme Court<sup>2</sup>]*, except as otherwise provided by statute**{ or another provision of these rules}**, the judicial review shall be initiated and conducted in the manner prescribed in **{ORAP Chapter 4,}***[the rules of appellate procedure]* relating to judicial review of agency orders generally.

**{(4)}[3]**The **{case-initiating document for any proceeding described in subsection (1)}***[notice of appeal or petition for judicial review]* shall state the statutory **{or other}** authority under which **{the proceeding}** *[a direct appeal or judicial review]* is **{filed directly in}***[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.[FN 3]*

- (5) On motion of a party or on the court's own initiative, the court may establish a special briefing schedule.

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FN 1 See, e.g., ORS 305.445 (tax court judgments and orders), ORS 662.120 (injunctions in labor dispute cases), and ORS 138.045(2) (certain pretrial orders in murder and aggravated murder cases).

FN 2 See, e.g., ORS 469.403(3) (~~energy~~*[nuclear]* facility sit~~e~~*[ing]* certificates).

FN 3 See, e.g., **ORS 28.200 (questions of law certified by other courts)***[ORS 138.261(6) and ORS 138.045(2) (requiring expedited disposition on appeal to the Supreme Court of a pretrial order dismissing or setting aside the accusatory instrument or suppressing evidence in a murder case)]*.

Rule 12.40 (New)

**{DIRECT REVIEW OF STATUTES**

**When the legislature provides for direct review of a statute, except as otherwise provided by statute or court order:**

- (1) The petition shall, to the extent practicable, allege one or more claims for relief as provided in ORCP 18.**
- (2) A response to the petition shall be filed within 14 days after the petition is filed and shall, to the extent practicable, respond to the petitioner's claims for relief as provided in ORCP 19.**
- (3) The petitioner may file a reply to assert any affirmative allegations in avoidance of any affirmative defenses asserted in the response. A reply shall be filed within 14 days after the response is filed.**
- (4) No later than 14 days after the response described in paragraph (b) is filed, the parties shall confer about the facts necessary for the court's resolution of the legal and procedural issues, and the petitioner shall file a joint statement that:**
  - (a) Identifies all stipulated facts;**
  - (b) States whether any facts are disputed and, if so, explains the parties' respective positions as to those facts; and**
  - (c) Explains the parties' positions as to whether the court should appoint a special master.**
- (5) The time for filing briefs set out in ORAP 5.80 applies, except that the opening brief is due 49 days after the court settles the record.**
- (6) To the extent practicable, the rules set out in ORAP Chapter 5 apply to the form and content of any brief filed.**

## Clean Versions:

### Rule 12.05

#### DIRECT APPEAL, DIRECT JUDICIAL REVIEW, AND DIRECT REVIEW IN THE SUPREME COURT

- (1) This rule governs the following proceedings in the Supreme Court:
  - (a) Any direct appeal from a court of law<sup>1</sup>;
  - (b) Any direct judicial review of an agency order<sup>2</sup>; and
  - (c) Any other proceeding for which a statute provides for direct review in the Supreme Court.<sup>3</sup>
- (2) When a statute authorizes a direct appeal, except as otherwise provided by statute or another provision of these rules, the appeal shall be taken in the manner prescribed in ORAP Chapters 2 and 3, relating to appeals generally.
- (3) When a statute authorizes direct judicial review, except as otherwise provided by statute or another provision of these rules, the judicial review shall be initiated and conducted in the manner prescribed in ORAP Chapter 4, relating to judicial review of agency orders generally.
- (4) The case-initiating document for any proceeding described in subsection (1) shall state the statutory or other authority under which the proceeding is filed directly in the Supreme Court. Filing fees shall be assessed as provided in ORS 21.010.
- (5) On motion of a party or on the court's own initiative, the court may establish a special briefing schedule.

