

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 160

Amendment No. 2
Amending Appellate Rule

IT IS ORDERED:

Rule 45(b) shall be amended to read as follows:

B. NOTICE OF APPEAL. The contents of the notice of appeal shall be the same as set forth in Appellate Rule 7(b) and the Notice of Appeal shall be filed in the superior court. The clerk of the superior court shall forthwith mail a copy of the Notice of Appeal to the administrative agency or district court involved and also notify them that they must prepare the record on appeal in accordance with Appellate Rule 9. The notice to prepare record may indicate what the contents of the record on appeal will be or that the contents of the record will be ordered at a prehearing conference to be scheduled by the superior court in conformity with Appellate Rules 45(a) and (f) and that the administrative agency or district court will be sent the order as soon as it is entered. The time limit for preparation of the record shall run from the date of receipt of the order designating such record if the record is not immediately designated.

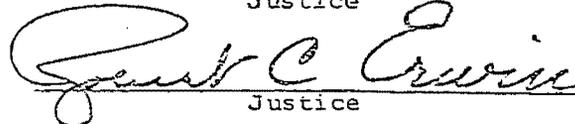
Effective date: October 15, 1973

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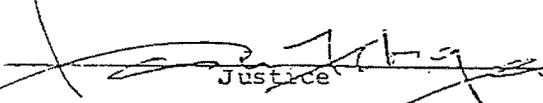
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Justice


Justice


Justice

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 160

Amendment 1

Amending Supreme Court
Order No. 160

Appellate Rules

BY DIRECTION OF THE SUPREME COURT, IT IS ORDERED:

(1) As of the effective date of this amendment to Supreme Court Order No. 160, Appellate Rule 11(a) shall read as follows:

(a) Time for Serving and Filing Briefs. The appellant shall serve and file his brief within 30 days after notice of filing of the record has been mailed. The appellee shall serve and file his brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 20 days after service of the brief of the appellee, but, except for good cause shown, a reply brief must be filed at least 30 days before argument.

(2) As of the effective date of this amendment to Supreme Court Order No. 160, Appellate Rule 12, footnote 1, section

(b)(1)[b] shall read as follows:

(b)(1)[b] The typewritten briefs may be sent directly to the clerk's office, or they may be filed in an office of a justice, and then sent immediately by counsel to the clerk in Juneau for preparation of masters, reproduction, and service. Since the original typewritten brief should not be folded, the envelope should be marked "DO NOT BEND OR FOLD". The fees to be paid the clerk's office for reproducing briefs are as follows: for furnishing three copies of a brief for each party--\$2.50 per page; for furnishing copies of a brief in excess of three for each party--\$3.00 per extra copy.

(3) As of the effective date of this amendment to Supreme Court Order No. 160, Appellate Rule 14(a) shall read as follows:

(a) What to Contain - Service. All motions to the court shall be typewritten, shall contain a brief statement of the fact and object of the motion, shall be supported by points and authorities and where the facts are not otherwise proved in the cause, by affidavits, and shall be served on all adverse parties. Except as may be otherwise provided under the authority of Rule 37(a), adverse parties shall have 7 days after service of a motion within which to serve and file counter motions, affidavits, and memoranda in opposition. As soon as practicable after the 7 day period has expired, the motion will be considered by the court and, unless otherwise ordered, without oral argument.

(4) As of the effective date of this amendment to Supreme Court Order No. 160, Appellate Rule 24(b) shall read as follows:

(b) Filing and Duplication. A petition from an interlocutory order may be sought by filing an original petition and 5 copies with the clerk of the supreme court within 10 days after the entry of such order in the superior court along with proof of service on all parties to the action in the superior court or district court. The court may require that additional copies be furnished. A justice of this court for good cause shown, may extend the time for filing in such cases for an additional period of 10 days. A notice of review need not be filed with the superior court.

5. As of the effective date of this amendment to Supreme Court Order No. 160, Appellate Rule 11(b)(1)[f] shall read as follows:

[f] A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review with appropriate references to the record (see subdivision (8)).

(6) One Appellate Rule was inadvertently omitted in the renumbering of the rules and one rule was inadvertently given the wrong title. The following Rules of Appellate Procedure shall be renumbered:

<u>Rule Number Prior to 3/15/73</u>		<u>New Number</u>	
Rule 43A	shall be	Rule 36	Review of Proceedings of Judicial Qualifications Commission
Rule 44	shall be	Rule 37	Applications to Individual Justices
Rule 45	shall be	Rule 38	Time--Computation and Extension
Rule 46	shall be	Rule 39	Service--Appearance of Counsel--Signing of Documents
Rule 47	shall be	Rule 40	Process--How Returnable
Rule 48	shall be	Rule 41	Death of a Party
Rule 49	shall be	Rule 42	Substitution of Parties and Attorneys
Rule 50	shall be	Rule 43	Clerical Mistakes
Rule 51	shall be	Rule 44	General Authority of Supreme Court
Rule 52	shall be	Rule 46	Construction
Rule 53	shall be	Rule 47	Standing Advisory Committee on Rules
Rule 55	shall be	Rule 48	Effective Date
Rule 56	shall be	Rule 49	Title
Rule 57	shall be	Rule 50	Legal Effect of Rules--Procedural Portions of Statutes Superseded

(7) Under the new PART X. APPEALS TO SUPERIOR COURT, the new rule "Appeals to Superior Court from District Court and from Administrative Agencies," which was numbered as Appellate Rule 44 under Supreme Court Order No. 160, shall now be renumbered as Appellate Rule 45.

(8) As of the effective date of this amendment to Supreme Court Order No. 160, the following change shall be made in Appellate Rule 35, Appeals at Public Expense: the two references to "Criminal Rule 39(c)" shall be changed to "Criminal Rule 39."

(9) The attached Table of Contents supersedes the previous Table of Contents as set out in Supreme Court Order No. 160.

