

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 08-056  
Amendments to the Oregon Rules of ) Chief Judge Order 08-10  
Appellate Procedure )

**ORDER ADOPTING TEMPORARY RULE  
AND TEMPORARY AMENDMENTS**

Pursuant to ORAP 1.10(2), 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. The Supreme Court and Court of Appeals by this order adopt temporary Oregon Rule of Appellate Procedure 7.55 and temporary amendments to Oregon Rules of Appellate Procedure 7.15 and 9.05. The new rule is set out below in **boldface**. The amendments are set out below with additions indicated in **boldface** and deletions indicated in ~~strikeout~~. The new rule and amendments adopted by this order are effective October 15, 2008. The new rule and amendments adopted by this order shall expire on December 31, 2010, if not previously adopted as permanent amendments.

**RULE 7.55  
COURT OF APPEALS APPELLATE COMMISSIONER**

**(1) Except as otherwise provided in subsection (2) of this rule, the appellate commissioner for the Court of Appeals shall have authority to decide motions and own motion matters that otherwise may be decided by the Chief Judge under ORS 2.570(6).<sup>1</sup> The appellate commissioner shall have authority to decide any other matter that the Court of Appeals or Chief Judge lawfully may delegate for decision.**

**(2) The appellate commissioner does not have authority to decide a motion that would result in the disposition of a case on its merits, except as to:**

**(a) A joint or stipulated motion for a disposition on the merits, where the relief granted is consistent with the relief sought in the motion.**

**(b) A motion to reverse and remand for new trial under ORS 19.420(3) due to loss or destruction of the trial court record.**

**(c) A motion for summary affirmance to the same extent that the Chief Judge could decide the motion under ORS 30.647(3), ORS 34.712, ORS**

138.225, ORS 138.660, ORS 144.335(6), or any other statute authorizing summary affirmance.

(3) The appellate commissioner shall have the authority to refer any matter to the Chief Judge or the Motions Department, as appropriate.

(4) (a) A party may seek reconsideration of a decision of the appellate commissioner as provided by ORAP 6.25. If a party files a petition or motion for reconsideration of a ruling by the appellate commissioner, the appellate commissioner may consider the matter in the first instance. The appellate commissioner shall have the authority to grant a request for reconsideration and modify or reverse the result. However, if the appellate commissioner would deny the request or grant the request and affirm the result, the commissioner shall forward the request to the Chief Judge or the Motions Department, as appropriate, for decision.

(b) A decision of the appellate commissioner is not subject to a petition for review in the Supreme Court, but the decision of the Chief Judge or the Motions Department on reconsideration of a ruling of the appellate commissioner is subject to a petition for review. ORAP 6.25(3) is not applicable to a ruling of the appellate commissioner.

(5) As used in this rule, "own motion matter" includes but is not limited to an order to show cause why a case should not be dismissed for lack of jurisdiction or for lack of prosecution, an order of dismissal for lack of jurisdiction or lack of prosecution where the court has raised the ground for dismissal on its own motion, and an order for substitution of a public officer who is a party to the case where a new person has duly assumed the public office.

(6) As used in these rules, "Motions Department" means the Court of Appeals Motions Department.

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<sup>1</sup>The Chief Judge of the Court of Appeals established the Appellate Commissioner Program by Chief Judge Order No. 08-04, dated March 5, 2008. The order may be viewed on the Oregon Judicial Department's web site at: <http://www.publications.ojd.state.or.us/CJOrder0804.pdf>

### **Rule 7.15 DECISIONS ON MOTIONS**

(1) The Chief Justice or, **except as otherwise provided in ORAP 7.55**, the Chief Judge may determine any motion made before submission of a case to the court or

after the date of the decision or may refer the motion to any other judge or judges of the court for decision.

(2) Any motion filed after submission of a case, but before decision, shall be decided by the court or, in the Court of Appeals, may be decided by the department to which the case has been submitted.

(3) If any motion other than a challenge to the court's jurisdiction is denied before submission of the case, the motion may not be resubmitted without leave of the court in the order on the motion.

(4) Except for a ruling on an oral motion for extension of time under ORAP 7.27, the court will rule on a motion by written order.