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FN 1 See, e.g., ORS 305.445 (tax court judgments and orders), ORS 662.120 (injunctions in labor dispute cases), and ORS 138.045(2) (certain pretrial orders in murder and aggravated murder cases).

FN 2 See, e.g., ORS 469.403(3) (energy facility site certificates).

FN 3 See, e.g., ORS 28.200 (questions of law certified by other courts).



**Rule 12.40 (New)**

**DIRECT REVIEW OF STATUTES**

When the legislature provides for direct review of a statute, except as otherwise provided by statute or court order:

- (1) The petition shall, to the extent practicable, allege one or more claims for relief as provided in ORCP 18.
- (2) A response to the petition shall be filed within 14 days after the petition is filed and shall, to the extent practicable, respond to the petitioner's claims for relief as provided in ORCP 19.
- (3) The petitioner may file a reply to assert any affirmative allegations in avoidance of any affirmative defenses asserted in the response. A reply shall be filed within 14 days after the response is filed.
- (4) No later than 14 days after the response described in paragraph (b) is filed, the parties shall confer about the facts necessary for the court's resolution of the legal and procedural issues, and the petitioner shall file a joint statement that:
  - (a) Identifies all stipulated facts;
  - (b) States whether any facts are disputed and, if so, explains the parties' respective positions as to those facts; and
  - (c) Explains the parties' positions as to whether the court should appoint a special master.
- (5) The time for filing briefs set out in ORAP 5.80 applies, except that the opening brief is due 49 days after the court settles the record.
- (6) To the extent practicable, the rules set out in ORAP Chapter 5 apply to the form and content of any brief filed.

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## RULE AS AMENDED (*Updated 3/9/20*):

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**Edited version** (new text in **braces/boldface/underscore**); omitted text in *[brackets/italics]*:

### Rule 12.05

#### DIRECT APPEAL<sub>{,}</sub>*[ OR ]* **DIRECT** JUDICIAL REVIEW<sub>{,}</sub> **AND DIRECT REVIEW** IN THE SUPREME COURT

**{(1)} This rule governs direct appeal, direct judicial review, and direct review proceedings in the Supreme Court.**

**{(2)}[1)]****{When}***[Where]* a statute authorizes a direct appeal from a court of law<sub>{,}</sub> *[to the Supreme Court,]*<sup>1</sup> 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.

**{(3)}[2)]****{When}***[Where]* a statute authorizes direct judicial review of an agency order<sub>[ or a legislative enactment by the Supreme Court]</sub>,<sup>2</sup> except as otherwise provided by statute **{ or rule of appellate procedure }**, 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.

**{(4)}[3)]**The **{case-initiating document}***[notice of appeal or petition for judicial review]* shall state the statutory authority under which **{the}***[a]* direct appeal<sub>{,}</sub> **{direct}** *[or ]*judicial review<sub>{,}</sub> **{or direct review proceeding}** is **{being}** taken **{directly}** to the Supreme Court. Filing fees shall be assessed as provided in ORS 21.010.

**{(5)} When the legislature provides for direct review of a statute, except as otherwise provided by statute or court order:**

**(a) The petition shall, to the extent practicable, allege one or more claims for relief as provided in ORCP 18.**

**(b) A response to the petition shall be filed within 14 days after the petition is filed and shall, to the extent practicable, respond to the petitioner's claims for relief as provided in ORCP 19.**

- (c) The petitioner may file a reply to assert any affirmative allegations in avoidance of any affirmative defenses asserted in the response. A reply shall be filed within 14 days after the response is filed.**
- (d) No later than 14 days after the response described in paragraph (b) is filed, the parties shall confer about the facts necessary for the court's resolution of the legal and procedural issues, and the petitioner shall file a joint statement that:**
- (i) Identifies all stipulated facts;**
  - (ii) States whether any facts are disputed and, if so, explains the parties' respective positions as to those facts; and**
  - (iii) Explains the parties' positions as to whether the court should appoint a special master.**
- (d) The time for filing briefs set out in ORAP 5.80 applies, except that the opening brief is due 49 days after the court settles the record.**
- (e) To the extent practicable, the rules set out in ORAP Chapter 5 apply to the form and content of any brief filed. }**

[(4) *When required to do so by statute, the court will expedite its disposition of the appeal or judicial review.*[FN 3]]

[(6)[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*].

