APPELLEE INSTRUCTIONS

District Court to Superior Court Appeals

Court staff can usually answer questions 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 you presented your case properly and with the best evidence and arguments
- tell you which procedures are the best ones to use in your case
- interpret laws for you

If you need help with your case, you should talk to a lawyer.

April 2022
ALASKA COURT SYSTEM

Most of the forms referenced in this booklet are available on the court system's website at http://www.courts.alaska.gov/forms/index.htm.

The Appellate Rules cited in this booklet are available on the court system's website at https://courts.alaska.gov/rules/docs/app.pdf.
You can also find copies of the book *Alaska Rules of Court* at any local court.

AP-205 (4/22)(white cvr)

INSTRUCTIONS FOR RESPONDING TO AN APPEAL FROM THE DISTRICT COURT TO THE SUPERIOR COURT[1]

These instructions explain what to do if someone else files an appeal in a case you are involved in. You may also want to read the "Appellant Instructions" (form AP-200) for more information about what the appellant must do in order to file the appeal.

Appellate Rules 601-612 govern appeals to the superior court. Appeals are complicated, and you may want to talk to a lawyer if someone files an appeal in your case.

I. DEFINITIONS

A. APPEAL. In general, an appeal is when a higher court reviews a lower court's final decision or judgment. These instructions are specific to when the **superior court** reviews the decision or judgment of the **district court**. An appeal is **not** a new trial. You cannot present any new evidence to the superior court. The only information that the superior court will consider on appeal is:

1. the electronic recording of the district court trial or hearing, including witness testimony;
2. any exhibits (documents, photographs, videos, or physical items) offered as evidence in the district court;
3. the documents in the court file; and
4. legal briefs and memoranda filed in the appeal.[2]

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. 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 (see section V).

B. Other Requests.

The appellant sometimes makes other requests that you may want to respond to. The appellant must serve you with a copy of any request.[3]

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1 District court cases that may be appealed to the superior court include formal civil cases, small claims, traffic and other minor offenses, criminal cases on the "merits", and some criminal sentences.

2 See section V of these instructions for more information on legal briefs and memoranda.

3 "Service" is a legal term that means the other party must give you a copy of everything filed in court during the appeal. Service can be by hand-delivery or mail. If you agree to it, you can also be served by email or fax.

Some common requests that the appellant may make at the same time they file the notice of appeal are:

1. Request to Accept Late-Filed Appeal. The appellant must file a notice of appeal within 30 days after the district court judgment is distributed. 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 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
   - a motion to waive or reduce cost bond
   - a supersedeas bond (discussed in paragraph 4 below)

   The purpose of a cost bond is to make sure your costs to defend the appeal will be reimbursed by the appellant if the appeal is dismissed or if the appellant loses the appeal. The appellant may, however, ask the court to waive or reduce the amount of the cost bond.

4. Request for Approval of Supersedeas Bond. If the appellant files a supersedeas bond, it 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, only an approved supersedeas bond will. A supersedeas bond is 125% of the amount of the judgment, which is designed to make sure that not only your appeal costs, but also the amount of the judgment, will be reimbursed or paid by the appellant if the appellant loses the appeal.

   If the appellant wants to file a supersedeas bond, they must file a request for approval of the bond. The appellant must serve you with a copy of the request and proof that the bond was deposited. The court will not wait for your response before deciding whether to approve the bond. Even if a bond is approved, you may still file an objection to the bond, and the court will reconsider the approval. You may use *Request and Order* (form AP-135) to file your objection.

5. Motion to Waive or Reduce Supersedeas Bond. If the appellant thinks 125% of the judgment is too high, or if the appellant cannot afford to post 125% of the judgment, the appellant may file a request to waive or reduce the supersedeas bond.

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

You are not required to respond to any requests or motions filed by the appellant, especially if you do not oppose them. However, if you oppose a request, you must file a written response for the court to consider your opposition.