**Rule 9.05**  
**PETITION FOR SUPREME COURT REVIEW OF**  
**COURT OF APPEALS DECISION**

(1) Reviewable Decisions

As used in this rule, "decision" means a decision of the Court of Appeals in the form of an opinion, per curiam opinion, or affirmance without opinion, or an order ruling on a motion, own motion matter, petition for attorney fees, or statement of costs and disbursements, **including an order of the appellate commissioner together with the decision of the Chief Judge or Motions Department under ORAP 7.55(4)(b).**

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

(a) 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 from the date of the Court of Appeals' decision. The Supreme Court may grant an extension of time to file a petition for review.<sup>1</sup>

(b) (i) If a timely petition for reconsideration of a decision of the Court of Appeals is filed 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.<sup>2</sup>

(c) (i) If the Administrator has issued the appellate judgment based on the Court of Appeals' disposition of a case, within a reasonable time thereafter, a party may move to reinstate the appeal for the purpose of seeking review. The party shall file in the Supreme Court a motion requesting relief from default, to reinstate the appeal, to recall the appellate judgment, and to establish a new due date for the petition for review.

(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.

### (3) Form and Service of Petition for Review

(a) The petition shall be in the form of a brief, prepared in conformity with ORAP 5.05, except that the petition shall not exceed 15 pages in length, and ORAP 5.35. The cover of the petition shall:

(i) Identify which party is the petitioner on review, including the name of the specific party or parties on whose behalf the petition is filed, if there are multiple parties on the same side in the case;

(ii) Identify which party is the respondent on review.

(iii) Identify the date of the decision of the Court of Appeals.

(iv) Identify the means of disposition of the case by the Court of Appeals:

(A) If by opinion, the author of the challenged opinion and the other members of the court who concurred in or dissented from the court's decision;

(B) If by per curiam opinion, affirmance without opinion, or by order, the members of the court who decided the case.<sup>3</sup>

(v) Contain a notice whether, if review is allowed, the petitioner on review intends to file a brief on the merits or to rely on the petition for review and brief or briefs filed in the Court of Appeals.<sup>4</sup>

(vi) For a case expedited under ORAP 10.15, prominently display the words "JUVENILE DEPENDENCY CASE EXPEDITED UNDER ORAP 10.15," "TERMINATION OF PARENTAL RIGHTS CASE EXPEDITED UNDER ORAP 10.15," or "ADOPTION CASE EXPEDITED UNDER ORAP 10.15," as appropriate.

(b) Any party filing a petition for review shall serve two copies of the petition on every other party to the appeal or judicial review, and file with the Administrator an original petition, marked as such, and 12 copies, together with proof of service.

(4) Contents of Petition For Review

The petition shall contain in order:

(a) A short statement of the historical and procedural facts relevant to the review, but facts correctly stated in the decision of the Court of Appeals should not be restated.

(b) Concise statements of the legal question or questions presented on review and of the rule of law that the petitioner on review proposes be established, if review is allowed.

(c) A statement of specific reasons why the legal question or questions presented on review have importance beyond the particular case and require decision by the Supreme Court.<sup>5</sup>

(d) If desired, and space permitting, a brief argument concerning the legal question or questions presented on review.

(e) A copy of the decision of the Court of Appeals, including the court's opinion and any concurring and dissenting opinions.

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<sup>1</sup> See generally ORS 2.520. See ORAP 7.25(2) regarding information that must be included in a motion for extension of time to file a petition for review.

<sup>2</sup> Paragraph (2)(b) of this rule does not apply to a motion for reconsideration filed under ORAP 6.25(5).

<sup>3</sup> See Appendix 9.05.

<sup>4</sup> See ORAP 9.17 regarding briefs on the merits.

<sup>5</sup> See ORAP 9.07 regarding the criteria considered by the Supreme Court when deciding whether to grant discretionary review. An assertion of the grounds on which the decision of the Court of Appeals is claimed to be wrong, without more, does not constitute compliance with this paragraph.

See ORAP 5.90(5) regarding filing a petition for review where a "*Balfour*" brief was filed on behalf of the appellant in the Court of Appeals.

DATED this 3rd day of October, 2008.

Paul J. De Muniz, Chief Justice

DATED this 1st day of October, 2008.

David V. Brewer, Chief Judge