

# APPELLANT INSTRUCTIONS

## Administrative Appeals To Superior Court\*

(except for Workers' Compensation Board decisions)

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.

\*For appeals from decisions of the Workers' Compensation Board, contact the Workers' Compensation Appeals Commission at 1016 W. 6<sup>th</sup> Ave., Anchorage, AK 99501, or call (907) 269-4980. The superior court cannot hear these appeals.

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**ALASKA COURT SYSTEM**

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 FROM AN ADMINISTRATIVE AGENCY TO THE SUPERIOR COURT

*NOTICE: Appeals to the superior court are governed by Appellate Rules 600-612. Further information may be found in AS 44.62 (the Administrative Procedure Act) and in the statutes cited in the agency decision you are appealing. Appeals are complicated, and you should consider seeing a lawyer if you want to appeal.*

## I. 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. the transcript of the administrative hearing (unless electronic recordings are authorized by the court);
  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.
- C. **APPELLEE.** The appellee is the party who defends against the appeal.

## 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. Proof that this has been done must be shown on or attached to each document you file. 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. Agencies are usually represented by an attorney. You should contact the agency to find out the name of the attorney representing the agency on appeal. See paragraph III.C. about where you must send copies of your notice of appeal and all attachments if you are appealing from the decision of a state agency.*

## III. TO FILE AN APPEAL

- A. Who may file an appeal. Any party to an administrative hearing who believes that (a) the agency applied the law incorrectly, and/or (b) the decision was not supported by the evidence presented, may file an appeal. Appeals from Workers' Compensation Appeals Commission decisions cannot be filed in the superior court.

B. When Can an Appeal be Filed.

1. An appeal to the superior court may be filed only after all administrative proceedings have been completed, including any available appeal or review proceedings within the agency.
2. A notice of appeal must be filed within 30 days from the date the order appealed from is mailed or otherwise distributed to you.<sup>1</sup> Appellate Rule 602(a)(2). If you file a timely request for reconsideration with the agency, the time for filing the notice of appeal may be extended. See 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.

C. How to File an Appeal.

To file an appeal, do the following:

1. Notice. File a Notice of Appeal (form AP-101) with a superior court.<sup>2</sup> You must attach a copy of the agency's decision.<sup>3</sup>
2. Filing Fee. Except as stated below, 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.

No filing fee is necessary if you are appealing a decision by the Department of Labor under AS 23.20 (Employment Security Act).<sup>4</sup>

3. Bond. No bond is required if you are appealing a denial of a claim for benefits under AS 23.20 (Employment Security Act). Appellate Rule 602(e)(2). In all other appeals from administrative agencies, 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.

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<sup>1</sup> 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)

<sup>2</sup> 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."

<sup>3</sup> Appellate Rule 602(c)(1)(D)

<sup>4</sup> Administrative Rule 9(a)(3)

a. \$750 Cost Bond. The purpose of filing a cost bond is to make sure the opposing party'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 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 the appellee 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 the appellee a notice that the bond will be released unless there is an objection. If you lose your appeal, the appellee may file an objection to the release of the bond or may request that the bond be applied to appellee's appeal costs. If no objection is filed by the

appellee, the bond will be released and any cash deposit returned to you.

4. Copies to Agency and Attorney General. You must send a copy of your notice of appeal and all attachments to the following:
  - a. the head of the agency, and
  - b. (if the agency is a state agency) the 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 the administrative agency and a typed transcript of all proceedings before the agency.<sup>5</sup>

When the court sends notice to do so, the agency must number the pages in the agency file and make a copy of it to send to the court. You must pay the agency to do this (usually in advance). Appellate Rule 604(b)(1)(B)(iv). The agency will notify you about this. You must pay the agency for preparation of the record within 30 days of being notified of the costs or your appeal may be dismissed. Appellate Rule 606(b).

You must also pay to have a transcript<sup>5</sup> of the agency hearing or hearings typed. You will need to get an electronic recording of the hearings from the agency and hire a transcriber. You should contact the agency about this after you file your appeal. You must file the original transcript with the agency within 40 days after you file your notice of appeal. If you need more time to get the transcript typed, you must ask the court for an extension of time. You may use form AP-135, Request and Order, to do this.

#### **V. STAY OF ADMINISTRATIVE ORDER**

If the agency decision will result in seizure of your property or loss of a license, you may ask the court for a stay of enforcement of the agency decision. You may use form AP-135, Request and Order, to do this. The court may require an additional bond, called a supersedeas bond, before granting the stay.

If you file this request at the same time you file your Notice of Appeal, include a copy of the request in the notice of appeal packet that you send to the head of the agency and the Attorney General. If you file this request later, you must instead send a copy to the agency's attorney. You can find out who that is by calling the agency.

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<sup>5</sup> Exception: In an appeal from the revocation of a driver's license by the division of Motor Vehicles, the record will include electronic recordings rather than transcripts.

## 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 the appellee 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 the agency'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 below.

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 8 1/2" 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, transcript, 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.), transcript (Tr.), or deposition (Dep. of \_\_\_\_\_ ) followed by the page number.

Examples:

Documents in an Excerpt of Record: (Exc. 26)  
Transcript: (Tr. 14)  
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 agency file which the agency sends to the court after the agency numbers the pages.)

Example:

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

2. Excerpt of Record. Unless you get a waiver, you must prepare an excerpt of record. You must include copies of the following in your excerpt:

- the complaint, petition or charging document that started the case;
- your answer or the answer filed by the agency (Note: If an amended answer was filed, you only need to include the amended answer.);
- the decision or order of the agency which you are appealing;
- any other orders or rulings the agency made in your case which you want the court to review;
- any written opinion, findings or other statements issued by the agency to explain the reasons for its decision; and
- any other documents in the agency's file that you refer to in your brief to support your side of the case.

Do not include pages of the transcript of agency hearings in your excerpt. If you want the court to look at a specific part of the transcript, see the "Citation Guidelines" on page 5 for how to refer to it in your brief.

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

- 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 appellant's reply brief is due. If the agency does not file a brief, your request for oral argument must be filed within 10 days after the date the agency's (appellee's) brief was due. If the agency 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.

If your request is not timely filed, you must file a request to accept a late-filed request for oral argument. Form AP-135 can 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 on the agency's attorney. Proof of service must be filed with the request.

## 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 agency decision,
- remand (send the case back for additional action by the agency),
- reverse the decision made by the agency, 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 administrative agency 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. The only costs you may ask for are:
  1. filing fee
  2. the cost of preparation of transcripts or cassettes
  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 the agency'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/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 agency'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, 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.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA AT \_\_\_\_\_

\_\_\_\_\_,  
Appellant,  
vs.  
\_\_\_\_\_,  
Appellee.  
\_\_\_\_\_ ) CASE NO. \_\_\_\_\_

BRIEF OF APPELLANT

Appeal from the \_\_\_\_\_  
(name of agency)

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:

By: \_\_\_\_\_

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA AT \_\_\_\_\_

\_\_\_\_\_,  
Appellant,  
vs.  
\_\_\_\_\_,  
Appellee.  
\_\_\_\_\_ ) CASE NO. \_\_\_\_\_

APPELLANT'S EXCERPT OF RECORD

Appeal from the \_\_\_\_\_  
(name of agency)

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:

By: \_\_\_\_\_