

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 1015

Amending Appellate Rules 601-612
concerning appeals to superior
court.

IT IS ORDERED:

Appellate Rules 601-612 are amended to provide:

PART VI. SUPERIOR COURT AS AN APPELLATE COURT

Rule 601. Scope of Part Six.

(a) Part Six of these rules (Rules 601 through 612) applies to requests to the superior court to review decisions of the district court or an administrative agency under AS 22.10.020(d) and AS 22.15.240(a), either by appeal or by petition for review.

(b) On any point not addressed in Part Six, procedure in appeals to the superior court is governed by the provisions of Parts Two and Five of these rules, and procedure in petitions for review to the superior court is governed by the provisions of Part Four of these rules.

Rule 602. Time-Notice-Bonds.

(a) When Taken.

(1) Appeals from the District Court. An appeal may be taken to the superior court from the district court within 30 days from the date shown in the clerk's certificate of distribution on the judgment.

(2) Appeals from Administrative Agencies. An appeal may be taken to the superior court from an administrative agency within 30 days from the date that the decision appealed from is mailed or otherwise distributed to the appellant. If a request for agency reconsideration is timely filed before the agency, the notice of appeal must be filed within 30 days after the date the agency's reconsideration decision is mailed or otherwise distributed to the appellant, or after the date the request for reconsideration is deemed denied under agency regulations, whichever is earlier.

(3) Rule 204(a)(2)-(6) concerning the timing of appeals applies to appeals to superior court.

(b) Notice of Appeal.

(1) A party may appeal from a judgment or agency decision by filing a notice of appeal with the superior court. The notice of appeal must specify the parties taking the appeal and their current addresses, designate the judgment, agency decision or part thereof appealed from, and name the court to which the appeal is taken. The notice of appeal must be accompanied by proof of service on all other parties to the action in the district court or agency. At the time the notice of appeal is served and filed, it must be accompanied by:

[a] a statement of points on which appellant intends to rely on appeal. The grounds for appeal stated in the statement of points on appeal constitute the sole basis for review by the superior court. On motion in the superior court, and for cause, the statement of points may be supplemented;

[b] if required, the filing fee as provided by Administrative Rule 9; and

[c] if required, a bond for costs on appeal as provided by paragraph (d) of this rule.

(2) An appellant seeking to have the cost bond waived or reduced, an extension of time to file the bond, or to appeal at public expense shall file an appropriate motion at the time the notice of appeal is filed.

(3) The clerk of the superior court shall refuse to accept for filing any notice of appeal not conforming with the requirements of this rule.

(c) Notification by Clerk.

(1) In an appeal from a district court which is not at the same location as the superior court, the clerk shall send a copy of the notice of appeal to the district court and shall notify the district court of the date by which it must forward the record on appeal as provided by Rule 604(a)(2).

(2) In an appeal from an administrative agency, the clerk shall send a copy of the notice of appeal to the agency and request the agency to submit a list of the names and addresses of all counsel who appeared in the matter before the agency, and of all persons who appeared therein pro se. The agency shall file the list with the clerk within ten days of service of the request. The clerk also shall notify the agency of the date by which it must prepare the record in accordance with Rule 604(b)(2).

(d) Cost Bond.

(1) In a civil case or an appeal from an administrative agency, unless a party is exempted by law, or has filed an approved

supersedeas bond under Rule 603(a)(2), a bond for costs on appeal must be filed in superior court with the notice of appeal. The amount and terms of the bond are governed by Rule 204(c)(1) and Civil Rule 80.

(2) The cost bond exemptions provided by Rule 204(c)(2) apply in appeals to superior court.

(e) Supersedeas Bond. The appellant may file a supersedeas bond pursuant to Rule 603(a)(2) in lieu of a cost bond.

(f) Cash Deposit. The appellant may deposit cash in the amount of the bond with the court in lieu of filing a cost or supersedeas bond. At the time of the deposit, appellant also shall file a written instrument properly executed and acknowledged by the owner of the cash, or by the owner's attorney or the owner's authorized agent, setting forth the ownership of the fund; agreement to the terms of Civil Rule 80(f); and satisfaction of the conditions specified in Rule 204(c)(1) if the deposit is in lieu of a cost bond, or Rule 204(d) if the deposit is in lieu of a supersedeas bond.