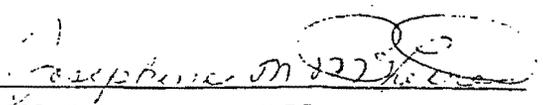
This amendment shall be effective March 30, 1973.

DATED at Juneau, Alaska, this 28th day March, 1973.

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 JOSEPHINE M. MCPHETRES
 Clerk, Supreme Court

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 160

Amendments to
Supreme Court Rules

IT IS ORDERED:

1. As of the effective date of this order, the Rules of the Supreme Court for the State of Alaska shall be known as the Rules of Appellate Procedure of the State of Alaska.

2. As of the effective date of this order, the following Supreme Court Rules shall be deleted:

Rules 25 through 32 and Rule 54

3. The following Rules of Appellate Procedure (formerly Supreme Court Rules) shall be renumbered:

Rule 3 shall be Rule 2	Clerk
Rule 4 shall be Rule 3	Attorneys and Counsellors
Rule 5 shall be Rule 4	Clerks to Justices Not to Practice
Rule 6 shall be Rule 5	Judgments from Which Appeal May be Taken
Rule 23 shall be Rule 25	Original Applications - Stay
Rule 34 shall be Rule 26	Judgments and Orders
Rule 35 shall be Rule 27	Rehearing
Rule 36 shall be Rule 28	Mandate
Rule 37 shall be Rule 29	Costs
Rule 38 shall be Rule 30	Interest
Rule 39 shall be Rule 31	Damages
Rule 40 shall be Rule 32	Dismissal of Causes
Rule 41 shall be Rule 33	Record and Briefs After Final Determination
Rule 42 shall be Rule 34	Custody of Prisoners on Habeas Corpus
Rule 43 shall be Rule 35	Appeals at Public Expense
Rule 44 shall be Rule 36	Applications to Individual Justices
Rule 45 shall be Rule 37	Time-Computation and Extension
Rule 46 shall be Rule 38	Service-Appearance to Counsel-Signing of Documents
Rule 47 shall be Rule 39	Process-How Returnable
Rule 48 shall be Rule 40	Death of a Party
Rule 49 shall be Rule 41	Substitution of Parties and Attorneys
Rule 50 shall be Rule 42	Clerical Mistakes
Rule 51 shall be Rule 43	General Authority of Supreme Court
Rule 52 shall be Rule 45	Time-Computation and Extension
Rule 53 shall be Rule 46	Standing Advisory Committee on Rules
Rule 55 shall be Rule 47	Effective Date
Rule 56 shall be Rule 48	Title
Rule 57 shall be Rule 49	Legal Effect of Rules - Procedural Portions of Statutes Superseded
Part X shall be Part XI	Construction - Effective Date - Applicability to Special Cases

4. The following Rules of Appellate Procedure (formerly Supreme Court Rules) shall be amended to read as set out in the

attached rules:

Table of Contents to Appellate Rules

Rule 2	Clerk
Rule 7	Appeal: Time-Notice-Bonds
Rule 9	Record on Appeal
Rule 11	Briefs
Rule 12	Form of Briefs and Motions
Rule 14	Motions
Rule 16	Quorum
Rule 18	Oral Argument of Appeals
Rule 19	Appeal in Criminal Cases
Rule 22	Applicability of Rules
Rule 23	Review of Non-Appealable Orders or Decisions
Rule 24	Petitions for Review
Rule 25	Original Applications--Stay
Rule 37	Time-Computation and Extension
Rule 38	Service-Appearance of Counsel-Signing of Documents
Rule 49	Title

5. The following Section and Rules shall be added to the Rules of Appellate Procedure:

Rule 6. Supervision and Control of Proceedings

PART X. Appeals to Superior Court

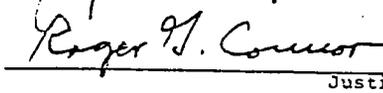
Rule 44. Appeals to Superior Court from District Court and from Administrative Agencies

These rules shall be effective March 15, 1973.

DATED at Anchorage, Alaska, this 15th day of February, 1973.



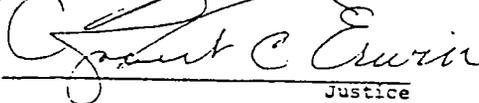
Chief Justice



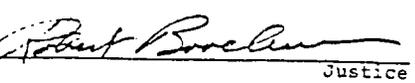
Justice



Justice



Justice



Justice

TABLE AFTER 160 + 160 Am. 1

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Rule 2. Clerk.

(a) The office of the clerk of the supreme court shall be in Juneau.

(b) The clerk shall not practice, either as attorney or counsellor, in this court or any other court while he shall continue to be clerk of this court.

(c) The clerk shall, before entering on the execution of his office, take and subscribe to the oath set forth in section 5, article XII, of the state constitution and such further oaths or affirmations as may be prescribed by the legislature, and shall give bond in the sum to be fixed, and with sureties to be approved by the court, faithfully to discharge the duties of his office. The bond shall be deposited for safekeeping as the court may direct.

(d) The clerk shall not permit any original record or paper to be taken from the supreme court, without an order from that court, except as otherwise provided in these rules.

Rule 6. Supervision and Control of Proceedings.

The supervision and control of the proceedings on appeal shall be in the supreme court from the time the notice of appeal is filed with its clerk, except as otherwise provided in these rules. The court may at any time entertain a motion to dismiss the appeal, or for directions to the superior court, or to modify or vacate any order made by the superior court or by any judge in relation to the prosecution of the appeal, including any order fixing or denying bail.

PART IV. PRACTICE ON APPEAL - CIVIL CASES

Rule 7. Appeal: Time-Notice-Bonds.

