

APPELLANT INSTRUCTIONS

Appeal to Superior Court From Administrative Revocation of Driver's License Under Alaska Statute 28.15.165

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>

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**INSTRUCTIONS FOR FILING AN APPEAL
TO THE SUPERIOR COURT
FROM AN ADMINISTRATIVE REVOCATION
OF DRIVER'S LICENSE UNDER AS 28.15.165**

NOTICE: Appeals to the superior court are governed by Appellate Rules 600-612. Appeals are complicated, and you should consider seeing a lawyer if you want to appeal.

I. INTRODUCTION

These instructions describe the procedure for appealing the decision of an administrative hearing officer if the hearing officer has decided to uphold the Department of Administration's revocation of your driver's license because you either failed a breath test for alcohol or refused to submit to one.

This appeal is called an "administrative appeal" because you are appealing the decision of an administrative agency, the Department of Administration, Division of Motor Vehicles (DMV).

Definitions:

- A. **ADMINISTRATIVE APPEAL.** An administrative appeal is a review by the superior court of the final decision of a state or local government agency, board or commission. An appeal is not a new hearing or a trial. The superior court will not accept any new evidence. The only information the superior court will consider on appeal is the following:
1. an electronic recording of the administrative hearing (unless the court requires a typed transcript instead of an electronic recording);
 2. any items offered as evidence at the hearing;
 3. the documents and depositions in the agency file; and
 4. legal briefs filed in the appeal.
- B. **APPELLANT.** The appellant is the party who files the appeal. In this case, you are the appellant.
- C. **APPELLEE.** The appellee is the party who defends against the appeal. In this case, the appellee is DMV.

II. COPIES TO OTHER PARTIES

The court rules require each party to send to all other parties a copy of any document which that party files with the court. Appellate Rule 602(j) Proof that this has been done must be shown on or attached to each document you file. 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. If another party is represented by an attorney, the documents must be served on the attorney instead of the party. Agencies are usually represented by an attorney. You should contact DMV to find out the name and address of the attorney representing DMV on appeal.

See paragraph III. C. 4. about where you must send copies of your notice of appeal and all attachments.

III. TO FILE AN APPEAL

A. Grounds for appeal. (AS 28.15.166(m)).

You may file an appeal if you believe that DMV:

1. misinterpreted the law,
2. acted in an arbitrary and capricious manner, or
3. made a determination unsupported by the evidence in the record.

B. When can an appeal be filed.

1. You may file an appeal only after the administrative review hearing in DMV has been completed. If no hearing has been held, you must apply to DMV for permission to have a late hearing before you can file an appeal in superior court. If DMV denies your request for a late hearing, you may appeal that decision.
2. Your notice of appeal must be filed within 30 days from the date the hearing officer's decision is mailed or otherwise distributed to you.¹ Appellate Rule 602(a)(2).

If you want to file a notice of appeal after the 30 days, you must file a Request and Order (form AP-135) asking the court to accept your late-filed appeal. Your request must state why your appeal is late. File your request at the time you file your notice of appeal.

¹ For the 30-day time limit to apply, an agency must clearly indicate that its decision is a final order and that the claimant has 30 days to appeal. Manning v. Alaska Railroad Corporation, 853 P.2d 1120, 1124 (Alaska 1993)

C. How to File an Appeal.

To file an appeal, do the following:

1. Notice. File a Notice of Appeal (form AP-102) with a superior court.² You must attach a copy of the DMV decision.³
2. Filing Fee. You must either:
 - a. pay a \$200 filing fee (make your check or money order payable to "Clerk of Court"); or
 - b. if you cannot afford to pay the filing fee, you may file a Request and Order (form AP-135) asking the court to waive the filing fee. A financial statement (form CR-206) must be filed with the request. File your request at the time you file your notice of appeal.
3. Bond. You must file one of the following at the time you file your notice of appeal:
 - a \$750 cost bond; or
 - a motion to waive or reduce cost bond.
 - a. \$750 Cost Bond.

The purpose of filing a cost bond is to make sure DMV's costs to defend the appeal (attorney fees, etc.) will be paid by you if the appeal is dismissed or if you lose the appeal.

To meet the cost bond requirement, you can either file a surety bond or make a cash deposit as described below:

- (1) Surety Bond. This is a document which guarantees payment of money if certain things occur. The person or company that writes the bond is called the surety. The surety guarantees the payment by becoming liable (responsible) for it. Such bonds are generally available from insurance companies or third parties qualified to write surety bonds. There will be a fee. The court

² According to Appellate Rule 602(b)(2), the appeal should be heard at "the superior court location that would best serve the convenience of the parties."

³ Appellate Rule 602(c)(1)(D)

system does not provide forms for surety bonds.

- (2) Cash Deposit. If you want to make a cash deposit with the court instead of filing a surety bond, complete the Cash Deposit on Appeal (form AP-110). Check the first box on the form, fill out the rest of it, acknowledge it before a court clerk or notary public and give it to the clerk along with your money.

b. Motion to Waive or Reduce Cost Bond.

