APPELLEE 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:
http://www.courts.alaska.gov/forms/index.htm

AP-205 (8/15)(white cvr)

INSTRUCTIONS FOR RESPONDING TO AN APPEAL

(When a District Court Judgment Is Appealed to the Superior Court[1])

An appeal has been filed in a case in which you were a party. These instructions tell you, in general terms, what steps you must take to defend the appeal. Appeals to the superior court are governed by Appellate Rules 600-612. Appeals are complicated, and you should consider seeking a lawyer to assist you in defending the appeal. You may also want to ask the court for a copy of AP-200, Appellant Instructions, for more information about what is required of the party filing the 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 or memoranda 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. HOW THE APPEAL BEGINS.

A. Notice of Appeal.

To start the appeal, the appellant had to file a notice of appeal with the court explaining the reasons for the appeal. You do not have to file a response to the notice at this time. Your opportunity to respond will occur later when the appellant files a legal brief or memorandum and serves it on you.

B. Other Requests the Appellant May Make.

There are, however, other requests which the appellant may make to which you may want to respond. The appellant must serve you with a copy of any request. You are not required to respond to any requests or

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[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.

motions filed by the appellant. However, if you oppose a request, you must file a written response with the court as follows:

- If the request was mailed to you, your response must be filed within 10 days after the date the request was mailed to you.

- If the request was personally served on you, your response must be filed within seven days after the date you received the request.

Form AP-140, Response to Request, is enclosed for this purpose. You may obtain additional copies of this form at the court or online at the website on the cover of this booklet. The court will notify you of its decision.

The following are some requests the appellant may make at the same time the appellant files the notice of appeal:

1. Request to Accept Late Filed Appeal. The notice of appeal must be filed within 30 days after the district court judgment is distributed. In order to file an appeal after this deadline, the appellant must file a request asking the court to accept a late filed notice of appeal.

2. Request to Waive Filing Fee. The appellant may file a request asking the court to waive the $50 filing fee for the appeal because the appellant cannot afford to pay it.

3. Motion To Waive or Reduce Cost Bond. In civil cases and small claims cases, before an appeal will be accepted, the appellant must also file one of the following:

   - a $750 cost bond; or
   - a motion to waive or reduce cost bond; or
   - a supersedeas bond (discussed in paragraph 4 below).

   The purpose of requiring the appellant to file a cost bond is to make sure your costs to defend the appeal (attorney fees, etc.) will be paid by the appellant if the appeal is dismissed or if the appellant loses the appeal. The appellant may, however, file a motion asking the court to waive or reduce the amount of the cost bond.

4. Request For Approval of Supersedeas Bond. The appellant may prefer to file a supersedeas bond rather than a cost bond because filing a supersedeas bond will stop any writs of execution from being issued to collect the district court judgment while the appeal is pending. Filing a cost bond will not stop execution. The reason a supersedeas bond stops execution is because the amount of the

supersedeas bond is 125% of the amount of the judgment, which is high enough to make sure that not only your appeal costs but also the amount of the judgment will be paid by the appellant if the appellant loses the appeal (or the appeal is dismissed).

If the appellant wants to file a supersedeas bond, the appellant must file a request for approval of the bond. The appellant must serve you with a copy of the bond and request. The court will not wait for a response from you before deciding to approve or disapprove the bond. Nonetheless, you may file a motion objecting to the bond, and the court will reconsider the approval of the bond. You may use form AP-135.

5. Motion to Waive or Reduce Supersedeas Bond. If the appellant thinks 125% of the judgment is unnecessarily high or if the appellant believes he/she cannot afford to post 125% of the judgment, the appellant may file a Motion to Waive or Reduce Supersedeas Bond.

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

   See section IX about the return of the bond after the appeal is over.

III. COPIES TO OTHER PARTIES.

If you file a response or any other document with the court, you must send a copy to the appellant. The court rules require each party to send to all other parties a copy of any document which that party files with the court. Proof that this has been done must be shown on or attached to each document you file. Appellate Rule 602(j). 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.*

IV. ASSIGNMENT OF JUDGE.

Enclosed with these instructions is a notice of the judge assigned to the appeal.