If the appellant's request (or motion) was mailed to you, you must file a response within 10 days after the date it was mailed. If the appellant's request was hand-delivered, emailed, or faxed to you, you must file a response within 7 days after you received it.[4] You may use *Response to Request* (form AP-140) to file your opposition. The court will notify you of its decision on any request.

III. COPIES TO OTHER PARTIES

The court rules require each party to give a copy of any document that they file with the court to all other parties.[5] You can give the copies to the other party by hand-delivering or mailing the documents. You can also email or fax a copy if the other party agreed to this type of service. For every document that you file, you must include a signed statement that you gave a copy to the other parties. This is called "proof of service." The court forms include a certificate of service section. Make sure that you always complete this section before you file the form with the court. If another party is represented by an attorney, you must serve their attorney instead of the party directly.

IV. ASSIGNMENT OF JUDGE

The court will notify you of the name of the judge assigned to hear the appeal. You have the right to a "peremptory challenge" (to ask for a different judge) **one time** only, without giving a reason. If you do this, you will be randomly assigned a different superior court judge to hear the appeal. Use *Notice of Change of Judge* (form TF-935). You must file this notice **within five days** of being notified of the assigned judge.

V. BRIEFING SCHEDULE

A "legal brief" is a document that you write to explain your side of the case to the judge. In an appeal to the superior court from the district court, you may file a "legal memorandum" instead, which is less formal than a brief. When the case is ready for briefing, the court will send you and the appellant *Notice Setting Appeal Procedure* (form AP-305). This notice will tell you the time schedule for filing legal memoranda and requesting oral argument.

You are not required to file your own (appellee) memorandum or brief. However, if you do not file one, the judge will not have the benefit of reading your explanation of the case, and it is possible that you will not be allowed to speak at oral argument (see section VI). This may make it more likely that the appellant will win the appeal. If you can't file your memorandum or brief within the time limit set in the notice from the court, file *Request and Order* (form AP-135) asking the court for more time.

If you want to file a formal brief, see Appellate Rules 212(c) and 513.5 for details about format and content. The rules for briefs are complicated and are not explained in detail in these instructions.

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[4] Appellate Rules 503 & 612.

[5] Appellate Rule 602(j).

If you choose to file the less formal memorandum, it must include:[6]

a. a statement of the issues you want the court to review
b. a summary of the facts of the case
c. a discussion of the law and its application to the facts
d. a short conclusion explaining what you want the court to order

Your memorandum must be typed or written (using black ink), double-spaced on 8.5" x 11" white paper. Number all of the pages except for the cover. Only type or write on one side of each page. Your memorandum must be no longer than 20 pages. *Appellee Memorandum Cover Sheet* (form AP-161) may be used as the cover of your memorandum. It is available as a fillable form online. It is also included as the last page of these instructions, which you may detach and fill out by hand.

For a complete description of the requirements for your memorandum, including rules about fonts and margins, see Appellate Rules 513.5 and 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 filing a records request with the appropriate court (see http://courts.alaska.gov/trialcourts/index.htm#recs for more information). You must pay $20 per electronic recording.[7] You should make this request as soon as possible, because it may take several days for the court to prepare your recording.

Send a copy of your memorandum (or brief) to the appellant. Show proof that you did this by filling out and filing a certificate of service. This certificate is already included on the sample memorandum cover (form AP-161).

VI. ORAL ARGUMENT

"Oral argument" is when you explain your side of the case to the appellate judge and try to persuade the judge why you should get what you are asking for. Oral argument is **not** a new trial or a chance to present more evidence. You cannot call witnesses to testify. You are limited to explaining in more detail the arguments you made in your legal memorandum (or brief). Sometimes, the judge will ask you questions about what you say during oral argument or what you wrote in your memorandum. Each side gets 15 minutes to speak, unless otherwise ordered.

If you do not file a legal memorandum or brief, you will not be allowed to present any arguments at oral argument, unless the appellant consents or the judge asks to hear your argument.[8]

The deadline to request oral argument is:

(1) If you file a brief or memorandum, then within 10 days after the date the appellant's **reply** memorandum is due; **or**

(2) If you do **not** file a brief or memorandum, then within 10 days after the due date for you to file one expired.

