

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1671

Amending Appellate Rules 202, 204, 210, 508, 601, and 603 and adding new Appellate Rules 201.1 and 501.1 to implement statutory changes to procedures for workers' compensation appeals.

IT IS ORDERED:

1. The Appellate Rules are amended by adding new Rule 201.1 to read as follows:

Rule 201.1. Appeals from the Alaska Workers' Compensation Appeals Commission.

(a) Part Two of these rules (Rules 201 through 220) applies to appeals as of right to the supreme court from a final decision of the Alaska Workers' Compensation Appeals Commission under AS 23.30.129.

(b) The "trial court" referred to in Part Two of these rules includes the Alaska Workers' Compensation Appeals Commission, if that commission entered the decision being appealed under AS 23.30.129.

(c) The "judgment" referred to in Part Two of these rules includes the final decision of the Alaska Workers' Compensation Appeals Commission, if that commission entered the decision being appealed under AS 23.30.129.

2. Appellate Rule 202 is amended to read as follows:

Rule 202. Judgments from Which Appeal May Be Taken.

(a) An appeal may be taken to the supreme court from a final judgment entered by the superior court, in the circumstances specified in AS 22.05.010, or from a final decision entered by the Alaska Workers' Compensation Appeals Commission in the circumstances specified in AS 23.30.129.

(b) An appeal may be taken to the court of appeals from a final judgment entered by the superior court or the district court, in the circumstances specified in AS 22.07.020.

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3. Appellate Rule 204 is amended to read as follows:

Rule 204. Appeal: Time—Notice—Bonds.

(a) When Taken—Appeals and Cross-Appeals.

(1) *Appeals.* The notice of appeal shall be filed within 30 days from the date shown in the clerk's certificate of distribution on the judgment appealed from, unless a shorter time for filing a notice of appeal applies as provided by Rules 216-220, or unless a different time applies as provided in AS 23.30.128(g).

(2) *Subsequent Appeals.* 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 filing of any timely notice of appeal by any other party, or within 30 days from the date shown in the clerk's certificate of distribution on the judgment, whichever period expires last.

(3) *Motions That Terminate Time for Filing Appeals in Civil Cases.* In a civil case, the running of the time for filing an appeal is terminated by a timely motion filed in the trial court pursuant to

those rules of civil procedure enumerated in this section or by AS 23.30.128. The full time for an appeal by any party begins to run again on the date of notice, as defined in Civil Rule 58.1(c), of any of the following orders made on timely motion:

(A) Granting or denying a motion for judgment under Civil Rule 50(b);

(B) Granting or denying a motion to amend or make additional findings of fact under Civil Rule 52(b) whether or not an alteration of the judgment would be required if the motion is granted;

(C) Granting or denying a motion to alter or amend a judgment under Civil Rule 59;

(D) Denying a new trial under Civil Rule 59;

(E) Granting or denying a motion for reconsideration filed in the trial court under Civil Rule 77(k) on the date of notice as defined by Civil Rule 58.1(c) or on the date of denial of the motion pursuant to Civil Rule 77(k)(4), whichever is earlier;

(F) Granting or denying a request for reconsideration filed in the Alaska Workers' Compensation Appeals Commission under AS 23.30.128(f) or on the date the request is deemed denied pursuant to that section, whichever is earlier; or

(G) Granting or denying a petition for rehearing under Appellate Rule 506 in an appeal from an administrative agency other than the Alaska Workers' Compensation Appeals Commission.

* * * *

(5) *Effect of Taxing of Costs and Prejudgment Interest and Awarding of Attorney's Fees.*

(A) The running of the time for filing an appeal is not terminated by proceedings related to the taxing of costs pursuant to Civil Rule 79 or while awaiting calculation of prejudgment interest or proceedings related to the award of attorney's fees. However, the statement of points on appeal filed pursuant to Appellate Rule 204(e) and the designation of transcript filed pursuant to Appellate Rule 210(b)(1) may be amended by motion by an appellant or cross-appellant to include the award or denial of costs and attorney's fees or prejudgment interest and pertinent portions of the electronic record. These subjects will thereafter be considered part of the appeal if covered in the brief of appellant or cross-appellant. If no appeal or cross-appeal is pending, the allowance of costs and attorney's fees or the award of prejudgment interest shall be considered a final judgment subject to separate appeal limited to the subject of costs, attorney's fees or prejudgment interest.

