

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1238

Amending Appellate Rules 204,
208, 209, 521, 603, and 604 to
reflect 1995 legislative
changes.

IT IS ORDERED:

1. Appellate Rule 204(b)(4) is amended to read:

(4) unless the party is represented by court-appointed counsel, the party is the state or an agency thereof, or the party is a prisoner found by the court to be eligible to pay less than full fees under AS 09.19.010,

(A) the filing fee required by Administrative Rule 9(a);

(B) a motion for waiver of filing fee pursuant to Administrative Rule 9(f)(1); or

(C) a motion to appeal at public expense pursuant to Rule 209;

* * * *

2. The following note is added at the end of Appellate Rule 204:

Note to SCO 1238: Ch. 79 § 1 SLA 1995 amends AS 09 by adding a new chapter related to prisoner litigation against the state. AS 09.19.010 prohibits the court from accepting any filing in an action governed by AS 09.19 until the filing fee required by AS 09.19.010 has been paid.

Section 17 of chapter 79 amends Appellate Rule 204(b)(4) to include the language "or the party is a prisoner whom the court finds is eligible to pay less than full fees under AS 09.19.010." Section 1 of this order is adopted for the sole reason that the legislature has mandated the amendment.

3. Appellate Rule 208 is repealed and reenacted to read:

Rule 208. Custody of Prisoners in Post-Conviction Relief Proceedings.

(a) **Release of Applicant Pending Review of Order Denying Release.** The court having jurisdiction over the appeal of a denial of an application for post-conviction relief may not grant bail or release the applicant pending appeal. If the appellate court determines that post-conviction relief should be granted, the case shall be remanded to the trial court for a bail hearing.

(b) **Release of Applicant Pending Review of Decision Ordering a New Trial.** If an appeal of an order granting an applicant a new trial is pending, Appellate Rule 206(b) shall govern an appeal from an order that denies bail pending appeal or imposes conditions of release pending appeal.

4. The following note is added at the end of Appellate Rule 208:

Note to SCO 1238: Appellate Rule 208

was repealed and reenacted by ch. 79 § 18 SLA 1995. Section 3 of this order is adopted for the sole reason that the legislature has mandated the amendment.

5. Appellate Rule 209(a) is amended by adding a new subparagraph to read:

(6) The provisions of this paragraph do not apply to the filing fees in a prisoner's appeal against the state or an officer, agent, employee, or former officer, agent, or employee of the state that is governed by the provisions of AS 09.19. A prisoner may request a filing fee reduction in an appeal governed by AS 09.19 by submitting an application which satisfies the requirements of AS 09.19.010 with the prisoner's notice of appeal and the items specified in Appellate Rule 204(b).

6. The following note is added at the end of Appellate Rule 209:

Note to SCO 1238: Ch. 79 § 1 SLA 1995 amends AS 09 by adding a new chapter related to prisoner litigation against the state. AS 09.19.010 prohibits the court from accepting any filing in an action governed by AS 09.19 until the filing fee required by AS 09.19.010 has been paid.

Section 19 of chapter 79 amends Appellate Rule 209(a) to add subparagraph (a)(6) which states that the provisions of paragraph (a) do

not apply in a prisoner's appeal that is governed by AS 09.19. Section 5 of this order is adopted for the sole reason that the legislature has mandated the amendment.

7. Appellate Rule 521 is amended to read:

Rule 521. Construction.

These rules are designed to facilitate business and advance justice. They may be relaxed or dispensed with by the appellate courts where a strict adherence to them will work surprise or injustice. In a matter involving the validity of a criminal conviction or sentence, this rule does not authorize an appellate court or the superior court, when acting as an intermediate appellate court, to allow

(1) the notice of appeals to be filed more than 60 days late; or

(2) a petition for review or petition for hearing to be filed more than 60 days late.

8. The following note is added at the end of Appellate Rule 521:

Note to SCO 1238: The limitation on the court's power to accept late appeals or petitions was added by ch. 79 § 21 SLA 1995. Section 7 of this order is adopted for the

sole reason that the legislature has mandated the amendment.

9. Appellate Rule 603(a) is amended by adding a new subparagraph to read:

(6) **Stay in Prisoner Disciplinary Appeals.** The court may not stay imposition of sanctions arising from a disciplinary decision of the Department of Corrections unless the court finds that the prisoner has alleged a violation of a fundamental constitutional right and is likely to succeed on the merits of the appeal, that the prisoner faces irreparable harm if a stay is not granted, that the Department of Corrections can be adequately protected if a stay is granted, and that a stay will not adversely affect the public interest in effective penal administration. In evaluating the stay motion, the court may consider documents and affidavits offered by either party, and shall consider the stay motion without waiting for the record to be prepared.

10. The following note is added at the end of Appellate Rule 603:

Note to SCO 1238: Appellate Rule 603(a)(6) was added by ch. 79 § 22 SLA 1995. Section 9 of this order is adopted for the sole reason that the legislature has mandated the amendment.

11. Appellate Rule 604(b)(1)(A) is amended to read:

(A) The record on appeal consists of the original papers and exhibits filed with the administrative agency, and a typed transcript of the record of proceedings before the agency. In an appeal from the revocation of a driver's license by the Division of Motor Vehicles or from a prisoner disciplinary decision of the Department of Corrections, the record of proceedings will include cassettes rather than transcripts unless otherwise ordered by the court.

12. The following note is added at the end of Appellate Rule 604:

Note to SCO 1238: Appellate Rule 604(b)(1)(A) was amended by ch. 79 § 23 SLA 1995 to allow the use of cassette tapes in prisoner disciplinary appeals. Section 11 of this order is adopted for the sole reason that the legislature has mandated the amendment.

13. Sections 1, 3, 5, 7, 9, and 11 of this order are adopted for the sole reason that the legislature has mandated the amendments.

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DATED: May 2, 1996

EFFECTIVE DATE: July 15, 1996




Chief Justice Compton



Justice Rabinowitz



Justice Matthews



Justice Eastaugh



Justice Fabe