

APPELLANT INSTRUCTIONS

District Court To Superior Court Appeals

Court staff generally can inform you about court procedures, court rules, court records, and forms. Court staff must remain neutral and impartial. They are not allowed to give legal advice. Court staff cannot:

- advise you how statutes and rules apply to your case,
- tell you whether the documents you prepare properly present your case,
- tell you what the best procedures are to accomplish a particular objective, or
- interpret laws for you.

If you need help with your case, you should talk to a lawyer.

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ALASKA COURT SYSTEM

Most of the forms referenced in this booklet are available on the court system's website: www.state.ak.us/courts/forms.htm

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INSTRUCTIONS FOR FILING AN APPEAL FROM THE DISTRICT COURT TO THE SUPERIOR COURT¹

NOTICE: Appeals to the superior court are governed by Appellate Rules 600-612. Appeals are complicated, and you should consider seeing a lawyer if you want to appeal.

I. DEFINITIONS

- A. **APPEAL.** An appeal is a review by a higher court (in this instance, the superior court) of a lower court's (the district court's) final decision or judgment. An appeal is not a new trial. The superior court will not accept any new evidence. The only information the superior court will consider on appeal is the following:
1. the electronic recording of the trial;
 2. any items offered as evidence at the trial;
 3. the documents in the court file; and
 4. legal briefs filed in the appeal.
- B. **APPELLANT.** The appellant is the party who files the appeal.
- C. **APPELLEE.** The appellee is the party who defends against the appeal.

II. COPIES TO OTHER PARTIES

The court rules require each party to send to all other parties a copy of any document which that party files with the court. Appellate Rule 602 (j) Proof that this has been done must be shown on or attached to each document you file. It is called proof of service. The forms which the court provides for your use include a certificate of distribution section which, if completed, will satisfy the requirement for proof of service. Note: If another party is represented by an attorney, the documents must be served on the attorney instead of the party.

¹ Appeals from the district court include formal civil appeals, small claims appeals, traffic and other minor offense appeals, criminal merit appeals and sentence appeals.

In a criminal, traffic or other minor offense case, you can appeal the district court's decision to either the superior court or the court of appeals. These instructions discuss only the procedures for an appeal to the superior court. The procedures for appealing to the court of appeals are significantly different. For example, the time limit for filing an appeal on the merits is 15 days rather than 30. Appellate Rule 217. You should contact an attorney if you wish to appeal to the court of appeals. Also see footnote 2 about petitions to the Supreme Court for review of sentences.

III. TO FILE AN APPEAL

A. Who may file an appeal.

1. Criminal Sentence Appeal

Any defendant convicted of a misdemeanor who is sentenced to serve more than 120 days in jail may file a sentence appeal on the ground that the sentence is excessive.² Upon such an appeal, the court may reduce or increase the sentence.

2. All Other Appeals From the District Court

Any party in a court case who believes that a) the court applied the law incorrectly, and/or b) the decision or judgment was not supported by the evidence presented, may file an appeal.

B. When must an appeal be filed.

A notice of appeal must be filed within 30 days from the date shown in the clerk's certificate of distribution at the bottom of the judgment or final order. Appellate Rule 602(a)(1) If you want to file a notice of appeal after the 30 days, you must file a Request and Order (form AP-135) asking the court to accept your late-filed appeal. Your request must state why your appeal is late. File your request at the time you file your notice of appeal.

C. How to File an Appeal.

To file an appeal, do the following:

1. Notice.

File a Notice of Appeal (form AP-100) with the superior court.³ The nearest court can tell you the superior court in which your appeal must be filed.

You must attach a copy of the district court judgment.⁴

2. Filing Fee.

You must either:

- a. pay a \$40 filing fee (make your check or money order payable to "Clerk of Court"); or

² A misdemeanor defendant sentenced to serve 120 days or less in jail may seek review of the sentence by filing a petition for review in the supreme court. The supreme court may or may not agree to review the sentence. The procedures for filing this petition are described in Appellate Rules 403(h) and 215. A notice of intent to file this petition must be filed with the clerk of the appellate courts within 10 days after the date shown in the clerk's certificate of distribution at the bottom of the judgment. If the judgment was mailed to you, you have an additional three days to file your notice. You should contact an attorney for help if you want to do this.

³ See Appellate Rule 602(b)(1) about venue for appeals.

⁴ Appellate Rule 602(c)(1)(D)

- b. if you cannot afford to pay the filing fee, you may file a Request and Order (form AP-135) asking the court to waive the filing fee. A financial statement (form CR-206) must be filed with the request. File your request at the time you file your notice of appeal.

3. Bond.

No bond is required for sentence, traffic or criminal merit appeals. In appeals from civil and small claims cases, you must file one of the following at the time you file your notice of appeal:

- a \$750 cost bond; or
- a motion to waive or reduce cost bond; or
- a supersedeas bond.

a. \$750 Cost Bond.

The purpose of filing a cost bond is to make sure the opposing party's costs to defend the appeal (attorney fees, etc.) will be paid by you if the appeal is dismissed or if you lose the appeal.

