

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1482

Amending Appellate Rules 210(b)(3), 215(k), 219(a), 508(f)(2), & 513.5(a); Civil Rules 4(i)-(j), 5, 32(a)(2), 58; Criminal Rules 32.6(c)(3), 32.6(g)(1), 6(b)(1); and District Court Criminal Rules 8(b), 8(f); to correct technical & typographical errors.

IT IS ORDERED:

- I. Appellate Rule 210(b)(3) is amended to read as follows:

**Rule 210. Record on Appeal.**

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(b) **Preparation of Transcript.**

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(3) *Preparation Not at Public Expense.* In cases in which the transcript is not prepared at public expense, the appellant shall arrange for preparation of a transcript of all parts of the electronic record designated by the parties to the appeal. Upon request, the clerk of the trial courts shall provide to the transcriber a copy of the designations, a copy of the electronic record or parts thereof, a copy of the log notes and other information necessary for preparation of the transcript. Unless the parties agree otherwise by stipulation, or unless otherwise ordered by the appellate court, the person designated to prepare the transcript shall not be a relative, employee, or attorney of any of the parties, or a relative or employee of

that attorney, or be financially interested in the action, ~~unless the parties agree otherwise by stipulation.~~ Apart from contracting for the preparation of the transcript within a given period of time and at a given price, neither the party nor the party's attorney may exercise control over the preparation of the transcript.

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II. Appellate Rule 215(k) is amended to read as follows:

(k) **Referral of Issues Outside Jurisdiction of Court of Appeals.** In a combined appeal, upon final adjudication of all issues within the jurisdiction of the court of appeals, the court of appeals shall refer the case to the supreme court for discretionary review of any remaining sentence issues which are reviewable by the supreme court under subparagraph (a)(2)(5) of this rule.

III. Appellate Rule 219(a) is amended to read as follows:

**Rule 219. Juvenile Appeals.**

(a) **Scope.** This rule applies to the following classes of appeals, and in such appeals supersedes the other appellate rules to the extent that they may be inconsistent with this rule.

(1) appeals from final judgments in juvenile delinquency proceedings under AS 47.10.080(b) 47.12.120(b); and

(2) appeals from orders under AS 47.10.060(a) 47.12.100(a) finding that a minor is not amenable to treatment under AS 47.10 47.12.

IV. Appellate Rule 508(f)(2) is amended to read as follows:

(2) *Reconsideration.* A party aggrieved by an order awarding costs under subsection (f)(1) of this rule or an order awarding attorney's fees under subsection (e) of this rule may file a motion for reconsideration within ten days after the date of notice of the order. The non-moving party may file a response within seven days after service of the motion. Reconsideration of an award of costs or attorney's fees under (f)(1) or (e) will be determined by an individual justice or judge. Full court reconsideration of such individual justice's or judge's decision may be sought pursuant to Appellate Rule 503(b) (h)(2)(B).

V. Appellate Rule 513.5(a) is amended to read as follows:

**Rule 513.5. Form of Papers.**

(a) **Scope.** This rule governs the form of all papers filed in the appellate courts except ~~transcripts~~ briefs, ~~(which are governed by Rule 212(b))~~, ~~transcripts~~, ~~(which are governed by Rule 210(b)administrative bulletin)~~ and excerpts of record, ~~(which are governed by Rule 210(c))~~. Briefs are governed by subparagraphs (b)(1)—(5) and paragraph (c) of this rule and by Rule 212(b); transcripts are governed by administrative bulletin as provided in Rule

210(b)(7); and excerpts of record are governed by Rule 210(c).

VI. Civil Rule 4(i) & 4(j) are amended as follows:

~~(i) **Service on Custody Investigator and Guardian Ad Litem.** In all cases involving the custody or visitation of a minor in which a custody investigator or a guardian ad litem has been appointed, the parties shall serve the custody investigator and the guardian ad litem with all pleadings involving the care, custody, or control of the minor.~~

~~(i)~~**(i) Summons — Time Limit for Service. \*\*\*\***

VII. Civil Rule 5 is amended to add a new paragraph (h) as follows:

(h) **Service on Custody Investigator and Guardian Ad Litem.** In all cases involving the custody or visitation of a minor in which a custody investigator or a guardian ad litem has been appointed, the parties shall serve the custody investigator and the guardian ad litem with all pleadings involving the care, custody, or control of the minor.