Appellate Rule 204(c)(1) requires that the cost bond be for \$750 unless the superior court fixes a lesser amount.

If you think this amount is unnecessarily high because the expected appeal costs (including attorney fees) for DMV will be considerably less than \$750, you may file:

- (1) a Motion to Waive or Reduce Cost Bond (form AP-120); and
- (2) an Order Re Cost Bond (form AP-130).

If you believe you cannot afford to post a \$750 cost bond, you may file:

- (1) a Motion to Waive or Reduce Cost Bond (form AP-120);
- (2) an Order Re Cost Bond (form AP-130); and
- (3) a Financial Statement (form CR-206).

The court will notify you of its decision. If the court orders a cost bond to be posted, you must file a surety bond or cash deposit in the amount set by the court or your appeal will be dismissed.

c. Return of Bond After Appeal.

After the appeal is decided, the court will send you and DMV a notice that the bond will be released unless there is an objection. If you lose your appeal, DMV may file an objection to the release of the bond or may request that the bond be applied to DMV's appeal costs. If no objection is filed by DMV, the bond will be released and any cash deposit returned to you.

4. Copies to DMV and Attorney General. In a driver's license revocation appeal, you must send a copy of your notice of appeal and all

attachments to both of the following:

a. Director of Driver Licensing, DMV
1300 West Benson Blvd., Suite 300
Anchorage, AK 99503-3691

and

b. Attorney General of Alaska
P.O. Box 110300
Juneau, AK 99811-0300

IV. PREPARATION OF RECORD

The record on appeal will include all original papers and exhibits filed with DMV and electronic recordings of all proceedings before the agency.

When the court sends notice to do so, DMV must number the pages in its file, make a copy of the file, and make a copy of the electronic recordings of the hearings to send to the court. You must pay DMV to do this (usually in advance). Appellate Rule 604(b)(1)(B)(iv). DMV will notify you about this.

You must pay DMV for preparation of the record within 30 days of being notified of the costs or your appeal may be dismissed. Appellate Rule 606(b).

V. STAY OF ADMINISTRATIVE ORDER

The filing of your appeal does not automatically stay (stop) the revocation of your license. If you want to try to stay the revocation while the appeal is pending, you must file a motion and affidavit with the court requesting a stay. Use form AP-145, Motion and Affidavit for Stay. If you file this motion at the same time you file your Notice of Appeal, include a copy of the motion in the notice of appeal packet that you send to DMV in Anchorage and the Attorney General in Juneau. If you file your motion later, you must instead send a copy of the motion to DMV's attorney. You can find out who that is by calling DMV.

The court may grant the stay only if the court finds that there is a reasonable probability that (1) you will win your appeal; (2) you will suffer irreparable harm if the license revocation is not stayed; and (3) if you operate a commercial motor vehicle, the public can be adequately protected by conditions imposed by the court. See Alaska Statute 28.15.166(n) and Appellate Rule 603(a)(4).

VI. FURTHER PROCEEDINGS

A. Assignment of Judge. After you have filed your Notice of Appeal, the court will notify you of the name of the judge assigned to your appeal. If you do not want that judge to hear your appeal, you may ask for a change of judge. To do so, you must fill out form TF-935, Notice of Change of Judge, and file it with the superior court within five days after notice is sent to you that the

judge has been assigned to your appeal. You may only ask for a change of judge one time.

- B. **Briefing Schedule.** A legal brief is a document which explains your side of the case to the judge. When the case is ready for briefing, the court will send you and DMV's attorney a Notice Setting Appeal Procedure (form AP-307). This form will tell you the time schedule for filing briefs and requesting oral argument.

You must file a brief within the time limit set by the court or your appeal may be dismissed. If you cannot file your brief 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.

Along with your brief, you must prepare an "excerpt of record." The excerpt is a copy of those documents in DMV's case file which you think the court should review in order to decide your appeal. Instructions for preparing an excerpt are in paragraph 2 on page 6.

1. Brief

Your brief must include:

- a. a statement of the issues presented for review,
- b. a summary of the facts,
- c. a statement of the law,
- d. an argument about how the law applies to the facts, and
- e. a short conclusion stating the precise relief sought.

For a complete description of what a brief must contain, including limits on the length, see Appellate Rules 605(a) and 212(c).

Your brief must be typed or printed (using black ink), double spaced on 8½" x 11" white paper. The illustration on page 9 shows what the cover of your brief should look like. If you wish, you may detach this page and use it as the cover of your brief.

Citation Guidelines. In your brief you must refer to specific pages in the excerpt of record or depositions which support your statements about the facts and your argument. To do this, put the following in parentheses after each statement which is supported by the record: an abbreviation for excerpt (Exc.) or deposition (Dep. of _____) followed by the page number.

Examples:

Documents in an Excerpt of Record: (Exc. 26)
Deposition: (Dep. of Tom Davis, page 20)

If you do not prepare an excerpt, you must refer to the page number of the record. (The "record" is a copy of the DMV file which DMV sends to the court after DMV numbers the pages.)

