

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1748

Amending Probate Rule 20 and
Appellate Rule 220 concerning
judicial bypass procedures to
conform rules with AS 18.16.010 -
.030.

IT IS ORDERED:

1. Probate Rule 20(a) is amended to read as follows:

Rule 20. Judicial Bypass Procedure to Authorize Minor to Consent to an Abortion.

(a) **Petition.** An action for an order authorizing a minor under age ~~17~~ 18 to consent to an abortion without notice to or the consent of a parent, guardian, or custodian is commenced by filing a petition. The petition must be under oath and must include the information required by AS 18.16.030(b). The petitioner is not required to provide an address or telephone number. Blank petition forms will be available at all court locations, on the court system website, and will be mailed, emailed, or faxed to a petitioner upon request. No fee will be charged for this service or other services provided to a petitioner.

(b) **Filing.** The petition may be filed in any district or superior court location in person, by mail, by email, or by fax. No filing fee will be charged. If a petition is filed in a district court location, the clerk or magistrate shall immediately notify the clerk of the nearest superior court and fax the petition to that court, ~~unless~~

~~the local judicial officer has been appointed as a master to conduct these proceedings.~~

(c) **Appointment of Counsel.** If the petitioner is not represented by a private attorney, the clerk shall appoint the Office of Public Advocacy to represent the petitioner. The clerk shall immediately notify the Office of Public Advocacy of the appointment.

(d) **Expedited Hearing.** Upon receipt of the petition, the court shall schedule a hearing to be held within 48 hours, including weekends and holidays, after the petition is filed. At the hearing, the court shall follow the procedure specified in AS 18.16.030(e)-(g). Upon request, the petitioner will be allowed to participate telephonically at court system expense.

(e) **Findings and Order.** The court shall enter an order immediately after the hearing is concluded. The court shall grant the petition if the court finds by clear and convincing evidence that one of the statutory grounds for dispensing with parental notice or consent exists. Otherwise, the court shall deny the petition. If the petition is denied, the court shall inform the petitioner of her right to an expedited appeal to the supreme court.

(f) **Constructive Order.** If the court fails to hold a hearing within five days after the petition is filed, the presiding judge of the judicial district, or another judge designated by the presiding judge, shall issue a certificate stating that (1) no hearing was held within five business days after the petition was filed; and (2) under AS 18.16.030(c), the failure to hold a hearing constitutes a constructive order of the court authorizing the minor to consent

to an abortion without notice to or the consent of a parent, guardian, or custodian. A certificate should not be issued if the hearing was not held because it was postponed at the petitioner's request or because the petitioner failed to appear at the hearing.

(g) **Confidentiality.** Petitions filed under AS 18.16.030 and all hearing, proceedings, and records are confidential. Court personnel are prohibited from notifying a minor's parents, guardian, or custodian that a minor is pregnant or wants to have an abortion, or from disclosing this information to any member of the public.

(h) **Appeal.** A petitioner may appeal an order denying or dismissing a petition to bypass parental consent by filing a notice of appeal in any district or superior court, or directly with the clerk of the appellate courts. If the notice of appeal is filed in a district or superior court, the clerk or magistrate shall immediately notify the clerk of the appellate courts that the notice of appeal has been filed. The procedure for appeals is governed by Appellate Rule 220. This rule supersedes the appeal procedure established by AS 18.16.030(j).

NOTE: Blank petition forms for a minor to file to begin the judicial bypass process, plus information about filling out the form, are available on the court system website at <http://www.courts.alaska.gov/forms.htm#p>.

NOTE: The changes to Probate Rule 20 are adopted because the law concerning abortions for minors was changed by voter initiative effective December 14, 2010. The changes to the rule are being made to conform the rule with revised AS 18.16.010 - .030.

2. Appellate Rule 220(a) is amended to read as follows:

Rule 220. Judicial Bypass Appeals.