VIII. Civil Rule 32(a)(2) is amended to read as follows:

(2) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(5)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental

agency which is a party may be used by an adverse party for any purpose.

IX. The first Note at the base of Civil Rule 58 is amended and the quotations of AS 09.17.040 and AS 09.17.080 are eliminated as follows:

~~**NOTE:** Ch. 139, § 7, SLA 1986, provided that AS 09.17.040 and 09.17.080, enacted by ch. 139, § 1, SLA 1986, amended Civil Rule 58 by requiring the court to include a specific item in its judgment.~~

**NOTE:** Ch. 139, § 1, SLA 1986, enacted AS 09.17.040 and AS 09.17.080 regarding awards of damages for personal injury and the apportionment of damages. According to Section 7 of the Act, AS 09.17.040 and AS 09.17.080 have the effect of amending Civil Rule 58. AS 09.17.040 requires verdicts to include an itemization between economic and non-economic losses, and allows for periodic payment in certain circumstances. AS 09.17.080, as amended, requires special interrogatories or findings on the amount of damages and percentages of fault, and requires that judgment be entered against each liable party on the basis of several liability.

~~**Sec. 09.17.040. Award of damages.** (a) In every case where damages for personal injury are awarded by the court or jury, the verdict shall be itemized between economic loss and noneconomic loss, if any, as follows:~~

~~— (1) — past economic loss;~~

~~— (2) — past noneconomic loss;~~

~~— (3) — future economic loss;~~

~~— (4) — future noneconomic loss; and~~

~~— (5) — punitive damages.~~

~~— (b) — The fact finder shall reduce future economic damages to present value. In computing the portion of a lump-sum award that is attributable to future economic loss, the fact finder shall determine the present amount that, if invested at long-term future interest rates in the best and safest investments will produce over the life expectancy of the injured party the amount necessary to compensate the injured party for~~

~~— (1) — the amount of wages the injured party could have been expected to earn during future years, taking into account future anticipated inflation and reasonably anticipated increases in the injured party's earnings; and~~

~~— (2) — the amount of money necessary during future years to provide for all additional economic losses related to the injury, taking into account future anticipated inflation.~~

~~— (c) — Subsection (b) of this section does not apply to future economic damages if the parties agree that the award of future damages may be computed under the rule adopted in the case of *Beaulieu v. Elliott*, 434 P2d 655 (Alaska 1967).~~

~~— (d) — In an action to recover damages, the court shall, at the request of an injured party, enter judgment ordering that amounts awarded a judgment creditor for future damages be~~

~~paid to the maximum extent feasible by periodic payments rather than by a lump sum payment.~~

~~— (e) — The court may require security be posted, in order to ensure that funds are available as periodic payments become due. The court may not require security to be posted if an authorized insurer, as defined in AS 21.90.900, acknowledges to the court its obligation to discharge the judgment.~~

~~— (f) A judgment ordering payment of future damages by periodic payment shall specify the recipient, the dollar amount of the payments, the interval between payments, and the number of payments in the period of time over which payments shall be made. Payments may be modified only in the event of the death of the judgment creditor, in which case payments may not be reduced or terminated, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before death. In the event the judgment creditor owed no duty of support to dependents at the time of the judgment creditor's death, the money remaining shall be distributed in accordance with a will of the deceased judgment creditor accepted into probate or under the intestate laws of the state if the deceased had no will.~~

~~— (g) — If the court finds that the judgment debtor has exhibited a continuing pattern of failing to make payments required under (c) of this section, the court shall, in addition to the required periodic payments, order the judgment debtor to pay the judgment creditor any damages caused~~

~~by the failure to make periodic payments, including costs and attorney fees. (§ 1 ch. 139 SLA 1986)~~