Example: Documents in the record, but not in an excerpt: (R. 52)

2. Excerpt of Record

Unless you get a waiver as explained on page 7, you must prepare an excerpt of record. You must include copies of the following in your excerpt:

- the notice of license revocation
- the law enforcement officer's sworn report which was filed with DMV;
- your request to DMV for review;
- the decision or order of DMV which you are appealing;
- any other orders or rulings DMV made in your case which you want the court to review;
- any written opinion, findings or other statements issued by DMV to explain the reasons for its decision; and
- any other documents in DMV's file that you refer to in your brief to support your side of the case.

Remember: You cannot introduce new evidence in the appeal. So, do not include anything in your excerpt that was not presented in the original DMV proceeding.

To prepare your excerpt, do the following:

- a. Arrange the documents in chronological order by the date they were signed, with the oldest one on top.
- b. Put page numbers on the bottom of each page, starting with "1" and numbering in one number series to the end of the excerpt. Do not number each document in the excerpt separately.
- c. Prepare a table of contents. List the title of each document, the date it was signed and the page number on which it begins. Put the table of contents on top of the other documents.
- d. Prepare a cover like the sample on page 11. You may detach this page and use it as the cover of your excerpt.
- e. Staple the excerpt separately from your brief.

Waiver of Excerpt. If you do not think it is necessary to prepare an excerpt of record, you must get DMV's attorney to agree in writing to waive the excerpt. You can use form AP-155, Agreement for Waiver of Excerpt of Record. The waiver agreement must be filed with the court within 20 days after you file your notice of appeal.

If a waiver of excerpt is filed, your brief must refer to page numbers in the record (rather than the excerpt) where information supporting your statements can be found.

In deciding whether you want to waive the excerpt, keep in mind that it may be to your advantage to prepare one. It is often easier for a judge to focus on the critical documents in a case when those documents are altogether in one place.

3. Service on Opposing Party

You must send a copy of both your brief and your excerpt to DMV's attorney and file proof of service. You may show proof of service by filling in the certificates of service shown on the sample brief and excerpt covers. You can find the name and address of DMV's attorney by calling DMV.

- C. **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 not a new trial. No witnesses may be called. The time allowed for oral argument, unless otherwise ordered, will be 15 minutes per side.

All requests for oral argument must be filed within 10 days after the date on which your reply brief is due. If DMV does not file a brief in response to your brief, then you will not be able to file a reply brief. In that case, the deadline for you to request oral argument is 10 days after the due date for the appellee's brief. If DMV requests oral argument, you may not object to the request. (Appellate Rule 605.5)

If the request is timely filed, oral argument will be automatically 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.

VII. DECISION

The superior court will decide the appeal based on the record, the briefs and excerpts 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 DMV decision.
- remand (send the case back for additional action by DMV),
- reverse the decision made by DMV, 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 DMV's decision is reversed.

If you win your 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 and itemized bill of costs within 10 days after the date shown in the clerk's certificate of distribution on the appeal decision. If the appeal 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 filing fee
 2. the fee charged by DMV for preparing the record and copying the electronic recording of the hearing for the court
 3. the cost of duplicating and mailing briefs and excerpts
 4. premiums for any cost bond or supersedeas bond

You must serve a copy of your bill of costs on DMV's attorney, 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. You can use form AP-135. You must send a copy of the request to DMV's attorney, who has seven days to file objections. The court will send you a copy of the judge's written award of attorney fees. Normally, actual attorney fees are not awarded.
- D. Request for Reconsideration. If you do not agree with the award of costs or attorney fees, you may file a request or motion for reconsideration within 10 days after notice of the award was sent to you. You can use form AP-135. You must send a copy of the request to DMV's attorney, who has 7 days to file objections. The court will send you a copy of the court's decision on the request for reconsideration.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA AT _____

)	
Appellant,)	
vs.)	
STATE OF ALASKA)	
DEPARTMENT OF ADMINISTRATION)	
DIVISION OF MOTOR VEHICLES,)	
Appellee.)	
)	CASE NO. _____

BRIEF OF APPELLANT

Appeal from the decision of the Department of Administration, Division of Motor Vehicles.

Party or Attorney Filing Brief:

Name: _____

Mailing Address: _____

Phone Number: _____

Attorney's Bar No. _____

I certify that on _____
a copy of this brief was

mailed

personally delivered

to: _____
Attorney for DMV

By: _____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA AT _____

_____,
Appellant,
vs.
STATE OF ALASKA
DEPARTMENT OF ADMINISTRATION
DIVISION OF MOTOR VEHICLES,
Appellee.
_____) CASE NO. _____

APPELLANT'S EXCERPT OF RECORD

Appeal from the decision of the Department of Administration, Division of Motor Vehicles.

Party or Attorney Filing Excerpt:

Name: _____

Mailing Address: _____

Phone Number: _____

Attorney's Bar No. _____

I certify that on _____
a copy of this excerpt was

mailed

personally delivered

to: _____
Attorney for DMV

By: _____