IMPORTANT NOTICE: Filing a cost bond will not stop the creditor from seizing your property to collect the judgment. To do this, you must file a supersedeas bond as described in paragraph c below.

To meet the cost bond requirement, you can either file a surety bond or make a cash deposit as described below:

- (1) Surety Bond. This is a document which guarantees payment of money if certain things occur. The person or company that writes the bond is called the surety. The surety guarantees the payment by becoming liable (responsible) for it. Such bonds are generally available from insurance companies or third parties qualified to write surety bonds. There will be a fee. The court system does not provide forms for surety bonds.
- (2) Cash Deposit. If you want to make a cash deposit with the court instead of filing a surety bond, complete the Cash Deposit on Appeal (form AP-110). Check the first box on the form, fill out the rest of it, acknowledge it before a court clerk or notary public and give it to the clerk along with your money.

b. Motion to Waive or Reduce Cost Bond.

Appellate Rule 204(c)(1) requires that the cost bond be for \$750 unless the superior court fixes a lesser amount.

If you think this amount is unnecessarily high because the expected appeal costs (including attorney fees) for the appellee will be considerably less than \$750, you may file:

- (1) a Motion to Waive or Reduce Cost Bond (form AP-120); and
- (2) an Order Re Cost Bond (form AP-130).

If you believe you cannot afford to post a \$750 cost bond, you may file:

- (1) a Motion to Waive or Reduce Cost Bond (form AP-120);
- (2) an Order Re Cost Bond (form AP-130); and
- (3) a Financial Statement (form CR-206).

The court will notify you of its decision. If the court orders a cost bond to be posted, you must file a surety bond or cash deposit in the amount set by the court or your appeal will be dismissed.

c. **Supersedeas Bond.**

If you want the court to stay execution of the judgment against you while your appeal is pending, you must file a supersedeas bond in the district court. A "stay of execution" means the court will not issue any court orders (called "writs of execution") allowing your money or property to be seized to pay the judgment.

The purpose of a supersedeas bond is to make sure that not only the opposing party's appeal costs but also the judgment will be paid by you if you lose your appeal or if your appeal is dismissed.

(1) **Filing a Supersedeas Bond**

The amount of the supersedeas bond is 125% of the district court judgment. Appellate Rule 603. You must file the supersedeas bond with a Request for Approval of Supersedeas Bond (form AP-115) in the district court which entered the judgment. You must serve a copy of the request and bond on opposing parties. The district court will notify you of its decision. You must also give a copy of your request to the superior court when you file your notice of appeal.

The stay becomes effective the day the bond is approved. Prior to approval of the bond or if the bond is not approved, no stay is in effect and the opposing party may request an execution against your money or property.

To meet the supersedeas bond requirement, you may either file a surety bond or make a cash deposit in the required amount.

- (a) Surety Bond. This is a document which guarantees payment of money if certain things occur. The person or company that writes the bond is called the surety. The surety guarantees the payment by becoming liable (responsible) for it. Such bonds are generally available from insurance companies or third parties qualified to write surety bonds. There will be a fee. The court system does not provide forms for surety bonds.
- (b) Cash Deposit. If you want to make a cash deposit with the court instead of filing a surety bond, complete a Cash Deposit on Appeal (form AP-110). Check the second box on the form, fill out the rest of it, acknowledge it before a court clerk or notary public and give it to the district court clerk along with your money.

(2) Request to Waive or Reduce Amount of Supersedeas Bond.

If you think 125% of the judgment is unnecessarily high because the expected appeal costs (including attorney fees) for the appellee will be considerably less than 25% of the judgment, you may file a Motion to Waive or Reduce Supersedeas Bond. Form AP-135 may be used.

If you believe you cannot afford to post 125% of the judgment, you may file:

- (a) a Motion to Waive or Reduce Supersedeas Bond (form AP-135 may be used); and
- (b) a Financial Statement (form CR-206).

The court will notify you of its decision. If the court orders a supersedeas bond to be posted, you must file a surety bond or cash deposit in the amount set by the court before the judgment will be stayed.

d. Return of Bond After Appeal.

After the appeal is decided, the court will send you and the appellee a notice that the bond will be released unless there is an objection. If you lose your appeal, the appellee may file an objection to the release of the bond or may request that the bond be applied to appellee's costs and to pay the judgment.

If no objection is filed by the appellee, the bond will be released and any cash deposit returned to you.

IV. FURTHER PROCEEDINGS

A. Assignment of Judge.

After you have filed your Notice of Appeal, the court will notify you of the name of the judge assigned to your appeal.

B. Briefing Schedule.

A legal brief or memorandum is a document which explains your side of the case to the judge. (In an appeal to the superior court from the district court, you may file a memorandum instead of a brief.) When the case is ready for briefing, the court will send you and the appellee a Notice Setting Appeal Procedure (form AP-305). This form will tell you the time schedule for filing memoranda and requesting oral argument.

You must file a memorandum within the time limit set by the court or your appeal may be dismissed. If you cannot file your memorandum in the time limit set in the Notice, you must file a Request and Order (form AP-135) asking the court for an extension of time.