(a) **Scope.** This rule applies to an appeal from an order denying or dismissing a petition filed by a minor under age ~~17~~18 to bypass parental notice or consent to an abortion under AS 18.16.030. In such appeals, this rule supersedes the other appellate rules to the extent they may be inconsistent with this rule. It also supersedes the procedure for bypass appeals established by AS 18.16.030(j).

(b) **Jurisdictional Limitation.** This rule does not permit an appeal to be taken in any circumstances in which an appeal would not be permitted by Appellate Rule 202.

(c) **Notice of Appeal.**

(1) A minor may appeal an order denying or dismissing a petition to bypass parental notice or consent by filing a notice of appeal in any district or superior court, or directly with the clerk of the appellate courts. The notice of appeal may be filed in person, by mail, by email, or by fax, and must be accompanied by a copy of the order from which the appeal is taken. No filing fee will be charged. If the notice of appeal is filed in a district or superior court, the clerk or magistrate shall immediately notify the clerk of the appellate courts that the appeal has been filed.

(2) The notice of appeal must indicate that the appeal is being filed pursuant to this rule, but the court will apply this rule to cases within its scope whether they are so identified or not.

(3) Blank notice of appeal forms will be available at all court locations and will be mailed, emailed, or faxed to a minor upon request. No fee will be charged for this service or other services provided to a minor in an appeal under this rule.

(d) **Record on Appeal.** The record on appeal consists of the superior court file, including all papers and exhibits filed in the superior court, and, unless otherwise ordered, a recording of the proceedings before the superior court. The clerk of the appellate courts shall request the record immediately upon receiving notice that the appeal has been filed. Upon receiving this request, the clerk of the trial court shall immediately transmit the record to the supreme court by overnight mail or in another manner that will cause it to arrive within 48 hours after the notice of appeal is filed.

(e) **Brief.** A brief is not required. However, the minor may file a typewritten memorandum in support of the appeal.

(f) **Oral Argument.** Unless the minor waives the right to oral argument in the notice of appeal, oral argument will be held within 72 hours, including weekends and holidays, after the notice of appeal is filed. Upon request, the minor will be allowed to participate telephonically at court system expense.

(g) **Disposition.** The court shall enter an order stating its decision immediately after oral argument or, if oral argument has been waived, within three days after the date the notice of appeal is filed. The court may issue an opinion explaining the decision at any time following entry of the order.

(h) **Constructive Order.** If the court fails to enter an order within five days after the date the clerk of the appellate courts receives the record on appeal, the clerk shall issue a certificate stating that (1) no order was entered within five days after the

appeal was docketed; and (2) under AS 18.16.030(j), the failure to enter an order constitutes a constructive order of the court authorizing the minor to consent to an abortion without notice to or the consent of a parent, guardian, or custodian. For purposes of AS 18.16.030(j), an appeal is deemed to be docketed on the date the clerk of the appellate courts receives the record on appeal.

(i) **Confidentiality.** Documents and proceedings in an appeal under this rule are confidential. Court personnel are prohibited from notifying the minor's parents, guardian, or custodian that the minor is pregnant or wants to have an abortion, or from disclosing this information to any member of the public.

(j) **Attorney.** If the minor is not represented by an attorney, the clerk of the appellate courts shall appoint the Office of Public Advocacy to represent the minor in the appeal. If the Office of Public Advocacy was appointed to represent the minor in the trial court, the appointment continues through the appeal.

(k) **Filing Defined.** For purposes of this rule only, a document is deemed filed on the date it is received by the district court, the superior court, or the clerk of the appellate courts if the appeal is filed directly with the clerk.

NOTE: The changes to Appellate Rule 220 are adopted because the law concerning abortions for minors was changed by voter initiative effective December 14, 2010. The changes to the rule are being made to conform the rule with revised AS 18.16.010 - .030.

DATED: December 9, 2010

EFFECTIVE DATE: December 14, 2010

/s/
Chief Justice Carpeneti

/s/
Justice Fabe

/s/
Justice Winfree

/s/
Justice Christen

/s/
Justice Stowers