

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1211

Amending Appellate Rule 209
concerning appeals at public
expense.

IT IS ORDERED:

1. Paragraph (a) of Appellate Rule 209 is amended to read as
follow:

(a) **Civil Matters.**

(1) A party to a civil action ~~in the~~
~~superior court~~ may file in the ~~superior~~
supreme court a motion to appeal or to
petition for review at public expense. The
motion shall be accompanied by:

~~[a] An affidavit of the party detailing~~
the party's inability to pay fees and costs or
to give security for fees and costs, in the
form prescribed by these rules.

~~[b] An affidavit of the party stating~~
that the party believes the party is entitled
to redress on appeal or on petition for
review;

~~[c] A concise statement of the points on~~
which the party intends to rely in the party's
appeal or petition for review.

(2) ~~The motion shall be considered ex~~
~~parte.~~ In considering the motion to appeal or
petition for review at public expense, the
~~superior~~ court shall determine.

~~{a}~~ The indigence or nonindigence of the party.

~~{b}~~ Whether any of the proposed points on appeal are frivolous and, if so, the reasons.

(3) If the motion is granted:

~~{a}~~ The party may proceed without further application to the supreme court.

~~{b}~~ The superior court shall specify in the order granting the motion which of the following costs or partial costs are to be covered at public expense:

- [1] Filing fees,
- [2] Transcript fees,
- [3] Costs of printing briefs,
- [4] Other costs;

~~{c}~~ {b} Any costs and attorney fees awarded to the appellant or petitioner as a prevailing party in the supreme court shall accrue to the state to reimburse it for costs relating to the appeal or petition for review.

~~(4) If the motion is denied in whole or in part:~~

~~{a} The superior court shall state in writing the reasons for denial;~~

~~{b} The party who made the original motion has ten days from the date shown in the clerk's certificate of distribution on the order denying the motion to file with the supreme court a motion to appeal or to petition for review at public expense. The motion shall be accompanied by copies of the affidavits and statement of points filed in superior court for its action.~~

~~(5) Leave to file at public expense granted by the superior court or the supreme court may be conditioned on repayment of costs to the state. The conditions may include the imposition of liens in favor of the state on costs, attorney fees and other recoveries awarded to the indigent appellant or petitioner.~~

~~(6) (5) An appeal or petition for review at public expense will be allowed without additional motion in cases where the appellant is represented by court-appointed counsel.~~

2. Paragraph (b) of Appellate Rule 209 is amended to read as follows:

(b) **Criminal Matters.**

(1) In criminal matters the ~~trial~~ appellate court shall authorize appeals at public expense on behalf of defendants who are

"indigent," as defined by statute, in accordance with the rules and decisions of the appellate courts of Alaska and where such appeals are required to be provided by state courts by decisions of the Supreme Court of the United States. Where an appeal at public expense is authorized by the ~~trial~~ court, the costs which shall be borne at public expense include those of providing counsel and of preparing a transcript and briefs.

(2) After a ~~trial~~ the court has authorized an appeal at public expense, the appellate clerk shall send defendant a written notice and order, to the address provided under Appellate Rule 204(b), that

. . . .

~~(4) The action of the trial court in authorizing or declining to authorize an appeal at public expense is reviewable by a motion in the appellate court, ancillary to the appeal.~~

~~(5)~~ Counsel appointed to represent a defendant in the trial court pursuant to Criminal Rule 39 shall remain as appointed counsel throughout an appeal at public expense authorized under this paragraph and shall not be permitted to withdraw except upon the grounds authorized in Administrative Rule 12. An attorney appointed by the court under Administrative Rule 12(b)(1)(B) will be permitted to withdraw upon a showing that

either the public defender agency or the office of public advocacy is able to represent defendant on appeal. If an appeal is to be taken, trial counsel will not be permitted to withdraw until the notice of appeal and the documents required to be filed with the appeal by Rule 204 have been accepted for filing by the clerk of the appellate courts.

~~(6)~~ (5) At the conclusion of the appellate proceeding, the appellate clerk shall enter judgment against defendant for the cost of representation on appeal unless defendant's conviction was reversed by the appellate court. The amount of the judgment shall be determined by reference to the schedule in subparagraph 209(b)(7). Before entering judgment, the clerk shall mail, to the defendant's address of record, a notice that sets out the amount of the proposed judgment. Defendant may oppose entry of the judgment by filing a written opposition within 45 days after the date shown in the clerk's certificate of distribution on the notice. The opposition shall specifically set out the grounds for opposing entry of judgment. The prosecuting authority may oppose the amount of the judgment by filing a written opposition within the same deadline. Criminal Rule 39(c)(1)(D) and (c)(2) shall apply to judgments entered under this subparagraph.

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~~(7)~~ (6) The following schedule governs
the cost of representation on appeal:

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DATED: April 13, 1995

EFFECTIVE DATE: July 15, 1995

Chief Justice Moore

Justice Rabinowitz

/s/_____
Justice Matthews

/s/_____
Justice Compton

/s/_____
Justice Eastaugh