

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1842

Amending Appellate Rule 503.5 regarding extensions of time for filing briefs; amending Appellate Rules 305(a)(2) and 403(f) to allow for scheduling conferences when petitions are granted; amending Appellate Rule 503(e) concerning the clerk's authority to decide unopposed, non-routine motions under Rule 503.5(c)(1); and amending Appellate Rule 510(c) concerning sanctions.

IT IS ORDERED:

1. Appellate Rule 503.5 is amended to read as follows:

Rule 503.5. Extensions of Time for Filing Briefs.

(a) General. Unless otherwise ordered by the court, this rule applies to extensions of time for filing briefs. This rule also applies to memoranda filed under Appellate Rules 215(g), 216, 216.5, and 220.

(b) Routine Extensions of Time by Notice.

(1) Except as provided in subparagraph (b)(3), by filing notice, an appellant may obtain routine extensions not to exceed 30 days for the opening brief and 15 days for the reply brief; and an appellee may obtain routine extensions not to exceed thirty days.

(2) The notice must be filed on or before the due date and must state:

- (A) the original due date for the brief;
- (B) the current due date, if that is a different date;
- (C) the length of extension; and

(D) the new due date.

(3) Routine extensions by notice may not be filed in the following matters:

(A) appeals filed under Rules 215, 216, 216.5, 218, 219, and 220;

(B) appeals filed by the prosecution challenging the dismissal of an indictment or challenging the dismissal of criminal charges;

(C) matters relating to attorney discipline or disability; and

(D) any other expedited matter.

(c) Non-Routine Extensions of Time by Motion. An extension of time not addressed by subsection (b) must be requested by motion. A party may request an extension of time by motion under paragraph (1) or (2) at any time before the party's brief is due, either originally or as extended.

(1) *Motion for Non-Routine Extension Based Upon a Showing of Diligence and Substantial Need.* A party may obtain up to 30 additional days for the opening or the appellee's brief and the appellant may obtain up to 15 additional days for the reply brief upon a showing of diligence and substantial need. A conclusory statement as to the press of business does not constitute a showing of diligence and substantial need.

(2) *Motion for Non-Routine Extension Based upon a Showing of Extraordinary and Compelling Circumstances.* An extension that would extend the time for filing a brief beyond the time allowed under subsection (b) and paragraph (c)(1) will be granted only upon a showing of extraordinary and compelling circumstances. Along with the requirements stated in paragraph (3), the affidavit accompanying the

motion must include a detailed explanation of the extraordinary and compelling circumstances that prevent completion of the brief within the time allowed. Factors the court may consider in determining the existence of extraordinary and compelling circumstances include: the nature and foreseeability of intervening events, pre-existing commitments, the extent of the party's or attorney's control over the circumstances that prevent completion of the brief, the nature of the case, and any prejudice to the parties.

(3) *General Requirements.* The motion must be filed on or before the due date, and must be accompanied by an affidavit stating:

(A) when the brief is due;

(B) when the brief was first due and the number and length of previous extensions;

(C) the length of the requested extension and requested due date;

(D) a detailed explanation of the reason that an extension is necessary; and

(E) that the brief will be filed within the time requested.

(4) A motion without a compliant affidavit will be rejected by the clerk of court.

(5) Motions for non-routine extensions of time will be decided by a single justice or judge.

(d) Oppositions to Motions for Extension. If a timely opposition to a motion for extension is received after the motion for extension is granted, the opposition will be treated as a motion for reconsideration and will be assigned to a justice or judge for determination pursuant to Rule 503(f).

(e) Request for Scheduling Conference in Exceptional Circumstances. Within 30 days of the notice of appeal, any party may request a scheduling conference with the clerk of court if, due to unusual scheduling issues or the complexity of the case, the party believes that the schedule for briefing and this rule's provisions for extensions are not adequate or should not apply. Following a scheduling conference, the clerk of court may issue a briefing schedule that deviates from the standard deadlines.

2. Appellate Rules 305(a)(2) and 403(f) are amended to read as follows:

Rule 305. Procedure When Hearing Granted.

(a) Unless the order granting a hearing specifies otherwise,

* * * *

(2) the case shall be briefed in the manner prescribed in Rule 212. The parties may request a scheduling conference under Rule 503.5(e) within ten days of the order granting the petition.

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Rule 403. Petitions for Review—Procedure.

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(f) Consideration by the Court and Grant of Petition.

(1) As soon as practicable, the appellate court will decide whether to grant or deny the petition. Oral argument will not be held on the question of whether the petition should be granted.

(2) If the petition is granted, the order granting the petition will specify any further actions to be required. If further briefing is ordered, the parties may request a scheduling conference under Rule 503.5(e) within ten days of the order granting the petition. Oral argument will be governed by the procedures set out in Rule 505.

(g) Denial of Petition. * * * *

3. Appellate Rule 503(e) is amended to read as follows:

Rule 503. Motions.

* * * *

(e) Motions Determined by the Clerk. Routine, unopposed motions may be ruled upon by the clerk without referral to an individual judge or justice or the full court. Unopposed non-routine motions for extensions of time under Rule 503.5(c)(1) for filing briefs may be ruled upon by the clerk. The clerk may not determine a motion to extend the time for filing a notice of appeal, petition for review, petition for rehearing, or petition for hearing. The clerk may not determine a motion for extension of time to file a document if the time period specified in these rules for filing the document, including any previous extensions, has already expired when the motion is filed. The clerk has the discretion to refer motions that may be determined by the clerk to an individual justice or judge for decision.

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4. Appellate Rule 510(c) is amended to read as follows:

Rule 510. Monetary Sanctions.

(a) When Appeal Brought for Delay. Where an appeal or petition for review shall delay the proceedings in the trial court or the enforcement of the judgment or order of the trial court, and shall appear to have been filed merely for delay, monetary sanctions may be awarded in addition to interest, costs, and attorney's fees.

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(c) Fines. In addition to its authority under (a) and (b) of this rule and its power to punish for contempt, the appellate court may, after

reasonable notice and an opportunity to show cause to the contrary, impose a fine not to exceed \$1000 against any attorney who practices before it for failure to comply with these rules or any other rules promulgated by the Supreme Court.

DATED: August 26, 2014

EFFECTIVE DATE: April 15, 2015

/s/

Chief Justice Fabe

/s/

Justice Winfree

/s/

Justice Stowers

/s/

Justice Maassen

/s/

Justice Bolger