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6 Appellate Rule 605(b)(4).

7 Administrative Rule 9(d).

8 Appellate Rule 212(c)(10).

In the following case types, oral argument is only allowed if the superior court judge decides there is a good reason to have it:

a. appeals from a civil or small claims matter where the controversy on appeal concerns less than $300.
b. appeals from a minor offense as defined by Minor Offense Rule 2.

In these cases, you may file *Request and Order* (form AP-135) to ask for oral argument. You must include an explanation of why oral argument is necessary. The court will notify you whether your request is granted or denied.

In all other types of appeals, as long as at least one party makes a timely request, the court will automatically schedule oral argument. The request must be in writing, but does not need to explain why oral argument is necessary. You may use *Request and Order* (form AP-135) to ask for oral argument. If the appellant timely requests oral argument, you may not object to the request.[9]

If your request for oral argument is filed after the deadline, you must also include a request for the court to accept your late filing. You may use *Request and Order* (form AP-135) to both ask for the oral argument to be scheduled and to explain why the court should accept your late request.

If you file a request for oral argument, you must serve a copy of your request on the appellant. Fill out the certificate of service showing that you did this.

VII. DECISION

The superior court will decide the appeal based on the record, the briefs or memoranda submitted, and oral arguments (if held). The court will send you a copy of the 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** the appeal.

There may also be a combination of these results if there are multiple issues on appeal.

VIII. ATTORNEY FEES AND COSTS

In civil appeals, Appellate Rule 508 determines who may apply for costs and attorney fees at the end of the appeal. Generally, you (the appellee) may apply for costs and attorney fees if the district court's decision or judgment is affirmed.[10]

Costs. The clerk will send the parties *Notice Re Costs and Attorney Fees on Appeal* (form AP-333) along with a copy of the appeal decision. If you won the appeal, and you want to recover your costs, file a verified[11] 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 decision was mailed to you, you have an additional three calendar days to file your bill of costs.

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9 Appellate Rule 605.5.

10 If the judgment is reversed, then the appellant may ask the court to award costs and attorney fees against you. If the judgment is remanded, or if only some parts were reversed or affirmed, then the superior court will have to decide which side, if any, is awarded costs and fees.

11 "Verified" means your cost bill must include a statement signed by a court clerk 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.

The only costs you may ask for are:

1. the cost of preparing the transcripts or electronic recordings and paying the transcriber
2. the cost of copying and mailing memoranda or briefs

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.

Attorney Fees. File a request for attorney fees **within 10 days** after the date shown in the clerk's certificate of distribution on the appeal decision. You may use *Request and Order* (form AP-135) to do this. Attach a detailed invoice showing your actual attorney fees. Non-attorneys cannot request attorney fees for representing themselves. Include an explanation of why you are allowed to recover attorney fees under Appellate Rule 508(e). 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 decision on the request.

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 any cost bond or supersedeas bond (posted by the appellant at the beginning of the appeal) to the amount owed you. See section IX of these instructions. You may also ask the clerk for a writ of execution to collect from the appellant the amount owed to 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 and request that the bond be applied to your costs and/or to the judgment. This request must be filed by the date stated in the notice the court will send to you. You may use *Request and Order* (form AP-135) to do this.

The appellant may have satisfied the bond requirement by filing either a surety bond or a cash deposit.

- Cash was Deposited. If the court orders the cash deposit applied to pay your judgment or appeal costs, the court will issue you a check.
- Surety Bond was Posted. If the court grants your request to apply the bond to your judgment or appeal costs, you are responsible for getting 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 assistance.

If you do not file an objection (or request to use the bond for costs), then 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 _____
at _____ *[date/time],* a copy
of this memorandum was
☐ mailed ☐ personally delivered
☐ emailed* ☐ faxed*
to *[list names]*:

By: _____

*Email and fax may only be used if the other party consented to this method of service.