Your memorandum must include:

- a. a statement of the issues presented for review,
- b. a summary of the facts,
- c. a discussion of the law and its application to the facts, and
- d. a short conclusion stating the precise relief sought.

Your memorandum must be typed or printed (using black ink), double spaced on 8 1/2" x 11" white paper. The illustration on page 9 shows what the cover of your memorandum should look like. If you wish, you may detach this page and use it as the cover of your memorandum.

For a complete description of the requirements for your memorandum, including limits on length, see Appellate Rule 605(b).

To help you prepare your memorandum, you may want to listen to an electronic recording of the district court proceedings. You can get a copy of the electronic recording by contacting the superior court appeals clerk. You must pay \$10 per transcript.⁵ You should make this request as soon as possible because it may take several days to prepare your recording.

You must send a copy of your memorandum to the appellee and file proof of service. You may show proof of service by filling in the certificate of service shown on the attached sample memorandum cover.

⁵ Administrative Rule 9(d)

C. Oral Argument.

Any party may request oral argument before the superior court judge assigned to the appeal. At oral argument, each party may argue the issues on appeal. Oral argument is not a new trial. No witnesses may be called. The time allowed for oral argument, unless otherwise ordered, will be 15 minutes per side.

All requests for oral argument must be filed within 10 days after the date on which appellant's reply memorandum is due. However, if appellee does not file a memorandum (in which case there can be no appellant's reply memorandum), your request for oral argument must be filed within 10 days after the due date of appellee's memorandum. In a sentence appeal, your request must also be filed within 10 days after the date on which appellee's sentence memorandum is due. If the opposing party requests oral argument, you may not object to the request. (Appellate Rule 605.5)

1. In the following cases oral argument will be allowed only if the superior court judge decides there is a good reason to have it:
 - a. if the appeal arises from a civil or small claims matter where the controversy on appeal concerns less than \$300, or
 - b. if the appeal is from a minor offense as defined by District Court Criminal Rule 8(b) [for example a traffic infraction].

In these instances, you may file a Request and Order (form AP-135) requesting oral argument and explaining why oral argument is necessary. The court will notify you whether your request is granted or denied.

2. In all other appeals, if the request is timely filed, oral argument will automatically be scheduled. The request must be in writing but does not need to state why oral argument is necessary. Use form AP-135 to request oral argument.

If your request is not timely filed, you must file a request to accept a late-filed request for oral argument. Form AP-135 can be used. The request must explain why your request for oral argument was not timely filed.

If you file a request for oral argument, you must serve a copy of your request on opposing parties. Proof of service must be filed with the request.

V. DECISION

The superior court will decide the appeal based on the record, the briefs or memoranda submitted and oral arguments (if held). All parties will be sent a copy of the court's decision. The decision may:

- affirm (agree with) the district court,
- remand (send the case back for additional action by the district court),
- reverse the decision made by the district court, or
- dismiss your appeal.

VI. AWARD OF ATTORNEY FEES AND COSTS

In civil and administrative appeals, Appellate Rule 508 determines who may apply for costs and attorney fees at the conclusion of the appeal. Generally, you may apply for costs and attorney fees if the district court judgment is reversed.

If you win your appeal, the procedure for requesting costs and attorney fees is as follows:

- A. The clerk will send the parties a copy of the appeal decision and a Notice Re Costs and Attorney Fees on Appeal, form AP-333.
- B. Costs. In order to recover costs, you must file a verified⁶ and itemized bill of costs within 10 days after the date shown in the clerk's certification of distribution on the appeal decision. If the decision was mailed to you, you have an additional three calendar days to file your bill of costs. The only costs you may ask for are:
 - 1. filing fee
 - 2. the cost of preparation of transcripts or electronic recordings
 - 3. the cost of duplicating and mailing briefs or memoranda
 - 4. premiums for any cost bond or supersedes bond

You must serve a copy of your bill of costs on the appellee, who has seven days to file objections. The clerk will then decide what costs to award and send both parties a copy of the decision.

- C. Attorney Fees. To request attorney fees, you must file a request or motion for attorney fees. You can use form AP-135. You must send a copy of the request to the appellee, who has seven days to file objections. The court will send you a copy of the judge's written award of attorney fees. Normally, actual attorney fees are not awarded. However, the court may award actual attorney fees to the appellee if the court determines that an appeal is frivolous or that it has been brought simply for purposes of delay.
- D. Request for Reconsideration. If you do not agree with the award of costs or attorney fees, you may file a request or motion for reconsideration within 10 days after notice of the award was sent to you. You can use form AP-135. You must send a copy of the request to the appellee, who has seven days to file objections. The court will send you a copy of the court's decision on the request for reconsideration.
- E. Collecting Costs and Attorney Fees. If you win an award of costs or attorney fees and the appellee does not pay voluntarily, you may ask the clerk for a writ of execution to collect from the appellee the amount owed to you.

⁶ "Verified" means your cost bill must include a statement signed by a clerk of court or notary public that you have sworn or affirmed that the information in the cost bill is true. See Alaska Statute 09.63.030 for the wording of a verification.