Rule 603. Stays.

(a) Civil Appeals.

(1) Automatic Stay. An automatic two day stay of execution or enforcement of district court judgments is provided for in District Court Civil Rule 24(a). A motion for stay and bond are not required for this stay.

(2) Stay Upon Appeal - Supersedeas Bond.

[a] Stay. When an appeal is taken, the appellant may obtain a stay of proceedings to enforce the judgment by filing a supersedeas bond. The stay is effective when the supersedeas bond is approved. The filing of a supersedeas bond does not prohibit the court from considering the public interest in deciding whether to impose or continue a stay on that portion of an administrative or district court judgment which is not limited to monetary relief.

[b] Request for Approval. A supersedeas bond, with a Request for Approval of Supersedeas Bond, must be served and filed with the district court, or with the superior court in administrative appeals. The bond may be filed at or after the time for filing the notice of appeal.

[c] Amount and Form. The amount of the supersedeas bond is 125% of the district court or administrative agency judgment (including any prejudgment interest, costs and attorney's fees), except that the court may specify a different amount based on the standard provided by Rule 204(d) upon motion by any party to the appeal. The form and conditions of the bond are governed by Civil Rule 80 and Appellate Rule 204(d).

[d] Objections - Reconsideration. An appellee may by motion raise objections to the form or amount of the bond or to the sufficiency of the surety. However, approval of the bond will not be delayed to allow objections to be filed. Objections filed after the supersedeas bond has been approved will be treated as a motion to rescind or modify the approval to be decided by the judge.

[e] Approval. The clerk may approve a supersedeas bond upon filing if: (i) the bond is in the form prescribed above; (ii) the amount of the bond is 125% of the judgment or, if the judge has ordered a different amount, in the amount ordered by the judge; and (iii) the bond is in cash pursuant to Rule 602(f) or is executed by approved surety companies. Otherwise, the judge must decide whether to approve the bond.

[f] Exemption. The state or an officer or agency thereof or a municipality or an officer or agency thereof desiring a stay on appeal is exempt from the requirement of filing a supersedeas bond.

(3) Stay in Workers' Compensation Appeals. An employer appealing to the superior court from a judgment of the Alaska Workers' Compensation Board may obtain a stay of the judgment pending the appeal by complying with subparagraph (a)(2) and by establishing that irreparable damage will result if the stay is not granted.

(4) Proceedings on Stay. When an appeal is taken, the district court judge or magistrate shall enter a written order indicating whether or not the proceedings to enforce a judgment have been stayed. If the proceedings are stayed, and process has been issued to enforce the judgment, the judge or magistrate must recall the process by written notice to the officer holding the process. Thereupon the process must be returned to the court, and all property seized or levied upon by virtue of such process must be released if it has not been sold, and in cases of civil arrest, the person arrested must be released from custody. This subdivision of this rule will not be construed as making any stay retroactive or as invalidating any proceedings or levies prior to the time the stay becomes effective.

(b) Criminal Appeals. If a sentence of imprisonment is imposed, admission to bail will be allowed and the sentence stayed, pending appeal. A sentence to pay a fine or a fine and costs may be stayed, if an appeal is taken, by the district judge or magistrate or by the superior court upon such terms as the court deems proper. During appeal the court may require the defendant to deposit the whole or any part of the fine and costs in the registry of the superior court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make an appropriate order to restrain the defendant from dissipating his or her assets. An order placing the defendant on probation will be stayed if an appeal is taken.

Rule 604. Record.

(a) Appeals from District Court.

(1) Preparation of Record.

[a] The record on appeal consists of the entire district court file, including the original papers and exhibits filed in the district court, and the record of proceedings before the district court, unless otherwise ordered by the court or unless the parties designate an abbreviated record. A party is not required to submit a designation of the record unless the court so requires.

