

# APPELLANT 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 here: <http://www.courts.alaska.gov/forms/index.htm>

The Appellate Rules cited in this booklet are available on the court system's website here: <https://courts.alaska.gov/rules/docs/app.pdf>

You can also find copies of the book *Alaska Rules of Court* at any local court.

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# INSTRUCTIONS FOR FILING AN APPEAL FROM THE DISTRICT COURT TO THE SUPERIOR COURT<sup>1</sup>

Appellate Rules 601-612 govern appeals to the superior court. Appeals are complicated, and you may want to talk to a lawyer before you start this process.

## 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.<sup>2</sup>
- 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 give a copy of any document that the party files with the court to all other parties.<sup>3</sup> You can give the documents 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 the attorney instead of the party.

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<sup>1</sup> 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" (that is, issues other than just the sentence the defendant received), and certain types of sentences in criminal cases. In a criminal or minor offense case, you can appeal the district court's decision to either the superior court or the court of appeals. These instructions discuss **only** the procedures for an appeal to the superior court. The procedures for appealing to the court of appeals are different. You may want to contact an attorney if you wish to appeal to the court of appeals. Also see footnote 4 on the next page about petitions to the Supreme Court for review of sentences in criminal cases.

<sup>2</sup> See section IV(B) of these instructions for more information on legal briefs and memoranda.

<sup>3</sup> Appellate Rule 602(j).

### III. HOW TO FILE AN APPEAL

#### A. Who May File.

##### 1. Criminal Sentence Appeal from the District Court

If a defendant is convicted of a misdemeanor in district court **and** is sentenced to serve more than 120 days in jail, the defendant may file a sentence appeal arguing that the sentence is excessive.<sup>4</sup> Note that the superior court is allowed to **increase** the sentence in this type of appeal, so defendants should think very carefully about their chances of winning the appeal before filing.

##### 2. All Other Appeals from the District Court

Any party may file an appeal when that party believes that (a) the district court applied the law incorrectly, and/or (b) the judge's or jury's decision was not supported by the evidence presented.

#### B. When to File.

You must file a notice of appeal **within 30 days** from the date shown in the clerk's certificate of distribution at the bottom of the judgment or final order.<sup>5</sup> If you want to file a notice of appeal after the 30 days, you must ask the court for permission to accept it. You can use *Request and Order* (form [AP-135](#)) for this. Your request must explain why your appeal notice is late. File your request to accept the late notice at the same time you file your notice of appeal.

#### C. How to File.

##### 1. Notice.

File *Notice of Appeal* (form [AP-100](#)) with the superior court. Attach a copy of the district court judgment or order that you are appealing.<sup>6</sup> You must file the appeal in the same judicial district as the district court that heard your case **and** in a location that would "best serve the convenience of the parties."<sup>7</sup>

##### 2. Filing Fee.

a. When you file, you will be required to pay a \$250 filing fee (\$100 if the appeal is from small claims court). Make your check or money order payable to "Clerk of Court."

-OR-

b. If you cannot afford to pay the filing fee, file *Request for Exemption from Payment of Fees* (form [TF-920](#)) asking the court to waive it.

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<sup>4</sup> A misdemeanor defendant sentenced to serve 120 days or less in jail may ask for review of the sentence by filing a petition for review in the supreme court. The supreme court may or may not agree to review the sentence. The procedures for filing this petition are described in Appellate Rules 403(h) and 215. A notice of intent to file this petition must be filed with the clerk of the appellate courts **within 10 days** after the date shown in the clerk's certificate of distribution at the bottom of the judgment. If the judgment was mailed to you, you have an additional three days to file your notice. You may want to contact an attorney for help if you wish to do this.

<sup>5</sup> Appellate Rule 602(a)(1).

<sup>6</sup> Appellate Rule 602(c)(1)(D).

<sup>7</sup> Appellate Rule 602(b)(1).

3. Bond.

You do **not** need to file a bond for criminal or minor offense appeals. In appeals from civil and small claims cases, you must file **one** of the following at the time you file your notice of appeal:

- a \$750 cost bond
- a motion to waive or reduce cost bond
- a supersedeas bond

a. \$750 Cost Bond.

The purpose of this bond is to make sure the appellee's appeal costs will be reimbursed by you if you lose your appeal or if your appeal is dismissed.

**IMPORTANT NOTICE:** Filing a cost bond will **not** stop the creditor from seizing your property or money to collect the judgment. To stop execution of the judgment, you must file a supersedeas bond as described in paragraph c on the next page.

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

- (1) Surety Bond. This is a document that 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 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 *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.

The cost bond is \$750 unless the superior court fixes a lesser amount.<sup>8</sup> If you think this amount is too high because the expected appeal costs (including attorney fees) for the appellee will be a lot less than \$750, you may file:

- (1) *Motion to Waive or Reduce Cost Bond* (form [AP-120](#)).
- (2) *Order Re Cost Bond* (form [AP-130](#)). Only fill out the top part of the AP-130 (the case caption). The judge will fill out the rest.

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<sup>8</sup> Appellate Rule 602(e)(1).

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

- (1) *Motion to Waive or Reduce Cost Bond* (form [AP-120](#)).
- (2) *Order Re Cost Bond* (form [AP-130](#)). Only fill out the top part of the AP-130 (the case caption). The judge will fill out the rest.
- (3) *Financial Statement* (form [CR-206](#)).

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

c. Supersedeas Bond.

