

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1868

Adopting new Appellate Rule 517.1 regarding the presumptive role of the attorney of record, entries of appearance, limited entries of appearance, substitution of counsel, and withdrawal of counsel; amending Appellate Rules 209(b)(4), 403(h), 514, 517 and 518 concerning attorneys, the time to file defendant's petition for sentence review, service, substitution of parties, and limits on self-representation; and amending Criminal Rules 32.5 and 50 regarding trial attorneys' duties with respect to appeals.

IT IS ORDERED:

1. A new Appellate Rule 517.1 is adopted that reads as follows:

Rule 517.1. Attorneys.

(a) Presumptive Role of Attorney of Record.

(1) The attorney of record for a party in the proceeding from which the appeal or petition is being taken shall be presumed to be the appellate attorney for that party unless

(A) a different attorney files the notice of appeal or petition or response on behalf of the party;

(B) a different attorney files an entry of appearance on behalf of the party;

(C) the attorney of record files a notice of non-representation of the appellee or respondent; the notice must include the last known address and telephone number of the party;

(D) the party personally files a notice of appeal, petition, or other document indicating that the party intends to proceed self-represented; or

(E) the appellate court grants a motion to withdraw under subsection (f).

(2) Subparagraphs (a)(1)(C) and (D) of this rule do not apply to criminal cases or post-conviction relief actions under Criminal Rule 35.1 or in any case in which the attorney has filed a document in the appellate proceeding.

(b) **Limited Appearance by Counsel in Criminal Cases.** An attorney in a criminal case or in an appeal from a post-conviction relief proceeding under Criminal Rule 35.1 may appear for limited purposes only with the permission of the appellate court and for good cause shown. Withdrawal from cases under this subsection requires a motion pursuant to subparagraph (f)(1)(A) or a substitution of counsel under paragraph (f)(2).

(c) **Limited Appearance By Counsel in Civil Cases.** An attorney in a civil appeal may appear on behalf of a party for limited purposes without court approval if the following conditions are satisfied:

(1) the attorney files an entry of appearance with the court before, or at the same time as, the attorney takes any action on behalf of the party in the appellate case;

(2) the title of the entry of appearance indicates that the appearance is limited and the document identifies the limitation by date, time period, or subject matter; and

(3) the attorney is not appointed under Administrative Rule 12.

Withdrawal from cases under this subsection requires a notice pursuant to subparagraph (f)(1)(B) or a substitution of counsel under paragraph (f)(2).

(d) **Superseding Entry of Appearance.** When an attorney in the same law firm or agency as the attorney of record assumes responsibility for the case, the new attorney must file and serve a superseding entry of appearance. Court approval is not required.

(e) **When Attorney Leaves Law Firm.** When an attorney of record leaves the employment of a law firm and the attorney will continue representing the party in a pending appeal, the attorney must file a notice with the court listing the attorney's new address and contact information. If a notice is not filed, the law firm is presumed to continue to represent the party, and an attorney in that firm must file a superseding entry of appearance under subsection (d) of this rule.

(f) **Withdrawal or Substitution.**

(1) *Withdrawal.* An attorney may withdraw as counsel for a party under one of the following provisions.

(A) The appellate court may allow an attorney to withdraw for good cause with or without the consent of the party.

(i) The attorney must file and serve upon the party a motion and a list of pending court deadlines. The motion must include the current service address and telephone number of the party. The attorney must file proof that the motion and the list of deadlines were served on the party.

(ii) The attorney for a person who seeks appellate review of a final judgment in a criminal case or a final order resolving a post-conviction relief action under Criminal Rule 35.1 will not be permitted to withdraw until the notice of appeal or petition and

the documents required to be filed with the appeal or petition by Appellate Rule 204, Appellate Rule 215, or Appellate Rule 403(h) have been accepted for filing by the clerk of the appellate courts, or unless the court otherwise allows.