(a) When Taken. The time within which an appeal may be taken to the supreme court by any party including the State of Alaska shall be 30 days from the entry of the judgment appealed from unless a shorter time is provided by law, except that: (1) upon a showing of excusable neglect based on a failure of a party to learn of the entry of the judgment, the court from which the appeal is taken may, in any action, extend the time for appeal not exceeding 30 days from the expiration of the original time herein prescribed; (2) if a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days of the date on which the first notice of appeal was filed, or within the time otherwise herein prescribed, whichever period expires last. Whenever in these rules the word "judgment" is used, it shall include an administrative order, unless the context provides otherwise.

The running of the time for appeal is terminated by a timely motion made pursuant to any of the rules of civil procedure for the superior court in suits of a civil nature, and the full time for appeal fixed in this subdivision commences to run and is to be computed from the entry of any of the following orders made upon a timely motion under such rules, granting or denying a motion for judgment under Civil Rule 50(b); or granting or denying a motion under Civil Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; or granting or denying a motion under Civil Rule 59 to alter or amend the judgment; or denying a motion for a new trial under Civil Rule 59.

(b) Notice of Appeal. A party may appeal from a judgment by filing with the court from which the appeal is being taken a notice of appeal in duplicate with sufficient additional copies for all

parties. The notice of appeal shall specify the parties taking the appeal, shall designate the judgment or part thereof appealed from, and shall name the court to which the appeal is taken. Notification of the filing of the notice of appeal shall be given by the clerk of the superior court by mailing copies thereof to all the parties to the judgment other than the party or parties taking the appeal, but his failure to do so does not affect the validity of the appeal. The notification to a party shall be given by mailing a copy of the notice of appeal to his attorney of record or, if the party is not represented by an attorney, then to the party at his last known address. The duplicate notice of appeal shall be forwarded immediately by the clerk of the court whose judgment is being appealed to the clerk of this court.

Failure of the appellant to take any of the further steps to secure the review of the judgment appealed from does not affect the validity of the appeal, but is ground only for such remedies as are specified in these rules, or, when no remedy is specified, for such action as the supreme court deems appropriate, which may include dismissal of the appeal.

(c) Bond on Appeal. Unless a party is exempted by law, a bond for costs on appeal shall be filed with the notice of appeal. The bond shall be in the sum of seven hundred and fifty dollars (\$750.00), unless the superior court fixes a different amount or unless a super-sedeas bond is filed, in which event no separate bond on appeal is required. The bond on appeal shall have sufficient surety and shall be conditioned to secure the payment of costs if the appeal is dismissed or the judgment affirmed, or such costs as the supreme court may award if the judgment is modified. If a bond on appeal in the sum of seven hundred and fifty dollars (\$750.00) is given, no approval thereof is necessary. After a bond on appeal is filed, an appellee may by motion raise objection to the form or amount of the bond or to the

sufficiency of the surety which shall be determined by the superior court. In lieu of filing such cost bond, the appellant may deposit in the office of the clerk a sum of money reasonably sufficient to cover such costs, the amount thereof to be fixed by the superior court.

(d) Supersedeas Bond.

(1) Whenever an appellant entitled thereto desires a stay on appeal, he may present to the superior court for its approval a supersedeas bond which shall have such surety or sureties as the court requires. The bond shall be conditioned for the satisfaction of the judgment in full together with costs and interest, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs and interest as the supreme court may adjudge and award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, and interest, unless the court after notice and hearing and for good cause shown, fixes a different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy as in real actions, replevin, and actions to foreclose mortgages or when such property is in the custody of the marshal or state police or when the proceeds of such property or a bond for its value is in the custody or control the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the cost of the action, costs on appeal, and interest, unless the court after notice and hearing and for good cause shown, fixes a different amount or orders security other than the bond.

(2) The supreme court or a justice thereof may stay the enforcement or effect of the judgment appealed from or the proceedings

in the court below upon such terms as to bond or otherwise as may be proper. Application for a stay to this court or a justice thereof normally will not be entertained unless application has first been made to the court below and has been denied, or unless the security offered below has been disapproved.

(e) Failure to File or Insufficiency of Bond. If a bond on appeal or a supersedeas bond is not filed with the notice of appeal, or if the bond filed is found insufficient, and if the record on appeal has not been forwarded to the supreme court, a bond may be filed at such time before the record is so forwarded as may be fixed by the superior court. After the record has been forwarded, application for leave to file a bond may be made only in the supreme court.

(f) Judgment Against Surety. By entering into an appeal or supersedeas bond given pursuant to subdivisions (c) and (d) of this rule, the surety submits himself to the jurisdiction of the superior court and irrevocably appoints the clerk of that court as his agent upon whom any papers affecting his liability on the bond may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the surety if his address is known.

Rule 9. Record on Appeal.

(a) Designation of Contents of Record on Appeal. Immediately after an appeal to the supreme court is taken, the appellant shall serve upon the appellee and file with the superior court, a designation of the portions of the record, proceedings, and evidence to be contained in the record on appeal, unless the appellee has already served and filed a designation. Within 10 days after the service and filing of such a designation, any other party to the appeal may serve and file a designation of additional portions of the record, proceedings, and evidence to be included. If the appellee files the original designation, the parties shall proceed under subdivision (b) of this rule as if the appellee were the appellant.

(b) Transcript. If there is to be included in the record on appeal any evidence or proceedings that were stenographically reported or electronically recorded, the appellant shall incorporate in his designation a description in the best practical manner of the particular parts of the evidence or proceedings to be included. If the appellant's designation includes only part of the evidence or proceedings, the appellee in his designation referred to in subdivision (a) of this rule shall in like manner designate such additional parts thereof as he desires to have added. If it is impracticable to describe with precision those portions which the parties desire to have included in the record on appeal, amended or supplemental designations may be filed at the time a transcript has been prepared.

