

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1279

Adopting Probate Rule 20 and Appellate Rule 220 and amending Probate Rules 1, 2, and 3, Administrative Rule 9, Civil Rules 40 and 79, and Appellate Rules 201, 204, 210, 212, 213, 503.5, 508, and 512.5 to implement chapter 14 SLA 1997.

IT IS ORDERED:

1. Part III of the Probate Rules is amended by adding new Probate Rule 20 to read:

Rule 20. Judicial Bypass Procedure to Authorize Minor to Consent to an Abortion.

(a) **Petition.** An action for an order authorizing a minor under age 17 to consent to an abortion without the consent of a parent, guardian, or custodian is commenced by filing a petition. The petition must be under oath and must include the information required by AS 18.16.030(b). The petitioner is not required to provide an address or telephone number. Blank petition forms will be available at all court locations and will be mailed or faxed to a petitioner upon request. No fee will be charged for this service or other services provided to a petitioner.

(b) **Filing.** The petition may be filed in any district or superior court location in person, by mail, or by fax. No filing fee will be charged. If a petition is filed in a district court location, the clerk or

magistrate shall immediately notify the clerk of the nearest superior court and fax the petition to that court, unless the local judicial officer has been appointed as a master to conduct these proceedings.

(c) **Appointment of Counsel.** If the petitioner is not represented by a private attorney, the clerk shall appoint the Office of Public Advocacy to represent the petitioner. The clerk shall immediately notify the Office of Public Advocacy of the appointment.

(d) **Expedited Hearing.** Upon receipt of the petition, the court shall schedule a hearing to be held within 48 hours, including weekends and holidays, after the petition is filed. At the hearing, the court shall follow the procedure specified in AS 18.16.030(e)-(g). Upon request, the petitioner will be allowed to participate telephonically at court system expense.

(e) **Findings and Order.** The court shall enter an order immediately after the hearing is concluded. The court shall grant the petition if the court finds by clear and convincing evidence that one of the statutory grounds for dispensing with parental consent exists. Otherwise, the court shall deny the petition. If the petition is denied, the court shall inform the petitioner of her right to an expedited appeal to the supreme court.

(f) **Constructive Order.** If the court fails to hold a hearing within five days after the petition is filed, the presiding judge of the judicial district, or another judge designated by the presiding judge, shall issue a certificate stating that (1) no hearing was held within five business days after the petition was filed; and (2) under AS 18.16.030(c), the failure to hold a hearing constitutes a constructive order of the court authorizing the minor to consent to an abortion without the consent of a parent, guardian, or custodian. A certificate should not be issued if the hearing was not held because it was postponed at the petitioner's request or because the petitioner failed to appear at the hearing.

(g) **Confidentiality.** Petitions filed under AS 18.16.030 and all hearings, proceedings, and records are confidential. Court personnel are prohibited from notifying a minor's parents, guardian, or custodian that a minor is pregnant or wants to have an abortion, or from disclosing this information to any member of the public.

(h) **Appeal.** A petitioner may appeal an order denying or dismissing a petition to bypass parental consent by filing a notice of appeal in any district or superior court, or directly with the clerk of the appellate courts. If the notice of appeal is filed in a district or superior court, the clerk or magistrate shall immediately notify the clerk

of the appellate courts that the notice of appeal has been filed. The procedure for appeals is governed by Appellate Rule 220. This rule supersedes the appeal procedure established by AS 18.16.030(j).

Cross-Reference: AS 18.16.030

2. Probate Rule 19 is reserved.
3. Part II of the Appellate Rules is amended by adding new Appellate Rule 220 to read:

Rule 220. Judicial Bypass Appeals.

(a) **Scope.** This rule applies to an appeal from an order denying or dismissing a petition filed by a minor under age 17 to bypass parental consent to an abortion under AS 18.16.030. In such appeals, this rule supersedes the other appellate rules to the extent they may be inconsistent with this rule. It also supersedes the procedure for bypass appeals established by AS 18.16.030(j).

(b) **Jurisdictional Limitation.** This rule does not permit an appeal to be taken in any circumstances in which an appeal would not be permitted by Appellate Rule 202.

(c) **Notice of Appeal.**

(1) A minor may appeal an order denying or dismissing a petition to bypass parental consent by filing a notice of appeal in any

district or superior court, or directly with the clerk of the appellate courts. The notice of appeal may be filed in person, by mail, or by fax, and must be accompanied by a copy of the order from which the appeal is taken. No filing fee will be charged. If the notice of appeal is filed in a district or superior court, the clerk or magistrate shall immediately notify the clerk of the appellate courts that the appeal has been filed.

(2) The notice of appeal must indicate that the appeal is being filed pursuant to this rule, but the court will apply this rule to cases within its scope whether they are so identified or not.

(3) Blank notice of appeal forms will be available at all court locations and will be mailed or faxed to a minor upon request. No fee will be charged for this service or other services provided to a minor in an appeal under this rule.

(d) **Record on Appeal.** The record on appeal consists of the superior court file, including all papers and exhibits filed in the superior court, and, unless otherwise ordered, a recording of the proceedings before the superior court. The clerk of the appellate courts shall request the record immediately upon receiving notice that the appeal has been filed. Upon receiving this request, the clerk of the trial court shall immediately transmit the record to the supreme court by overnight

mail or in another manner that will cause it to arrive within 48 hours after the notice of appeal is filed.