V. 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 appellant a Notice Setting Appeal Procedure (form AP-305). This form will tell you the time schedule for filing memoranda and requesting oral argument.

You are not required to file an appellee's memorandum. However, if you do not file one, it may result in a decision for the appellant and will result in you not being allowed to present oral arguments to the judge. 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 8½" x 11" white paper. The illustration on page nine 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 $20 per electronic transcript.[2] You should make this request as soon as possible because it may take several days for the court to prepare your recordings.

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

VI. 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 <u>not</u> a new trial. No witnesses may be called. The time allowed for oral argument, unless otherwise ordered, will be 15 minutes per side.

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[2] Administrative Rule 9(d)

Note: If you do not file a memorandum, you will not be allowed to present any arguments at oral argument unless the appellant consents or the judge asks to hear your argument. Appellate Rule 212(c)(10).

All requests for oral argument must be filed within 10 days after the date on which appellant's reply memorandum is due, or in the case of sentence appeals, 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.

A. In the following cases, oral argument will be allowed only if the superior court judge decides there is a good reason to have it:

1. if the appeal arises from a civil or small claims matter where the controversy on appeal concerns less than $300, or

2. 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.

B. 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 for oral argument is not timely filed, you must also file a request to accept a late filed request for oral argument. Form AP-135 may 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 for oral argument and, if applicable, a copy of the request to accept late-filed request for oral argument on opposing parties. Proof of service must be filed with the request.

VII. 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.

VIII. 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 an appeal. Generally, you may apply for costs and attorney fees if the district court judgment is affirmed.[3]

If you win the 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 verified [4] 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. the cost of preparation of transcripts or electronic recordings
2. the cost of duplicating and mailing briefs or memoranda

You must serve a copy of your bill of costs on the appellant, 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 within 10 days of the date of the opinion or the order under Rule 214. You can use form AP-135. You must send a copy of the request to the appellant, who has seven days to file objections. The court will send you a copy of the judge's written award of attorney fees. Normally, attorney fees are not awarded. However, the court may award attorney fees if attorney fees are provided by statute, case law or contract; the court determines that an appeal or cross-appeal is frivolous or has been taken in bad faith; or the appeal was taken under Rule 601.

D. Collecting Costs and Attorney Fees. If you win an award of costs or attorney fees and the appellant does not pay voluntarily, you may ask the court to apply the cost or supersedeas bond posted by the appellant to the amount owed you. See section IX of these instructions. You may also

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[3] If an appeal is dismissed, you may not recover costs unless such recovery is ordered by the court.

[4] "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.

ask the clerk for a writ of execution to collect from the appellant the amount owed you.

IX. RETURN OF BOND AFTER APPEAL.

After the appeal is decided, the court will send you and the appellant a notice that the appellant's bond will be released unless there is an objection. If you win the appeal, you may file an objection to the release of the bond or you may request that the bond be applied to your costs and the judgment. This objection or request must be filed by the date stated in the notice the court will send to you. You may use form AP-135.

As stated previously, the appellant may have satisfied the bond requirement by filing either a surety bond or a cash deposit.

- If a cash deposit was used and the court orders the deposit applied to pay your judgment and appeal costs, a check will be issued to you by the court.

- If a surety bond was posted and the court grants your request to apply the bond to your costs and judgment, you must take further action to obtain the proceeds of the surety bond from the surety. No court forms are available for this action. You may need to contact an attorney for further information.

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

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA AT _____

_____, Appellant,	)
vs.	)
_____, Appellee.	)
_____	) CASE NO. _____

MEMORANDUM OF APPELLEE

Appeal from the District Court at _____, Alaska.

Party or Attorney Filing Memorandum:

Name: _____

Mailing Address: _____

_____

Phone Number: _____

Attorney's Bar Number: _____

I certify that on _____
a copy of this memorandum was

☐ mailed

☐ personally delivered

to:

By: _____