Within 30 days after the filing of the notice of appeal, the appellant shall file the original of a transcript of the evidence or proceedings so designated by the parties, which shall be certified by the transcript secretary or other officer of the court. If the

appellant fails to file a transcript of those portions designated by appellee, he may be required to do so by the court upon motion made by appellee not later than 10 days after the appellant's transcript has been filed.

A request for the preparation of a transcript shall be in writing, shall be served on the other parties to the appeal, shall be accompanied by proof of service, and shall be filed in duplicate with the clerk. The duplicate copy shall be forwarded immediately by the clerk to the clerk of the supreme court.

In the event that a copy of the transcript or of the necessary portions thereof is already on file, the appellant shall not be required to file any additional copies.

All transcripts shall be in typewritten form upon paper 8-1/2 x 11 inches, bound on the left-hand margin, and shall be indexed.

(c) Stipulation as to Record. Instead of serving designations as above provided, the parties by written stipulation filed with the clerk of the superior court may designate the parts of the record, proceedings, and evidence to be included in the record on appeal.

(d) Record to Be Abbreviated. All matters essential to the decision of the questions presented by the appeal must be included in the record on appeal, and all matters not essential to the decision of such questions shall be omitted; and the court will consider nothing but those parts of the record so designated. For any infraction of this rule, the supreme court may withhold or impose costs as the circumstances of the case and discouragement of like conduct in the future may require, and such costs may be imposed upon offending attorneys or parties; and in addition, if at the hearing it shall appear that any material part of the record, proceedings and evidence has not been included in the record on appeal, the appeal may be dismissed, or such other order made as the circumstances may appear to the court to require.

(e) Statement of Points. The appellant shall serve and file with his designation a concise statement of the points on which he intends to rely on the appeal. The court will consider nothing but the points so stated. On motion, and for cause, the statement of points may be supplemented subsequent to the filing of the designation of record.

(f) Record to Be Prepared by Clerk - Necessary Parts.

(1) The clerk of the superior court shall prepare the record on appeal which shall consist of original papers, exhibits and transcript as designated by the parties, and which shall always include, whether or not designated, the following: the material pleadings, without unnecessary duplication; the verdict or the findings of fact and conclusions of law together with the direction for the entry of judgment thereon; in an action tried without a jury, the referee's or master's report, if any; the opinion; the judgment or part thereof appealed from; the notice of appeal with date of filing; the designations or stipulations of the parties as to matter to be included in the record; and the statement by the appellant of the points on which he intends to rely.

(2) The record on appeal shall be assembled by the clerk in one or more separate parts or volumes, as the clerk may deem convenient, and with each paper and exhibit numbered at the bottom consecutively, in order that convenient and easy reference, by page and volume numbers, may be had to any particular paper or exhibit in the record.

(3) The clerk shall also prepare, sign and attach to the record on appeal a document containing the following: a table of contents which shall list each document contained in the record on appeal with corresponding volume and page numbers where each such document may be found; the date upon which the preparation of the record was completed; and the dates upon and manner in which notice

of such completion of the record was given by the clerk and the names of the parties or their attorneys to whom such notice was given.

(4) Promptly upon the completion of the preparation of the record on appeal, the clerk shall give notice thereof in writing to all parties to the judgment and to the clerk of this court, but his failure to do so does not relieve any party from serving and filing his brief within the time prescribed in Rule 11.

(g) Time for Completion of Record - Filing. The preparation of the record on appeal shall be completed within 40 days from the date of filing the notice of appeal. After completion, the record shall be retained in the clerk's office for a length of time sufficient to permit the preparation of briefs in accordance with Rule 11, and shall be filed with the supreme court at a time designated by the clerk of that court. Upon a proper showing, and upon motion and notice, the superior court may extend the time for completion of the record on appeal for an additional period of time which shall in no event exceed 50 days, if the motion for such extension has been filed before the expiration of the original time as prescribed in this subdivision (g). All other additional applications for extensions of time must be made to the supreme court. Copies of all orders extending time shall be forwarded immediately to the clerk of the supreme court.

In those cases where the record is prepared by a private court reporter, payment for transcripts shall be made within 20 days of notification that such fees are due. A motion for an extension of time in which to prepare the record on appeal must be accompanied by a statement from the court reporter that the delay in the preparation of the record is not because of non-payment of the court reporter's fees. Non-payment of fees shall not be considered as grounds for an extension of time for the preparation of the record on appeal.

(h) Power of the Court to Correct or Modify Record. It is not necessary for the record on appeal to be approved by the superior court or a judge thereof except as provided in subdivision (k) of this rule and in Rule 10, but if any difference arises as to whether the record truly discloses what occurred in the superior court, the difference shall be submitted to and settled by that court and the record made to conform to it. If anything material to either party is omitted from the record on appeal by error or accident or is misstated therein, the parties by stipulation, or the superior court either before or after the record is transmitted to the supreme court, or the supreme court, on a proper suggestion or of its own initiative, may direct that the omission or misstatement shall be corrected, and if necessary that a supplemental record shall be certified and transmitted by the clerk of the superior court. All other questions as to the content and form of the record shall be presented to the supreme court.

(i) Record for Preliminary Hearings in Supreme Court. If, prior to the time the complete record on appeal has been prepared as herein provided, a party desires to make in the supreme court a motion for dismissal, for a stay pending appeal, for additional security on the bond on appeal or on the supersedeas bond, or for any intermediate order, the clerk of the superior court, at the party's request, shall prepare and transmit to the supreme court such portion of the record or proceedings below as is needed for that purpose.

(j) Several Appeals. When more than one appeal is taken to the supreme court from the same judgment, a single record on appeal shall be prepared containing all the matter designated or agreed upon by the parties, without duplication.