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FN 1 See, e.g., ORS 305.445 (tax court judgments and orders), ORS 662.120 (injunctions in labor dispute cases), and ORS 138.045(2) (certain pretrial orders in murder and aggravated murder cases).

FN 2 See, e.g., ORS 469.403(3) (~~energy~~[*nuclear*] facility sit~~e~~[*ing*] certificates).

[3 *See, e.g., ORS 138.261(6) and ORS 138.045(2) (requiring expedited disposition on appeal to the Supreme Court of a pretrial order dismissing or setting aside the accusatory instrument or suppressing evidence in a murder case).*]

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## **RULE AS AMENDED (*Original Proposal*):**

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**Edited version** (new text in **{braces/boldface/underscore}**; omitted text in *[brackets/italics]*):

### **Rule 12.05**

DIRECT APPEAL{,}[ *OR*] JUDICIAL REVIEW{, **OR OTHER REVIEW**} IN THE SUPREME COURT

**{(1)} This rule governs direct appeal, direct judicial review, or other direct review proceedings in the Supreme Court.**

**{(2)}{[1]}****{When}***[Where]* a statute authorizes a direct appeal from a court of law{,} *[to the Supreme Court,]* FN 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.

**{(3)}{[2]}****{When}***[Where]* a statute authorizes direct judicial review of an agency order or a legislative enactment{,} *[by the Supreme Court,]* FN 2 except as otherwise provided by statute**{ or rule of appellate procedure}**, 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.

**{(4)}{[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.

**{(5)} When the legislature provides for direct review of a statute, unless the law provides otherwise:**

**(a) The petition for review shall:**

**(i) To the extent practicable, allege a claim for relief under ORCP 18; and**

**(ii) State whether a lower tribunal has developed a factual record that establishes sufficient factual findings necessary for the court's resolution of the legal and procedural issues; and**

**(iii) If the petitioner contends that a lower tribunal's factual record is not sufficient, allege any additional fact necessary for the court's resolution of the legal and procedural issues; or**

**(iv) If no lower tribunal has developed a factual record, allege all facts necessary for the court's resolution of the legal and procedural issues.**

**(b) The responsive pleading shall:**

**(i) Agree to or deny any fact alleged in the petition and otherwise, to the extent practicable, follow the standards set out in ORCP 19; and**

**(i) State whether it agrees with a statement in the petition of sufficient factual findings under subparagraph (a)(ii); and**

**(iii) If any party contends that a lower tribunal's record is not sufficient, or if no lower tribunal has developed a factual record, include any additional fact necessary for the court's resolution of the legal and procedural issues.**

**(c) Following the filing of the responsive pleading, if any fact is disputed, the court may direct the parties to confer and develop joint stipulated facts or otherwise identify any fact that remains in dispute that is necessary for the court to resolve the legal issues.}**

[(4) *When required to do so by statute, the court will expedite its disposition of the appeal or judicial review.[FN 3]*]

{6}[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.

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FN 1 See, e.g., ORS 305.445 (tax court judgments and orders), ORS 662.120 (injunctions in labor dispute cases), and ORS 138.045(2) (certain pretrial orders in murder and aggravated murder cases).

FN 2 See, e.g., ORS 469.403(3) (nuclear facility siting certificates).

[3 *See, e.g., ORS 138.261(6) and ORS 138.045(2) (requiring expedited disposition on appeal to the Supreme Court of a pretrial order dismissing or setting aside the accusatory instrument or suppressing evidence in a murder case).]*