(B) If an attorney has filed a limited entry of appearance in a civil case pursuant to subsection (c) of this rule, the attorney may withdraw without court approval by filing and serving on all other parties a notice certifying that the attorney has (1) taken all actions necessitated by the limited representation, and (2) provided to the party a list of deadlines. The notice must also state that the attorney's limited representation has concluded and provide a current service address and telephone number for the party.

(2) *Substitution of Counsel.* If the party has other counsel ready to be substituted for the attorney who wishes to withdraw, the attorneys may file and serve on all other parties a stipulation for substitution of counsel. The stipulation must be signed by the withdrawing attorney and the substituting attorney. Court approval is not required. In cases where both attorneys are paid at public expense, substitution of counsel can be accomplished by having the new attorney file a superseding entry of appearance.

(g) **Trial Court Representation Not Affected.** An entry of appearance, limited entry of appearance, superseding entry of appearance, substitution, or withdrawal of an attorney in the appellate courts does not affect the representation of a party in the trial court.

2. Appellate Rules 209(b)(4), 403(h), 514, 517, and 518 are amended to read as follows:

Rule 209. Appeals at Public Expense.

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(b) **Criminal Matters.**

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(4) Counsel appointed to represent a defendant in the trial court pursuant to Criminal Rule 39 shall remain as appointed counsel throughout an appeal or petition for review at public expense authorized under this paragraph and shall not be permitted to withdraw except upon the grounds authorized in Appellate Rule 517.1~~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 ~~p~~P~~u~~b~~i~~c ~~d~~e~~f~~e~~n~~d~~e~~r~~ ~~a~~A~~g~~e~~n~~c~~y~~ or the ~~e~~O~~f~~f~~i~~c~~e~~ of ~~p~~P~~u~~b~~i~~c ~~a~~A~~dv~~o~~c~~a~~c~~y~~ is able to represent the defendant in the appellate proceeding. ~~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.~~~~~~

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Rule 403. Petitions for Review – Procedure.

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(h) **Defendant's Petition for Sentence Review.**

(1) Except as provided in (h)(2), a defendant seeking relief from a sentence under Appellate Rule 215(a)(5) must file a notice of intent to file a petition for sentence review no later than ~~30~~40 days after the date shown in the clerk's certificate of distribution on the written judgment. If the defendant is indigent, a request for preparation of a transcript of the sentencing proceeding must accompany the notice. The petition itself must be filed no later than 45 days after the date

shown in the clerk's certificate of distribution on the written judgment or, if the court is preparing the transcript, no later than 15 days after service of the transcript on the petitioner. The following items must be filed with the petition:

* * * *

Rule 514. ~~Service--Appearance of Counsel--Signing of Documents.~~

(a) **In General.** All documents filed with the appellate courts shall be served upon all other parties, unless otherwise ordered by the court. ~~Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the~~ If a party is represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court. ~~Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to him at the attorney's or party's last known address or, if no address is known, by leaving it with or mailing it to the clerk of the appellate courts. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the attorney's or party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.~~

(b) **Proof of Service** ~~--- How Made.~~ Proof of service shall be made in conformity with Civil Rule 5(f)- and

~~(c) **Proof of Service -- Filing.** Where proof of service is required, it shall be filed with the clerk in conformity with Civil Rule 5(e). Appellate Rule 502(d).~~

~~(d) **Entry of Appearance.** Any document filed with the clerk by or on behalf of counsel whose appearance has not previously been filed must be accompanied by an entry of appearance.~~

(ce) **Signing of Documents.** All documents presented to the court, other than records, must bear the manuscript signature of the member of the bar who is counsel of record for the party concerned, and upon whom service is to be made. The individual names of other counsel and their addresses may be added.

(df) **Notice of Question of Constitutionality of Statute.** When the constitutionality of a state statute is drawn in question in any appeal or other proceeding in the appellate courts to which the state or an officer, agency, or employee thereof is not a party, the party raising the question shall give immediate notice in writing to the court of the existence of the question. The clerk of court shall notify the Attorney General of Alaska of the case raising the question.