(k) Appeals When No Stenographic Report or Electronic Recording Was Made. In the event no stenographic report or electronic recording of the evidence or proceedings at a hearing or trial was made, the appellant may prepare a statement of the evidence of proceedings from the best available means, including his recollection,

for use instead of a stenographic or electronically recorded transcript. This statement shall be served on the appellee who may serve objections or proposed amendments thereto within 10 days after service upon him. Thereupon the statement, with the objections or proposed amendments, shall be submitted to the court from which the appeal is being taken for settlement and approval, and as settled and approved shall be included by the clerk of that court in the record on appeal.

(l) Filing Fee. Immediately after a notice of appeal is filed, the appellant shall pay to the clerk of this court a filing fee prescribed in the schedule of fees by Supreme Court Order No. 59.

(m) Transfer of Record on Appeal From One Clerk's Office to Another. If it is impracticable for Alaska counsel for a party to prepare his brief because he resides in a judicial district other than the district where the record on appeal is situated, the court whose judgment is being appealed may, in its discretion, provide for the transfer of the record from one clerk's office to another for the accommodation of counsel in the preparation of briefs.

Rule 11. Briefs

(a) Time for Serving and Filing Briefs. The appellant shall serve and file his brief within 30 days after notice of filing of the record has been mailed. The appellee shall serve and file his brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 20 days after service of the brief of the appellee, but, except for good cause shown, a reply brief must be filed at least 3 days before argument.

(b) Briefs.

(1) Brief of Appellant. The brief of the appellant shall contain the following items under appropriate headings and in the order here indicated:

[a] A table of contents, including the titles and subtitles of all arguments, with page references.

[b] A table of cases alphabetically arranged, statutes, and other authorities cited, with references to the pages of the brief where they are cited.

[c] The constitutional provisions, statutes, ordinances, and regulations which the case involves shall be set out verbatim or their pertinent provisions shall be appropriately summarized.

[d] A jurisdictional statement of the date on which judgment was entered and of the legal authority of the court to consider the matter upon which review is sought.

[e] A statement of the issues presented for review. In cases of cross-appeal the cross-appellant may present a statement of the issues presented for review which require determination if the case is reversed and remanded for further proceedings in the trial court; in the event that the decision is affirmed, such issues may be deemed waived by the supreme court.

[f] A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record (see subdivision (7)).

[g] Argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefore, with citations to the authorities, statutes and parts of the record relied on, and it shall be preceded by a heading indicating the subject matter.

[h] A short conclusion stating the precise relief sought.

(2) Brief of Appellee. The brief of the appellee shall conform to the requirements of subdivisions (1)[a] through (1)[h], except that a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(3) Reply Brief. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. No further briefs may be filed except with leave of the court.

(4) Exclusive of appendices, the appellant's and appellee's briefs may not exceed 50 numbered pages each. The appellant's reply brief may not exceed 20 pages. Except after leave granted, the clerk will not accept a brief of either party which exceeds the length specified here.

(5) Briefs in Cases of Multiple Parties. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another.

(6) Briefs in Cases Involving Cross-Appeals. If a cross-appeal is filed, the cross-appellant may file one brief that both discusses his claims of error and answers the original appellant. The brief should be divided in two sections, one section containing the issues and argument involved in his appeal and the other containing the answer to the brief of the appellant. In the event cross-appellant elects to file one brief to cover both the appeal and cross-appeal, he waives his right to file a reply brief to the answer filed to the cross-appeal.

(7) References in Briefs and in Oral Arguments to Parties. In briefs and oral arguments, counsel are expected to minimize references to parties by such designations as "appellant" and "appellee". It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of parties, or descriptive terms such as "the employee", the "injured person", "the taxpayer", and so forth.

(8) References in Briefs to the Record. The briefs shall refer to parts of the record and to the pages of the record at which those parts appear. If reference is made to evidence of which the admissibility is in controversy, reference shall be made to the pages of the transcript at which the evidence was identified, offered, and received or rejected.

(9) Brief of an Amicus Curiae. A brief of an amicus curiae may be filed only if accompanied by written consent of all the parties, or by leave of court granted on motion, or at the request of the court. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Unless all parties otherwise consent, any amicus curiae shall file its brief within the time allowed to the party whose

position as to affirmance or reversal the amicus brief will support unless the court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer. A motion of an amicus curiae to participate in the oral argument will be granted only for extraordinary reasons.

(10) Failure to File Briefs. When the brief for appellant is not filed as required, the court may forthwith on its own motion or on motion of appellee take appropriate action, which may include dismissal of the appeal. When the brief is not filed as required, appellee will not be heard on the argument except on consent of his adversary, or by request of the court.

(11) Defective Briefs. When a brief fails to comply with the requirements of these rules, this court on application of any party or on its own motion, and with or without notice as it may determine, may: (1) order the brief to be returned to counsel for correction by interlineation, cancellation, revisions or replacement in whole or in part, and to be refiled with the clerk within a time specified in the order; or (2) order the brief stricken from the files, with leave to file a new brief within a specified time; or (3) disregard defects and consider the brief as if it were properly prepared.

Rule 12. Form of Briefs and Motions.

(a) Briefs. Briefs shall be prepared in accordance with Supreme Court Order No. 14.¹

(b) Motions. All motions prepared for the use of this court must be on plain white, 8-1/2 x 13 inch, opaque, and unglazed paper. The type shall be legible and 10 pitch (10 characters per inch). Only one side of the paper shall be used, and the margins and spacing shall be similar to those used in briefs. The motions shall be numbered consecutively at the bottom center of the page.

1. The substance of Supreme Court Order No. 14 is as follows:

(a) When using standard machines in preparation of briefs, the type must be 10 pitch (10 characters per inch) and 11 or 12 points in height. If proportional or executive type is used, it shall be from 10 to 12 points in height. The expand key shall not be used. If doubt exists as to whether a given type will comply with these instructions, a sample may be submitted to the clerk.

(b) Briefs may be reproduced either by the clerk's office in Juneau or by a commercial reproduction office.

(1) Preparation of Briefs for Duplication in Clerk's Office.