[b] The record of proceedings before the district court will include cassette tapes rather than transcripts unless the superior court orders the submission of transcripts. Otherwise, the record on appeal must be prepared and certified in conformity with Rule 210. The papers in the record need not be

numbered, and the superior court clerk's certificate attached to the record need not include a table of contents.

[c] The clerk of the superior court shall prepare the record on appeal. In the absence of an agreement between the parties or an order of the court to the contrary, all reasonable costs incurred in connection with preparing the record on appeal or a cross-appeal will be borne by the appellant.

(2) Time. The record must be prepared and certified within 40 days from the date of filing of the notice of appeal.

(3) Power of Court to Correct or Modify Record of District Court. If any differences arise as to whether the record on appeal truly discloses what occurred in the district court, the difference must be submitted to and settled by the superior court and the record made to conform to it. If anything material to either party is omitted from the record on appeal by error or accident or is misstated therein, the parties by stipulation, or the superior court on motion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be prepared and certified in accordance with this rule.

(4) Return of Record and Appellate File after Final Disposition. Unless the court otherwise orders, the clerk shall return the record and appellate file after final disposition to the district court as provided by Rule 512(a)(2).

(b) Appeals from Administrative Agencies.

(1) Preparation of Record.

[a] The original papers and exhibits filed with the administrative agency, and a typed transcript of the record of proceedings before the agency, constitute the record on appeal unless otherwise ordered by the court or unless the parties designate an abbreviated record. In an appeal from the revocation of a driver's license by the Division of Motor Vehicles, the record of proceedings will include cassettes rather than transcripts unless otherwise ordered by the court. A party is not required to submit a designation of the record unless the court so requires.

[b] The record on appeal must be prepared and certified in conformity with Appellate Rule 210, except as otherwise provided in this rule.

[c] The administrative agency shall prepare the record on appeal. In the absence of an agreement between the parties or an order of the court to the contrary, all reasonable costs incurred in connection with preparing the record on appeal shall be borne by the appellant. The preparing agency may require advance payment of the costs as reasonably estimated by the agency.

(2) Time. The record must be prepared and certified by the agency within 40 days from service of notice by the court that the agency is to prepare the record.

(3) Notice of Certification of the Record. Immediately upon completion, the agency shall forward the record to the superior court. The court shall notify the parties that the record has been prepared and certified by the agency and is available at the court.

(4) Return of Record and Appellate File after Final Disposition. If a timely appeal from the superior court decision is filed and unless the court otherwise orders, the clerk shall

return the record after final disposition to the administrative agency as provided by Rule 512(a)(3). If a timely appeal is not filed, the clerk shall return the record to the agency on the day after the time for filing an appeal expires. The appellate file will be retained by, or returned to, the superior court.

Rule 605. Briefs and Memoranda.

(a) Appeals from Administrative Agencies. Unless the superior court orders to the contrary:

(1) the time for service and filing briefs is governed by Rule 212(a)(1), except that the time for filing the appellant's brief begins when the superior court clerk notifies the parties of certification of the record pursuant to Rule 604(b)(3);

(2) The form of briefs is governed by Rule 212(b), except the briefs must be two-hole punched at the center of the top of each page rather than bound, the brief covers need not be on colored paper, and the briefs may be in clear and legible black printing rather than typewritten;

(3) the substantive requirements of briefs are governed by Rule 212(c); and

(4) the filing of a single copy of the brief with proof of service is sufficient, without the necessity of duplication as provided by Rule 212(a)(2) and (3).

(b) Appeals from District Court. Unless the superior court orders to the contrary, the parties may file memoranda on appeal as specified by this paragraph instead of briefs. Unless otherwise ordered:

(1) the time for service and filing of memoranda is governed by Rule 212(a)(1);

(2) the form of memoranda is governed by Rule 513.5;

(3) the length of appellant's and appellee's opening memoranda may not exceed 20 numbered pages, and the length of appellant's reply memoranda may not exceed 10 numbered pages;

(4) the memoranda must include a statement of issues presented for review, a summary of facts, a discussion of the law and its application to the facts, and a short conclusion stating the precise relief sought;

(5) the filing of a single copy of the memoranda with proof of service is sufficient without the necessity of duplication as provided by Rule 212(a)(2) and (3); and

(6) the consequences of submitting defective memoranda or the failure to file memoranda, and the citation of supplemental authorities are governed by Rule 212(c)(10)-(12).

