

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1778

Adding a new Appellate Rule 401.1 and amending Appellate Rules 402(a) and (b), 403, and 405 concerning petitions for review of non-final orders from the court of appeals or Workers' Compensation Appeals Commission.

IT IS ORDERED:

1. A new Appellate Rule 401.1 is added that reads as follows:

Rule 401.1 Review of Non-Appealable Orders or Decisions from the Alaska Workers' Compensation Appeals Commission.

(a) Part Four of these rules (Rules 401 to 408) applies to petitions for review of non-appealable orders or decisions from the Alaska Workers' Compensation Appeals Commission.

(b) The court referred to in Part Four of these rules includes the Alaska Workers' Compensation Appeals Commission, if that commission entered the order or decision for which review is sought.

(c) For petitions for review covered by this rule, the procedures governing the Workers' Compensation Appeals Commission should be referenced when Part Four refers to a particular Alaska Rule of Civil Procedure.

2. Appellate Rules 402, 403, and 405 are amended to read as follows:

Rule 402. Petitions for Review of Non-Appealable Orders or Decisions.

(a) When Available.

(1) An aggrieved party, including the State of Alaska, may petition the appellate court as provided in Rule 403 to review any court order or decision

that is not appealable under Rule 202 and is not subject to a petition for hearing under Rule 302. In addition, a defendant may petition the supreme court as provided in Rule 403(h) to review an unsuspended sentence of imprisonment that is not appealable under Appellate Rule 215(a)(1), and a victim as defined in AS 12.55.185 may petition the court of appeals as provided in Rule 403(i) to review an unsuspended sentence of imprisonment that is below the applicable presumptive sentencing range. An order from an individual judge of the court of appeals is not reviewable under this rule.

(2) A petition for review shall be directed to the appellate court that would have jurisdiction over an appeal or petition for hearing from a final judgment or decision of the court in the action or proceeding in which it arises.

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

* * * *

(3) The court has so far departed from the accepted and usual course of proceedings, or sanctioned such a departure, as to call for the appellate court's power of supervision and review; or

(4) The issue is one that might otherwise evade review, and an immediate decision by the appellate court is needed for guidance or is otherwise in the public interest.

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Rule 403. Petitions for Review -- Procedure.

(a) Filing.

(1) *Petitions.*

(A) A petition for review must be filed with the clerk of the appellate courts within 10 days after the date of notice of the order or decision of which review is sought. Date of notice is defined in Civil Rule 58.1(c) and Criminal Rule 32.3(c). An appellate judge or justice, for good cause shown, may extend the time for filing. The original of the petition must be filed, together with six legible copies, a completed docketing statement in the form prescribed by these rules, and proof of service on the court from whose order the petition is taken and all parties to the action in that court when the order or decision was entered. The party seeking review shall be known as the petitioner. All other parties to the proceeding shall be named as respondents.

(B) The running of the time for filing a petition for review is terminated by a timely motion for reconsideration of the order or decision. The full time for a petition for review by any party begins to run again on the date of notice, as defined in Civil Rule 58.1(c) and Criminal Rule 32.3(c), or the date of denial of the motion pursuant to Civil Rule 77(k)(4), whichever is earlier.

(2) *Cross-petitions.* When a petition is filed under this rule, any other party may file a cross-petition for review of the same order. Cross-petitions must be filed within ten days from service of the petition for review.

(3) *Petitions from Multiple Orders.* Where orders or decisions arising from different cases or proceedings pending in the same court are sought to be reviewed, and where they involve identical or closely-related questions, a single petition covering all the cases or proceedings may be filed.

(4) *Notice to Court.* Upon the filing of a petition for review, the clerk of the appellate courts shall promptly notify the court of the date and identity of the order sought to be reviewed, the name of the party filing the petition, and the docket number assigned to the petition in the appellate court. The clerk of the appellate courts shall also promptly notify the court of the action taken by the appellate court on the petition.

(b) Contents of Petition or Cross-Petition.

(1) The petition or cross-petition shall contain a:

(A) statement of facts necessary to an understanding of the question or questions determined by the court order or decision;

(B) statement of the question itself;

(C) statement of the trial date, if scheduled;

(D) discussion of the reasons, under Rule 402, why review should not be postponed until appeal may be taken from a final judgment;

(E) discussion of the reasons why the decision below is alleged to be erroneous;

(F) statement of the precise relief sought; and

(G) if the petitioner or cross-petitioner requests relief by a specific date, a statement of the date by which a decision is needed and the reasons why a decision is needed by that date.

(2) The petition or cross-petition shall not exceed 15 pages in length, exclusive of appendices, and shall include or have annexed thereto:

(A) a copy of the order or decision of which review is sought or a statement of the substance of the order or decision, if it was rendered orally, showing the date of notice as defined in Civil Rule 58.1(c) and Criminal Rule 32.3(c); and

(B) copies of any findings of fact, conclusions of law, and opinions related to the order or decision.

(c) Response. Within ten days after service of the petition or cross-petition, each respondent shall file either an original and six copies of a response, together with proof of service on all parties to the action when the court order or decision was entered, or a notice that no response will be filed. The response shall not exceed 15 pages in length, exclusive of appendices. No reply may be filed by the petitioner unless ordered by the appellate court. A motion to dismiss the petition will not be received. Objections to the exercise of the appellate court's power of discretionary review must be included in the response.

(d) Form. Petitions, cross-petitions and responses shall be prepared in accordance with Rule 513.5(b). All attachments must be listed in an index submitted with the attachments.

(e) Inadequacy of the Petition. The failure of the petitioner to include any matter required by subsection (b) of this rule, or otherwise to present briefly and clearly whatever is essential to a ready and adequate understanding of the questions presented for review, will be a sufficient reason for denying the petition.

(f) Consideration by the Court. As soon as practicable, the appellate court will decide whether to grant or deny the petition. Oral argument will not be held on the question of whether the petition should be granted. If the petition is granted, the order granting the petition will specify any further actions to be

required. If further briefing is ordered, oral argument will be governed by the procedures set out in Rule 505.

(g) Denial of Petition. If the petition is denied, no mandate shall be issued: the clerk of the appellate courts shall furnish a copy of the order denying review to the court that issued the order or decision involved. A petition for rehearing of the denial of a petition for review may not be filed.

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Rule 405. Relief Available; Applications for Stay.

(a) Relief Available. Relief in the nature of writs of review, mandamus, prohibition, certiorari, or other writs, shall be sought by petition for review under Rule 402 or original application under Rule 404, as may be appropriate. On the granting of a petition for review or original application, the appellate court will grant such relief as may be appropriate in the circumstances, in accordance with Rule 520.

(b) Stay. Court proceedings or the enforcement of any court order or decision shall not be stayed by the filing of a petition for review or of an original application for relief unless that court or the appellate court, or a justice or judge thereof, so orders. Application for stay will be granted by the appellate court or a justice or judge thereof only in accordance with Rule 205 or 206.

DATED: January 23, 2014

EFFECTIVE DATE: April 15, 2014

/s/

Chief Justice Fabe

/s/

Justice Winfree

/s/

Justice Stowers

/s/

Justice Maassen

/s/

Justice Bolger