[a] All briefs are to be typed on twenty-pound bond paper, 8-1/2 x 11 inches. All margins - left, right, top, and bottom - should be one inch each, and the lines should be double spaced. The pages should be numbered consecutively at the bottom center of the page. The pages should be clean and legible, with no filled in letters. Incomplete erasures, fingerprints, oil marks, ink marks, stray marks, and folds or creases will reproduce on the photographed masters produced by the clerk's office.

[b] The typewritten briefs may be sent directly to

the clerk's office, or they may be filed in an office of a justice, and then sent immediately by counsel to the clerk in Juneau for preparation of masters, reproduction, and service. Since the original typewritten brief should not be folded, the envelope should be marked "DO NOT BEND OR FOLD". The fees to be paid the clerk's office for reproducing briefs are as follows: for furnishing three copies of a brief for each party - \$2.50 per page; for furnishing copies of a brief in excess of three for each party - \$3.00 per page.

(2) Preparation of Briefs for Commercial Printing.

[a] If the commercial printer uses an electrostatic process for preparation of a master, the procedures for preparing briefs for duplication in the clerk's office (see above) should be followed. If the commercial printer does not use an electrostatic process, the following instructions should be carefully noted in preparing masters for duplication. To achieve one inch margins, the following number guides on each master should be used: the left margin should be one inch from the dotted vertical line on the left, and the right margin should be one inch from the dotted vertical line on the right; the first line of type should be on line 7 of the vertical numbering on the master; the last line of type should be line 57. The lines should be double spaced. The pages should be numbered consecutively, with the number centered on line 61. The type should be extremely legible and even, without filled in or heavy letters. Care should be taken not to remove the surface of the master when making erasures: only the surface of the image should be removed. Nonreproducing pencil marks need not be erased since they will disappear in the duplicating process. Signatures or drawings should be made with either a reproducing pen or pencil. Fingerprints, unusual marks, and smears on the master will be reproduced in the briefs.

[b] Masters must be filed in an office of a justice prior to duplication. All briefs, petitions for review and memoranda duplicated commercially shall be mailed to the clerk's office in Juneau for distribution and service. No fees will be charged by the clerk's office where briefs are reproduced commercially.

Rule 14. Motions.

(a) What to Contain - Service. All motions to the court shall be typewritten, shall contain a brief statement of the fact and object of the motion, shall be supported by points and authorities and where the facts are not otherwise proved in the cause, by affidavits, and shall be served on all adverse parties. Except as may be otherwise provided under the authority of Rule 36(a), adverse parties shall have 7 days after service of a motion within which to serve and file counter motions, affidavits, and memoranda in opposition. As soon as practicable after the 7 day period has expired, the motion will be considered by the court and, unless otherwise ordered, without oral argument.

(b) Filing Motion With Court. There must be filed with this court, accompanied by a proof of service on all adverse parties, an original copy of each motion and of each document in support thereof and in opposition thereto.

Rule 16. Quorum.

(a) A quorum shall consist of a minimum of 3 justices or judges designated to sit on the supreme court.

(b) If, at any term or session, a quorum does not attend on any day appointed for holding it, any justice who does attend may adjourn the court from time to time, or in the absence of any justice, the clerk may adjourn the court from day to day. If during a term, after a quorum has assembled, less than that number attend on any day, any justice attending may adjourn the court from day to day until there is a quorum, or may adjourn without designation of a day for the holding of any such term or session.

(c) Any justice attending when less than a quorum is present may make all necessary orders touching any pending proceeding.

Rule 18. Oral Argument of Appeals.

(a) Waived Unless Requested. Unless one of the parties to an appeal makes a written request to this court for oral argument, the court will consider that the case has been submitted for determination on the briefs. Requests for oral argument of cases on appeal shall be summarily granted. When request has been made by one party, the right to oral argument shall extend to all parties. The original of such written request, accompanied by proof of service on all parties, shall be made not later than 20 days after the expiration of the time allowed for the filing of appellee's brief.

(b) Opening and Conclusion. The original appellant in this court shall be entitled to open and conclude the argument of the case. When there is a cross-appeal, the appeal and cross-appeal shall be argued together. In such cases the order of oral argument shall be determined by the supreme court at the request of either party or upon its own motion.

(c) Limitation of Counsel. Unless otherwise ordered by the court, no more than two counsel will be heard for each party on the argument of the case.

(d) Length of Arguments. In all cases, unless otherwise ordered by the court prior to setting the case for argument, one-half hour of argument shall be allowed to each side. The time thus allowed may be apportioned between the counsel on the same side at their discretion, provided always that a fair opening of the case shall be made by the party having the opening and closing argument.

PART V. PRACTICE ON APPEALS - CRIMINAL CASES

Rule 19. Appeal in Criminal Cases.

(a) Notice of Appeal. A party may appeal from a judgment by filing with the court from which the appeal is being taken a notice of appeal in duplicate with sufficient additional copies for all parties. The notice of appeal shall specify the parties taking the appeal, shall designate the judgment or part thereof appealed from, and shall name the court to which the appeal is taken. Notification of the filing of the notice of appeal shall be given by the clerk of the superior court by mailing copies thereof to all the parties to the judgment other than the party or parties taking the appeal, but his failure so to do does not affect the validity of the appeal. The notification to a party shall be given by mailing a copy of the notice of appeal to his attorney of record, or if the party is not represented by an attorney, then to the party at his last known address. The duplicate notice of appeal shall be forwarded immediately by the clerk of the court whose judgment is being appealed to the clerk of this court.

Failure of the appellant to take any of the further steps to secure the review of the judgment appealed from does not affect the validity of the appeal, but is ground only for such remedies as are specified in these rules, for such action as the supreme court deems appropriate, which may include dismissal of the appeal.