~~**Sec. 09.17.080. Apportionment of damages.** (a) In all actions involving fault of more than one party to the action, including third party defendants and persons who have been released under AS 09.17.090, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating:~~

~~——(1)—— the amount of damages each claimant would be entitled to recover if contributory fault is disregarded; and~~

~~(2)—— the percentage of the total fault of all of the parties to each claim that is allocated to each claimant, defendant, third party defendant, and person who has been released from liability under AS 09.17.090.~~

~~——(b)—— In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party at fault, and the extent of the causal relation between the conduct and the damages claimed. The trier of fact may determine that two or more persons are to be treated as a single party if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.~~

~~——(c)—— The court shall determine the award of damages to each claimant in accordance with the findings, subject to a reduction under AS 09.17.090, and enter judgment against each party liable. The court also shall~~



~~determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance with the respective percentages of fault.~~

~~(d) The court shall enter judgment against each party liable on the basis of joint and several liability, except that a party who is allocated less than 50 percent of the total fault allocated to all the parties may not be jointly liable for more than twice the percentage of fault allocated to that party. (§ 1 ch. 139 SLA 1986)~~

X. Criminal Rule 32.6(c)(3) is amended to read as follows:

(3) *Municipal Cases.* In addition to the requirements of ~~(b)(c)~~(1) and (2) above, a municipal prosecutor shall file an *ex parte* victim information statement on a form provided by the Administrative Director, which includes information concerning the identity and addresses of the victims. The victim information statement shall be filed within 15 days after entry of the restitution judgment under ~~(b)(c)~~(1) above or at the time the municipal prosecutor submits a proposed judgment to the court under ~~(b)(c)~~(2) above.

XI. Criminal Rule 32.6(g)(1) is amended to read as follows:

(g) **Financial Statement.**

(1) If restitution has been ordered and has not been paid, and no financial statement has been required under Rule 32.1(a)(2)(B) or Rule 32.6~~(b)(c)~~(2), the court

shall order the defendant to complete and submit such statement within 30 days of the restitution judgment. The statement shall be on a form designated by the administrative director and shall be submitted to the Collections Unit of the Department of Law in state cases or the prosecuting authority in municipal cases.

XII. The last paragraph of Criminal Rule 6(b)(1) is amended to read as follows:

For the purpose of this rule, election districts shall be those set forth in the official ~~1985~~ 1984 reapportionment map for the State of Alaska.

XIII. District Court Criminal Rule 8(b) is amended to read as follows:

(b) **Minor Offenses.** As used in this rule, "minor offenses" means

(1) an offense classified by statute as an infraction or a violation; or

(2) any offense for which a bail forfeiture amount has been authorized by statute and established by supreme court order; or

(3) any municipal motor vehicle or traffic offense for which a fine amount has been established in a fine schedule adopted by municipal ordinance under AS 28.05.151; or

(4) any offense under a municipal ordinance for which a conviction cannot result in incarceration or the loss of a valuable license and for which a fine schedule has been established under AS 29.25.070(a); or

(5) any offense under statute or municipal ordinance for which a conviction cannot result in incarceration, a fine greater than ~~\$300~~ \$500, or the loss of a valuable license.

XIV. District Court Criminal Rule 8(f) is amended to read as follows:

(f) **Disposition of Records of Conviction.**

Notice of conviction will be transmitted to the following agencies:

(1) In the case of a motor vehicle offense, the conviction will be transmitted to the Department of Administration, Division of Motor Vehicles, to become a part of the defendant's driving record and for the department to assess points pursuant to statute and regulation.

(2) In the case of a fish and game violation, the conviction will be transmitted to the Department of Public Safety, Division of Fish and Wildlife Protection, for the department to determine whether it has a basis for petitioning for license revocation.

(3) In the case of a smoking violation under AS 18.35.300-.365, the conviction will be transmitted to the Department of Environmental Conservation, Division of Environmental Health.

DATED: September 4, 2002  
EFFECTIVE DATE: October 15, 2002

/s/  
Chief Justice Fabe

/s/  
Justice Matthews

/s/  
Justice Eastaugh

/s/  
Justice Bryner

/s/  
Justice Carpeneti