(eg) **Changes in Mailing Address and Telephone Number.** While a case is pending, all attorneys of record and all parties unrepresented by counsel must immediately inform the court and all other attorneys of record and parties unrepresented by counsel, in writing, of any changes in their mailing addresses and contact telephone numbers, except as provided in Civil Rule 65.1.

Rule 517. Substitution of Parties and Attorneys.

(a) **Parties.** Except as provided in subsection (b), ~~Whenever~~ a substitution of parties to a pending appeal is necessary other than by reason of death, it shall be made by proper proceedings instituted for

the purpose in the trial court. On ~~proper~~ motion and the filing of a ~~certified copy of the trial court's order of substitution made by the trial court, the appellate court shall enter~~ a like order of substitution shall be made in the appellate court.

~~(b) **Attorneys.** Withdrawal or substitution of attorneys may be effected by serving and filing a stipulation in the appellate court, signed by the party, the retiring attorney and any substituted attorney. The stipulation is subject to approval of the court. In the absence of stipulation, withdrawal or substitution may be effected only by an order made pursuant to a noticed motion in the appellate court; provided, however, that unless otherwise ordered, service of notice of the motion need be made only on the party and the attorneys affected thereby. A notification of any such withdrawal or substitution shall be given by the clerk of the appellate court to the clerk of the trial court, and substituted counsel shall forthwith give notice thereof to all parties.~~

(b) **Public Officers.** When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the absence of such an order shall not affect the substitution.

Rule 518. Self-Represented Parties ~~Pro Se Litigants.~~

(a) If a party is self-represented appearing in an appellate proceeding~~appeal unrepresented by counsel~~, all references in these rules to counsel shall be construed as referring to the party personally.

All documents filed by such a party shall include an address at which that party can be served.

(b) A party who is represented by an attorney in an appellate proceeding may not appear or act in the party's own behalf in that appellate proceeding, unless the attorney has withdrawn under Appellate Rule 517.1(f) or the court otherwise orders.

3. Criminal Rules 32.5 and 50(a) are amended to read as follows:

Rule 32.5. Appeal From Conviction or Sentence--Notification of Right to Appeal.

(a) A person convicted of a crime after trial shall be advised by the court judge or magistrate:

(1a) that the person has the right to appeal from the judgment of conviction within 30 days (or 15 days in appeals from the district court made under Appellate Rule 217) from the date shown in the clerk's certificate of distribution on the judgment appealed from by filing a notice of appeal with the clerk of the appellate courts; and

(2b) that if the defendant wants counsel and is unable to pay for the services of an attorney, the court will appoint an attorney to represent the defendant on the appeal.

(b) In addition, at the time of imposition of any sentence of imprisonment, the court judge or magistrate shall advise the defendant as required by Appellate Rule 215(b).

(c) The court shall further advise the defendant's attorney that, if an appeal or petition is to be taken, the attorney may not withdraw from the case except as provided by Appellate Rule 517.1.

Rule 50. Attorneys.

(a) **Appearance by Counsel—Withdrawal.** In all criminal actions, counsel retained to represent the accused shall, immediately after being retained ~~as such~~, file with the clerk a formal written appearance upon a form to be provided by the court. The Rules of Civil Procedure relating to the withdrawal of an attorney for a party shall apply ~~with equal force with respect to any attorneys~~ retained to represent the an accused in a criminal actions. If review is sought of a final judgment in a criminal case or a final order resolving a post-conviction relief action, counsel will not be permitted to withdraw unless a different attorney has entered the case or until the notice of appeal or petition and the initial documents required to be filed under Appellate Rule 204(b), Appellate Rule 215(c), or Appellate Rule 403(h) have been accepted for filing by the clerk of the appellate courts as provided in Appellate Rule 517.1(f)(1)(A), or unless the appellate court otherwise allows.

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DATED: October 28, 2015

EFFECTIVE DATE: April 15, 2016

/s/
Chief Justice Stowers

/s/
Justice Fabe

/s/
Justice Winfree

/s/
Justice Maassen

/s/
Justice Bolger