(b) Time for Taking Appeal. An appeal by a defendant may be taken within 30 days after entry of the judgment in accordance with Criminal Rule 32(b). If a motion for a new trial or an arrest of judgment has been made within the 30 day period, an appeal from a judgment of conviction may be entered within 30 days after entry of the order denying the motion. When after trial a court imposes sentence upon a defendant not represented by counsel, the defendant shall be advised of his right to appeal and if he so requests, the

clerk shall prepare and file forthwith a notice of appeal on behalf of the defendant. An appeal by the state when authorized by law may be taken within 30 days after entry of the judgment or order appealed from.

Rule 22. Applicability of Rules. The rules governing the practice and procedure in civil cases including, but not limited to, the rules governing the preparation, form and filing of the record and the preparation, form and filing of the briefs, shall apply to appeals in criminal cases, except as otherwise provided in these rules, and except where any such rule is obviously inconsistent with or not reasonably adaptable to appeals in criminal cases.

PART VI. PETITIONS FOR REVIEW - ORIGINAL APPLICATIONS
FOR RELIEF

Rule 23. Review of Non-Appealable Orders or Decisions.

An aggrieved party, including the State of Alaska, may petition this court as set forth in Rule 24 to be permitted to review any order or decision of the superior court, not otherwise appealable under Rule 5, in any action or proceeding, civil or criminal, as follows:

(a) From interlocutory orders granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions.

(b) From interlocutory orders appointing receivers or refusing orders to terminate receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property.

(c) From any order affecting a substantial right in an action or proceeding which either (1) in effect terminates the proceeding or action and prevents a final judgment therein; or (2) discontinues the action; or (3) grants a new trial.

(d) Where such an order or decision involves a controlling question of law as to which there is substantial ground for difference of opinion, and where an immediate and present review of such order or decision may materially advance the ultimate termination of the litigation.

(e) Where postponement of review until normal appeal may be taken from a final judgment or where it will result in injustice because of impairment of a legal right, or because of unnecessary delay, expense, hardship or other related factors.

Relief heretofore available by writs of review, certiorari, mandamus, prohibition, and other writs necessary or appropriate to the complete exercise of this court's jurisdiction, may be obtained by petition for review and the procedure for obtaining such relief shall be as prescribed in Part VI of these rules.

Rule 24. Petitions for Review.

(a) When Granted. A review is not a matter of right, but will be granted only: (1) where the order or decision sought to be reviewed is of such substance and importance as to justify deviation from the normal appellate procedure by way of appeal and to require the immediate attention of this court; or (2) where the sound policy behind the general rule of requiring appeals to be taken only from final judgments is outweighed by the claim of the individual case that justice demands a present and immediate review of a particular non-appealable order or decision; or (3) where the superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by an inferior court or administrative tribunal, as to call for this court's power of supervision and review.

(b) Filing and Duplication. A petition from an interlocutory order may be sought by filing an original petition and 5 copies with the clerk of the supreme court within 10 days after the entry of such order in the superior court along with proof of service on all parties to the action in the superior court or district court. The court may require that additional copies be furnished. A justice of this court for good cause shown, may extend the time for filing in such cases for an additional period of 10 days. A notice of review need not be filed with the superior court. The preparation, duplication and service of all petitions and memoranda shall be governed by Appellate Rules 11 and 12.

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(c) Contents of Petition and Answers. The petition shall contain a statement of fact necessary to an understanding of the controlling question of law determined by the order of the court,

a statement of the question itself, and a statement of the reasons why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation. Where orders or decisions arising from different cases or proceedings pending in the same court are sought to be reviewed, and where they involve identical or closely related questions, it shall suffice to file a single petition covering all the cases or proceedings.

The party seeking review shall be known as the petitioner. All other parties to the proceedings shall be named as respondents. The petition shall not exceed 15 pages in length and shall include, or have annexed thereto, a copy of the order from which appeal is sought showing the date that it was signed or entered, and copies of any findings of fact, conclusions of law and opinion related thereto. Within 7 days after service of the petition, an adverse party may file an answer in opposition. No reply brief will be filed unless ordered by the court. The application and answer shall be submitted without oral argument unless otherwise ordered. Motions to dismiss a petition or cross-petition will not be received. Objections to the exercise of the discretionary power of the court to grant a petition or cross-petition must be included in memoranda in opposition.

(d) Filing of Record and Cost Bond. If permission for review is granted by three justices of the court, the petitioner shall file a bond for costs as required by Appellate Rule 7(c) within 10 days of the entry of the order granting review, and the record shall be transmitted and filed and the appeal docketed in accordance with the rules of this court on other appeals, except no further briefs shall be filed unless ordered by the court. The time fixed by those rules for transmitting the record and docketing the appeal shall run from the date of the entry of the order granting permission.

(e) Consideration by Court. As soon as practicable, the

matter shall be considered by the court. The failure of a petitioner to present with accuracy, brevity, and clearness, or whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition.

Rule 25. Original Applications - Stay.

(a) Original Applications for Relief. The granting by this court or a justice thereof, on original application, of relief heretofore available by writs authorized by law, is not a matter of right but of sound discretion sparingly exercised. The procedure for obtaining such relief shall be as follows:

(1) There must be filed with the court or a justice thereof: [a] such portion of the record and proceedings of the court below as is needed for the purpose of determining whether the relief sought will be granted, and [b] an original and five legible copies of the petition prepared in conformity with Rule 12(b), accompanied by proof of service where service is required by this rule.

(2) The petition shall set forth with particularity why the relief sought is not available in any other court, or cannot be had through appellate processes of appeal or petition for review.

(3) Except as provided in paragraph (6) of this rule, the petition shall be served on opposing parties and when filed shall be accompanied by proof of service. If the petitioner seeks relief heretofore available by writ of prohibition or mandamus, or both in the alternative, it shall be served on the persons to whom the order granting relief is sought to be directed, and in addition, shall be served on every other party to the proceedings in respect of which relief is desired.