Rule 605.5. Oral Argument.

(a) Request. Either party may serve and file a written request for oral argument not later than 10 days after the date on which appellant's reply brief or memorandum is due, pursuant to Rule 605, or pursuant to any extension of that time granted under Rule 502 or 503. If no appellee's brief or memorandum is filed, the appellant's request for oral argument must be filed within 10 days after the due date of the appellee's brief or memorandum. No response to a request for oral argument may be filed.

(b) Right to Oral Argument. In an appeal from a civil case where the controversy on appeal concerns less than \$300 or from a minor offense as defined by District Court Criminal Rule 8(b), oral argument will be scheduled only if ordered by the superior court for good cause shown. In all other appeals, oral argument will be scheduled automatically if timely requested by either party.

(c) Time Allowed. The time allowed for oral argument, unless otherwise ordered, is 15 minutes per side.

Rule 606. Dismissal.

(a) By Parties or Court. Dismissal of appeals by parties is governed by Rule 511. Dismissal of appeals by the superior court or clerk of the superior court is governed by Rule 511.5.

(b) Nonpayment of Costs. If the costs for preparation of the record or transcript on appeal are not paid within 30 days of notification that such costs are due, the appeal may be dismissed by the superior court on its own motion or on the motion of opposing counsel.

Rule 607. Conflicts with Other Procedures in Administrative Appeal

These rules supersede all other procedural methods specified in Alaska statutes for appeals from administrative agencies to the courts of Alaska.

Rule 608. Sentence Appeal.

A sentence appeal to the superior court is governed by Rule 215. That rule will in case of inconsistency prevail over Part Six of these rules, except that as provided by Rule 604(a) the record

on appeal consists of the entire district court record and designation of the record is not required.

Rule 609. Powers of the Superior Court.

(a) Powers of Superior Court. After notice of appeal to the superior court has been given, the superior court may make such orders as are necessary and proper to aid its appellate jurisdiction.

(b) De Novo Trial.

(1) In an appeal from an administrative agency, the superior court may in its discretion grant a trial de novo in whole or in part. If a trial de novo is granted, the action will be considered as having been commenced in that court at the time that the record on appeal is received by the superior court.

(2) All further proceedings in such action are governed by the rules governing procedure in the superior court, except that no summons nor any amended or additional pleadings shall be served unless authorized or required by the court. The hearing or trial of the action shall be upon the record thus filed and upon such evidence as may be produced in the superior court.

(c) Change of Judge as a Matter of Right.

(1) Any party to an appeal from an administrative agency to the superior court may peremptorily challenge the judge to whom the appeal is assigned, pursuant to the limitations and procedures in Civil Rule 42(c). The notice of change of judge is timely if filed within five days after notice to the party of the assignment.

(2) No peremptory challenge of the judge to whom an appeal is assigned is allowed in an appeal from the district court to the superior court.

Rule 610. Petitions for Review of Non-appealable Orders or Decisions.

(a) When Available. An aggrieved party, including the State of Alaska, may petition the superior court to review any order or decision not appealable under Rule 602 of a district court or of an administrative agency in a proceeding in which the superior court has appellate jurisdiction.

(b) When Granted. Review is not a matter of right, but will be granted only when the sound policy behind the general rule of requiring appeals to be taken only from final judgments is outweighed because:

(1) postponement of review until appeal may be taken from a final judgment will result in injustice because of impairment of a legal right or because of unnecessary delay, expense, hardship or other related factors;

(2) the order or decision involves a controlling question of law on which there is a substantial ground for difference of opinion, and an immediate review of the order may materially advance the termination of the proceedings in the other forum; or

(3) the district court so far departed from the accepted and usual course of judicial proceedings, or the administrative agency has so far departed from the accepted and usual course of

administrative adjudication, as to call for the superior court's power of supervision and review.

Rule 611. Petitions for Review - Procedure.

(a) Filing.