If you want the court to "stay" (stop) execution of the judgment against you while your appeal is pending, you must file a supersedeas bond in the **district court** (the same court that issued the judgment or order you are appealing). A stay means that the court will not issue any court orders (called "writs of execution") allowing your money or property to be seized to pay the judgment.

The purpose of this bond is to make sure that the appellee's appeal costs will be reimbursed by you **and** that the judgment will be paid by you if you lose your appeal or if your appeal is dismissed.

The supersedeas bond is 125% of the monetary amount of the district court judgment.<sup>9</sup> File *Request for Approval of Supersedeas Bond in District Court Case* (form [AP-116](#)) in the same district court that entered the judgment or order you are appealing. You must serve on the appellee a copy of both the request for approval and proof that you deposited the bond. The district court will notify you of its decision. **Note:** give a copy of this paperwork to the superior court at the same time you file your notice of appeal.

The stay becomes effective the day the bond is approved. Before the bond is approved, or if the bond is not approved, there is no stay and the creditor may request an execution against your money or property.

To meet the supersedeas bond requirement, you may either file a surety bond **or** make a cash deposit:

- (1) **Surety Bond.** This is a document that 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 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.

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<sup>9</sup> Appellate Rule 603.

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

If you think the expected appeal costs (including attorney fees) for the appellee will be a lot less than 25% of the judgment amount,<sup>10</sup> you may ask the court to reduce this percentage. You can use *Request and Order* (form [AP-135](#)) for this.

If you believe you cannot afford to post 125% of the judgment amount, you may ask the court to reduce or waive the entire amount of the supersedeas bond. You can use *Request and Order* (form [AP-135](#)) for this. You must also include *Financial Statement* (form [CR-206](#)) if your request is based on your inability to pay.

The court will notify you of its decision. If the court orders a supersedeas bond to be posted, you must file a surety bond or cash deposit in the amount set before the judgment will be stayed.

d. Return of Bond.

After the appeal is decided, the court will send all parties a notice that the bond will be released unless there is an objection. If you lose your appeal, the appellee may file an objection and request that the bond be applied to the appellee's costs and to pay the judgment. If the appellee doesn't file an objection, the court will return your cash deposit to you.

#### IV. WHAT HAPPENS AFTER YOUR APPELLATE CASE IS OPENED

A. Assignment of Judge.

After you have opened your appellate case, the court will notify you of the name of the judge assigned to hear it. 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.

B. 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 appellee *Notice Setting Appeal Procedure* (form [AP-305](#)). This notice will tell you the time schedule for filing legal memoranda and requesting oral argument.

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<sup>10</sup> The first 100% of the supersedeas bond amount is to cover the amount of the judgment itself. The extra 25% is to cover the potential costs of an appeal.

You **must** file a memorandum or brief within the time limit set by the court's notice. If you do not, your appeal may be dismissed. If you can't file within the time limit, 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.

If you choose to file the less formal memorandum, it must include:<sup>11</sup>

- 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 initial memorandum must be no longer than 20 pages. If the appellee files a brief or memorandum in response, you have the option (but are not required) to file a reply memorandum, addressing any new points brought up in the appellee's memorandum or brief. Your reply memorandum must be no longer than 10 pages. *Appellant Memorandum Cover Sheet* (form [AP-160](#)) 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.<sup>12</sup> You should make this request as soon as possible, because it may take several days to prepare your recording.

Send a copy of your memorandum (or brief) to the appellee. You must 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-160).

### C. 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.<sup>13</sup>

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<sup>11</sup> Appellate Rule 605(b)(4).

<sup>12</sup> Administrative Rule 9(d).

<sup>13</sup> An exception is if the appellee does not file a legal memorandum (or brief), the appellee waives (gives up) the right to speak at oral argument.



The deadline to request oral argument is:

- (1) If the appellee files a memorandum (or brief), then within 10 days after the date your **reply** memorandum is due; **or**
- (2) If the appellee does **not** file a memorandum (or brief), then within 10 days after the due date for the appellee's memorandum expired.<sup>14</sup>

In the following cases, 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 (examples include most traffic offenses and many fish & game violations).

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 appellee timely requests oral argument, you may not object to the request.<sup>15</sup>

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 appellee. Make sure to fill out the certificate of service showing that you did this.

## V. 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** your appeal.

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

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<sup>14</sup> In a criminal sentence appeal, the deadline for requesting oral argument is within 10 days after the appellee's sentence memorandum is due, regardless of whether the appellee actually files one. This is because you are not allowed to file a reply memorandum in these kinds of appeals, unless the court specifically orders otherwise.

<sup>15</sup> Appellate Rule 605.5.

## VI. 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 appellant) may apply for costs and attorney fees if the district court's decision or judgment is reversed.<sup>16</sup>

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<sup>17</sup> 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.

The only costs you may ask for are:

1. the filing fee
2. the cost of preparing the transcripts or electronic recordings and paying the transcriber
3. the cost of copying and mailing memoranda or briefs
4. extra costs related to bonds, such as surety fees or bank fees

You must serve a copy of your bill of costs on the appellee, 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. Be sure to 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 appellee, 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 appellee does not pay voluntarily, you may ask the clerk for a writ of execution to collect from the appellee the amount owed to you.

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<sup>16</sup> If the judgment is affirmed or if the appeal is dismissed, then the appellee 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.

<sup>17</sup> "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.

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

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

**MEMORANDUM OF APPELLANT**

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.