(4) Unless otherwise ordered by the court or a justice thereof, each respondent shall have 7 days after service of the petition upon him within which to serve and file an original and five legible copies of a memorandum in opposition prepared in conformity with Rule 12(b). When such memorandum is filed, it shall be accompanied by proof of service.

(5) Timely reply or supplemental memoranda will be considered, but a determination of the matter will not be delayed pending the filing of such memoranda.

(6) If the petition seeks issuance of a writ of habeas corpus, it shall comply with the requirements of statutes relating to habeas corpus, and shall state the reasons for not making application to the superior court. The petition shall also specifically set forth how and wherein the petitioner has exhausted all other remedies available to him by law or rule. Proceedings under this paragraph (6) shall be ex parte, unless the court or a justice thereof otherwise orders.

(7) Motions to dismiss a petition will not be received. Objections to the exercise of the discretionary power of the court to grant a petition must be included in the memoranda in opposition.

(8) As soon as practicable after the time has expired for filing memoranda in opposition to an original application, the matter shall be considered by the court and unless otherwise ordered, without oral argument. If the court or a justice thereof orders the cause set for argument, the parties will be notified whether additional briefs or memoranda are required, when they must be filed, and how much time has been allotted for oral argument.

(9) The preparation, duplication and service of all original applications and memoranda shall be governed by Rules 11 and 12(b).

(b) Stay. Except when petitions for certiorari or appeals have been filed to the United States Supreme Court, applications for stay to this court or a justice thereof normally will not be entertained unless application has first been made to the superior court and has been denied. Proceedings in the superior court or the enforcement of any order or decision thereof shall not be stayed by the filing of a petition for review or of an original application for relief unless the superior court or this court or a justice thereof shall so order.

Rule 37. Time - Computation and Extension.

(a) Computation. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday. When the period of time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

(b) Extensions of Time. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, this court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect.

Rule 38. Service-Appearance of Counsel-Signing of Documents.

(a) In General. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with or mailing it to the clerk of this court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(b) Service on State. If the State of Alaska or an officer or agency thereof is a party, service of all motions, notices, briefs, petitions or other documents shall, notwithstanding the foregoing paragraph, be made upon the Attorney General of Alaska, at Juneau, Alaska. A copy shall also be served upon the attorney of record (if he is not the Attorney General) who represented the State of Alaska or its officer or agency in the court whose judgment, order or decision is involved.

(c) Proof of Service - How Made. Proof of service shall be made in conformity with Civil Rule 5.

(d) Proof of Service - Filing. Where proof of service is required, it shall be in conformity with Civil Rule 5.

(e) Entry of Appearance. Any document filed with the clerk by or on behalf of counsel whose appearance has not previously been entered must be accompanied by an entry of appearance.

(f) Signing of Documents. All documents presented to the court, other than records, must bear the manuscript signature and post office address of the member of the bar of this court who

is counsel of record for the party concerned, and upon whom service is to be made. The individual names of other counsel and their addresses may be added.

PART X. APPEALS TO SUPERIOR COURT

Rule 44. Appeals to Superior Court from District Court and
From Administrative Agencies.

(a) When Taken.

(1) The time within which an appeal may be taken to the superior court from the district court shall be 30 days from the entry of the judgment appealed from. The running of the time for appeal shall be the same as set forth in Appellate Rule 7(a).

(2) The time within which an appeal may be taken to the superior court from an administrative agency shall be 30 days from the date that the order appealed from is mailed or delivered to the appellant. If a request for agency reconsideration is timely filed before the agency, the notice of appeal must be filed within 30 days after the agency's reconsideration decision.

(b) Notice of Appeal. The contents of the notice of appeal shall be the same as set forth in Appellate Rule 7(b).

(c) Bond on Appeal. Unless a party is exempted by law, a bond for costs on appeal shall be filed after the time of the appellate conference provided by section (f) of this rule. The amount of the bond, if any, shall be fixed by the superior court and it shall be regulated by the terms of Appellate Rule 7(c).

(d) Supersedeas Bond. When an appellant entitled thereto desires a stay on appeal, he may present to the superior court for its approval a supersedeas bond drawn in conformity with the requirements of Appellate Rule 7(2). All proceedings with regard thereto shall be governed by Appellate Rules 7(e) and 7(f).

(e) Preparation of Record. The record on appeal shall be prepared in conformity with Appellate Rule 9, unless otherwise ordered at a prehearing conference, with the following exceptions:

(1) The clerk of the district court shall prepare the record on appeal in all cases involving appeal of district court judgments.

(2) The administrative agency shall prepare the record on appeal in the case of appeal of an administrative decision. All reasonable costs incurred in connection with preparing the record on appeal shall be borne by the appellant; in the instance of a cross-appeal, the costs may be apportioned. The preparing agency may require in advance the costs as reasonably estimated by the agency.

(f) Time for Filing Briefs. The superior court shall set the time limits for filing the necessary briefs and the time of oral argument at the time of a prehearing conference to be ordered by that court.

(g) Preparation of Briefs. The briefs on the appeal shall be typewritten and shall be prepared substantially in conformity with Appellate Rules 11 and 12.

(h) Dismissal if Costs Not Paid. If the costs for preparation of the record or transcript on appeal are not paid within 30 days of notification, the appeal may be dismissed by the superior court on its own motion or on the motion of opposing counsel.

(i) Conflict with Other Procedures for Appeal from Rulings of Administrative Agencies. These rules shall supersede all other procedural methods specified in Alaska statutes for appeals from administrative agencies to the courts of Alaska.

(j) Powers of Superior Court Following Notice of Appeal. After notice of appeal to the superior court has been given, the superior court shall have power to make such orders as are necessary and proper to aid its appellate jurisdiction.

Rule 49. Title.

These rules shall be known and cited as the "Rules of Appellate Procedure of the State of Alaska."

Appellate Rule 49