(1) A petition for review of a district court order or decision, with the filing fee, must be filed with the clerk of the superior court within 10 days after the date of notice of the challenged order or decision, along with proof of service on all parties. Date of notice is defined in Civil Rule 58.1(c) and Criminal Rule 32.3(c). The clerk of the superior court shall proceed in accordance with Rule 403(a)(4).

(2) A petition for review of an order or decision of an administrative agency, with the filing fee, must be filed with the clerk of the superior court within 10 days after the date of mailing or other distribution of the order or decision, along with proof of service on all parties. A copy of the petition for review must be served on the administrative agency.

(3) A judge of the superior court, for good cause shown, may extend the time for filing. The party seeking review will be known as the petitioner. All other parties to the proceedings will be named as respondents.

(b) Other Matters.

(1) Cross Petitions and Petitions for Review of Multiple Orders may be filed in accordance with the provisions of Appellate Rule 403(a)(2) and (3).

(2) The Petition or Cross Petition shall conform to Appellate Rule 403(b) through (e), except that the statement of reasons why review should be granted is governed by Rule 610.

(c) Consideration by the Court. The court shall determine whether to grant or deny the petition within ten days after the day on which the response is due. The court shall consider the merits of any petition granted as soon as practicable, and unless otherwise ordered, without oral argument, and on the basis of the memoranda and supporting documents submitted by the parties. The court, on request or on its own motion, may require submission of whatever additional portions of the record it considers necessary, or may order supplementation of the record through oral testimony or otherwise.

(d) Stay.

(1) Judicial Proceeding. When a petition for review has been filed, the superior court in its discretion may stay further proceedings by the district court and the operation or enforcement of the order or decision sought to be reviewed upon such terms as to bond or otherwise as the court considers proper for the security of the rights of the adverse party.

(2) Administrative Proceeding. When a petition for review has been filed, the superior court may stay further proceedings in an administrative agency and the operation or enforcement of the order or decision sought to be reviewed when the party seeking review establishes that irreparable injury will result if the stay is not granted.

(e) Relief Available. Upon consideration of a petition for review, the superior court may affirm, modify, vacate, set aside or reverse any order or decision of a district court, and may remand

the action or proceeding and direct the entry of such appropriate judgment or order, or require such further proceedings to be had, as may be just under the circumstances.

Rule 612. Motions and Authority of the Clerk.

(a) Applicability of Rule 503. Motions to the superior court are governed by Rule 503, except as provided below.

(b) Motions Determined by the Clerk. The clerk may approve a supersedeas bond pursuant to Rule 603(a)(2)[e]. The superior court clerk may rule upon the following motions, if unopposed, without reference to the judge assigned to the appeal:

(1) motions for extensions of time for filing briefs as provided by paragraph (c) below;

(2) motions for extension of time for transmitting the record in administrative appeals;

(3) an appellant's motion to dismiss the appeal; and

(4) motions to supplement the record if filed prior to the filing of any brief.


(c) Length of Extensions. The clerk may not grant extensions totalling more than 30 days for the appellant's brief, 30 days for the appellee's brief, and 15 days for the appellant's reply brief. The clerk may not determine a motion for extension of time to file a document if the time period specified in these rules for filing the document, including any previous extensions, has already expired when the motion is filed.

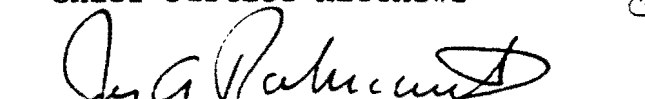
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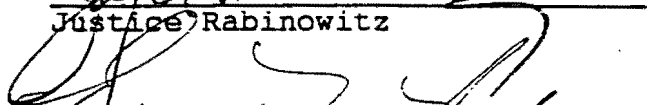
(d) Reconsideration of Clerk's Order. A party who is aggrieved by the decision of the clerk on a motion may file a motion for reconsideration of the clerk's order. This motion will be determined by the judge assigned to the appeal.


DATED: October 12, 1989

EFFECTIVE DATE: January 15, 1990


Chief Justice Matthews


Justice Rabinowitz


Justice Burke

Justice Compton

Justice Moore