

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1843

Amending Appellate Rule 508
concerning costs and fees.

IT IS ORDERED:

Appellate Rule 508 is amended to read as follows:

Rule 508. Costs and Fees.

(a) **Dismissal or Denial.** If an appeal is dismissed or petition denied by the appellate court, costs shall not be allowed to the appellee or respondent, unless otherwise ordered by the court.

(b) **Affirmance of Judgment.** In all cases of affirmance of a judgment or any order or decision of the superior court, costs shall be allowed to the appellee or respondent unless otherwise ordered by the court or not permitted by law.

(c) **Reversal or Partial Reversal.** In cases of reversal of any judgment, order or decision of the superior court, costs shall be allowed the appellant or petitioner unless otherwise ordered by the court or not permitted by law. In cases of partial affirmance and partial reversal, the court will determine which party, if any, shall be allowed costs.

(d) **Costs to be Awarded.** When costs are awarded in the appellate court, they shall include, unless the court otherwise orders and subject to Rules 210(b)(6) and (c)(6), the filing fee, the costs of preparing the transcript, premiums for any bond under Rule 204(c) or 204(d), and the costs of duplicating and mailing briefs and excerpts of records. Duplicating costs will not be awarded in excess of the rate generally charged by printers in the city in which counsel

is located. In administrative appeals to the superior court, costs, when awarded, shall also include the costs borne by the appellant under Rule 604(b)(1)(B)(iv) of preparing the court's copy of the agency file. If the superior court conducted a trial de novo, in whole or in part, the superior court shall award costs under Civil Rule 79 for the de novo proceedings.

(e) **Attorney's Fees.** ~~Attorney's fees may be allowed in an amount to be determined by the court. If such an allowance is made, the clerk shall issue an appropriate order awarding fees at the same time that an opinion or an order under Rule 214 is filed. If the court determines that an appeal or cross-appeal is frivolous or that it has been brought simply for purposes of delay, actual attorney's fees may be awarded to the appellee or cross-appellee.~~ shall not be awarded unless

(1) attorney's fees are provided by statute, caselaw, or contract;

(2) the court determines that the appeal or cross-appeal is frivolous or has been taken in bad faith; or

(3) the appeal was taken under Rule 601, in which case the court shall award the prevailing party 20% of its actual attorney's fees that were necessarily incurred, except in cases where

(A) paragraphs (1) or (2) apply; or

(B) the court determines that an award of fees would be so onerous to the non-prevailing party that it would deter similarly situated litigants from the voluntary use of the courts if not reduced.

(f) **Procedure.**

(1) *Bill of Costs.* At the time an opinion or an order under Rule 214 is filed, the clerk shall notify the party or parties entitled to recover costs under subsections (b) and (c) of this rule. That party or parties

shall serve and file an itemized and verified bill of costs within 10 days after the date of notice of the opinion or order. Date of notice is defined in Civil Rule 58.1(c). The bill of costs shall be limited to the items specified in subsection (d) of this rule. ~~Failure to file a bill of costs within 10 days, or such additional time as the clerk or court may allow, will be construed as a waiver of the right to recover costs.~~ Objections to the bill of costs may be filed within 7 days after service of the bill. Promptly after expiration of the time for filing objections, the clerk shall issue an itemized award of costs. A hearing on the bill of costs shall not be held unless requested by the clerk. The clerk may not delegate to a deputy clerk the authority to award costs in cases in which objection is filed, except with the approval of the chief justice. Return of the record shall not be delayed pending the award of costs.

(2) Attorney's fees. A party may file a motion for attorney's fees within 10 days of the date of the opinion or the order under Rule 214, specifying the provision of subsection (e) under which fees are sought, and attaching an affidavit of services rendered on appeal. An adverse party may file an opposition under Rule 503(d).

~~(2) — Reconsideration.~~ A party aggrieved by an order awarding or denying costs under subsection (f)(1) of this rule or an order awarding attorney's fees under subsection (e) of this rule may file a motion for reconsideration within ten days after the date of notice of the order. The non-moving party may file a response within seven days after service of the motion. Reconsideration of an order regarding award of costs or attorney's fees under (f)(1) or (e) will be determined by an individual justice or judge. Full court reconsideration of such individual justice's or judge's decision may be sought pursuant to Appellate Rule 503(h)(2)(B).

(3) *Rehearing.* If a timely petition for rehearing is filed, the clerk shall not award costs until the court has disposed of the case on rehearing. As Supplemental or amended bills of costs may not be filed after disposition of a petition for rehearing unless requested by the court.

~~(g) — Exemptions.~~

~~(1) — Workers' Compensation Appeals.~~ In an administrative appeal from the Alaska Workers' Compensation Appeals Commission or in an appeal from a denial of a claim of benefits under the Employment Security Act, an award of costs or attorney's fees shall not be made against the claimant in either the supreme court or the superior court unless the court finds that the claimant's position was frivolous, unreasonable, or taken in bad faith.

~~(2) —~~ In an administrative appeal from the Alaska Workers' Compensation Appeals Commission, full reasonable attorney's fees will be awarded to a successful claimant. Counsel for the claimant shall serve and file an affidavit of services rendered on appeal within 10 days from the date of notice of an opinion or an order under Rule 214. Objections to the affidavit of services may be filed within 7 days of service of the affidavit. An individual justice shall determine the amount of fees to be awarded.

~~(gH)~~ **Execution.** The bond on appeal filed under Rule 204(c) may be applied to an award of costs and attorney's fees made under this rule. Upon proper application, the clerk of the trial court may issue writs of execution upon the award of costs and attorney's fees made pursuant to under this rule, without the approval of a judge of the trial court.

Note to SCO 1843: With the amendments to subsection (e) recognizing that statute, caselaw, or contract may otherwise provide for awards of attorney's fees, it is not necessary to retain a separate discussion of fee awards in appeals from the Workers' Compensation Appeals Commission or appeals from a denial of a claim of benefits under the Employment Security Act. The fee-award scenarios discussed in subsection (g) of the previous version of the rule are now covered by the amended subsection (e). Similarly, former subsection (g)'s limitations on cost awards are captured by the minor changes to the amended subsections (b) and (c). The new rule structure does not abrogate the substantive rights addressed in the prior subsection (g).

DATED: October 29, 2014

EFFECTIVE DATE: April 15, 2015

/s/
Chief Justice Fabe

/s/
Justice Winfree

/s/
Justice Stowers

/s/
Justice Maassen

/s/
Justice Bolger