(B) Notwithstanding Rule 203, the pendency of an appeal shall not divest the trial court of jurisdiction to consider the matters of costs and attorney's fees pursuant to Civil Rules 79 and 82 or AS 23.30.008(d).

* * * *

(b) **Appeal—How Taken.** A party may appeal from a final order or judgment by filing a notice of appeal with the clerk of the appellate courts. The notice of appeal must identify the party taking the appeal, the final order or judgment appealed from, and the court to which the appeal is taken. The party must file the

original and one copy of the notice of appeal accompanied by the original and one copy of the documents listed below:

* * * *

(5) unless the party is represented by court-appointed counsel, the party is the state, municipality, or officer or agency thereof, or the party is an employee appealing denial of compensation by the Alaska Workers' Compensation Appeals Commission or denial of benefits under AS 23.20 (Employment Security Act),

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(c) Bond on Appeal.

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(2) Notwithstanding subparagraph (1), a bond for costs on appeal shall not be required in an appeal from a decision of the trial court in any criminal case or any civil case where an indigent party is entitled to court-appointed counsel, and a bond shall not be required from an employee appealing from a denial of compensation by the Alaska Workers' Compensation Appeals Commission or from a denial of a claim for benefits under AS 23.20 (Employment Security Act).

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4. Appellate Rule 210 is amended to read as follows:

Rule 210. Record on Appeal.

(a) **Composition of Record.** The record on appeal consists of the entire trial court file, including the original papers and exhibits filed in the trial court, and the electronic record of proceedings before the trial court.

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(e) Preparation of the Trial Court File.

(1) *Page Numbering.* Upon receiving the notice of appeal, the regional appeals clerk shall number the pages of the trial court file in a single consecutive sequence throughout all volumes. Page numbering must be completed within 40 days after filing of the notice of appeal. In an appeal from the Alaska Workers' Compensation Appeals Commission, the commission's record should be numbered beginning with the number immediately following the number of the last page in the record prepared by the Workers' Compensation Board.

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5. The Appellate Rules are amended to add a new Appellate Rule 501.1 to read as follows:

Rule 501.1. Appeals from the Alaska Workers' Compensation Appeals Commission.

(a) The "trial court" referred to in Part Five of these rules includes the Alaska Workers' Compensation Appeals Commission, if that commission entered the decision being appealed under AS 23.30.129.

(b) The "judgment" referred to in Part Five of these rules includes the final decision of the Alaska Workers' Compensation Appeals Commission, if that commission entered the decision being appealed under AS 23.30.129.

6. Appellate Rule 508 is amended to read as follows:

Rule 508. Costs.

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(g) Exemptions.

(1) *Workers' Compensation Appeals.* In an administrative appeal from the Alaska Workers' Compensation Appeals Commission or in an appeal from a denial of a claim of benefits under the Employment Security Act, an award of costs or attorney's fees shall not be made against the claimant in either the supreme court or the superior court unless the court finds that the claimant's position was frivolous, unreasonable, or taken in bad faith.

(2) In an administrative appeal from the Alaska Workers' Compensation Appeals Commission, full reasonable attorney's fees will be awarded to a successful claimant. Counsel for the claimant shall serve and file an affidavit of services rendered on appeal within 10 days from the date of notice of an opinion or an order under Rule 214. Objections to the affidavit of services may be filed within 7 days of service of the affidavit. An individual justice shall determine the amount of fees to be awarded.

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7. Appellate Rule 601 is amended to read as follows:

Rule 601. Scope of Part Six.

(a) Part Six of these rules (Rules 601 through 612) applies to requests to the superior court to review decisions of the district court or an administrative agency under AS 22.10.020(d) and AS

22.15.240(a), either by appeal or by petition for review.

(b) An appeal may be taken to the superior court from a final judgment entered by the district court, in the circumstances specified in AS 22.15.240, or from a final decision of an administrative agency, except that appeals from decisions of the Alaska Workers' Compensation Appeals Commission shall be taken to the supreme court under AS 23.30.129 and are governed by parts Two and Five of these rules.

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8. Appellate Rule 603 is amended to read as follows:

Rule 603. Stays.

(a) Civil Appeals.

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(3) *Stay in License Revocation Appeals.*

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(4) *Proceedings on Stay.*

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(5) *Stay in Prisoner Disciplinary Appeals.*

DATED: May 5, 2008

EFFECTIVE DATE: October 15, 2008

/s/
Chief Justice Fabe

/s/
Justice Matthews

/s/
Justice Eastaugh

/s/
Justice Carpeneti

/s/
Justice Winfree