(e) **Brief.** A brief is not required. However, the minor may file a typewritten memorandum in support of the appeal.

(f) **Oral Argument.** Unless the minor waives the right to oral argument in the notice of appeal, oral argument will be held within 72 hours, including weekends and holidays, after the notice of appeal is filed. Upon request, the minor will be allowed to participate telephonically at court system expense.

(g) **Disposition.** The court shall enter an order stating its decision immediately after oral argument or, if oral argument has been waived, within three days after the date the notice of appeal is filed. The court may issue an opinion explaining the decision at any time following entry of the order.

(h) **Constructive Order.** If the court fails to enter an order within five days after the date the clerk of the appellate courts receives the record on appeal, the clerk shall issue a certificate stating that (1) no order was entered within five days after the appeal was docketed; and (2) under AS 18.16.030(j), the failure to enter an order constitutes a constructive order of the court authorizing the minor to consent to an abortion without

the consent of a parent, guardian, or custodian. For purposes of AS 18.16.030(j), an appeal is deemed to be docketed on the date the clerk of the appellate courts receives the record on appeal.

(i) **Confidentiality.** Documents and proceedings in an appeal under this rule are confidential. Court personnel are prohibited from notifying the minor's parents, guardian, or custodian that the minor is pregnant or wants to have an abortion, or from disclosing this information to any member of the public.

(j) **Attorney.** If the minor is not represented by an attorney, the clerk of the appellate courts shall appoint the Office of Public Advocacy to represent the minor in the appeal. If the Office of Public Advocacy was appointed to represent the minor in the trial court, the appointment continues through the appeal.

(k) **Filing Defined.** For purposes of this rule only, a document is deemed filed on the date it is received by the district court, the superior court, or the clerk of the appellate courts if the appeal is filed directly with the clerk.

Note: Under AS 18.16.030(j), the failure to enter a judgment in the appeal within five days after the appeal is docketed constitutes a constructive order of the court authorizing the appellant to consent to an abortion

without the consent of a parent, guardian, or custodian.

4. Paragraph (b) of Probate Rule 1 is amended to read:

(b) **Scope.** These rules govern practice and procedure in the trial courts in all phases of proceedings brought under Title 13 of the Alaska Statutes, proceedings related to the release of personal property under AS 12.65.105 and AS 22.15.110(a)(3), mental commitments under AS 47.30, and proceedings to bypass parental consent to an abortion under AS 18.16.030.

5. Paragraph (b) of Probate Rule 2 is amended to read:

(b) **Authority, Order of Reference.**

* * * *

2. The following proceedings may be referred to a master:

* * * *

E. hearings on emancipations;

F. authorization of emergency life-saving procedures pursuant to AS 13.26.140(f); and

G. hearings in proceedings to bypass parental consent to an abortion under AS 18.16.030 and Probate Rule 20.

6. Probate Rule 3 is amended to read:

Rule 3. Probate Indices.

(a) **Estate Index.** An alphabetical index of all estate cases will be kept under the name of the person to whose estate the case relates.

* * * *

(f) **Judicial Bypass Proceeding Index.** An alphabetical index of all proceedings to bypass parental consent to an abortion will be kept under the name of the petitioner.

(g) **Confidentiality.** The mental commitment index and the judicial bypass proceeding index are confidential. Other indices are public records even though the files may be confidential.

7. Administrative Rule 9 is amended to read:

The fees specified in this rule shall be charged for the services designated herein:

(a) **In the Supreme Court and the Court of Appeals:**

(1) Filing Fees:

* * * *

(v) Upon filing a judicial bypass
appeal (Appellate Rule 220) **no fee**

* * * *

(b) Filing Fees — Superior Court:

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(2) For probate matters:

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(vii) For filing a petition to
bypass parental consent to an
abortion under Probate Rule 20 **no fee**

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(f) General Provisions:

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(5) No fee of any kind will be charged
to a minor in a proceeding to bypass
parental consent to an abortion
under Probate Rule 20 or Appellate
Rule 220.

8. The following note is added at the end of Civil Rule 40:

Note: In 1997 the legislature enacted AS
18.16.030(c), which requires the court to hold
a hearing in a proceeding to bypass parental
consent to an abortion within five days after

the petition is filed. According to ch. 14, § 7 SLA 1997, this provision has the effect of amending Civil Rule 40 by setting a specific timetable for hearing certain cases. Instead of amending individual rules to implement AS 18.16.030, the supreme court has adopted a separate rule on judicial bypass proceedings. See Probate Rule 20.

9. Paragraph (a) of Appellate Rule 201 is amended to read:

(a) Part Two of these Rules (Rules 201 through 220) applies to appeals as of right, whether to the court of appeals under AS 22.07.020 or to the supreme court under AS 22.05.010. The "court" or "appellate court" referred to in Part Two of these rules is the court of appeals, if the appeal is taken to that court, or the supreme court, if the appeal is taken to that court.

10. Paragraph (a) of Appellate Rule 204 is amended to read:

(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.

11. The following note is added at the end of Appellate Rules 204, 210, 212, and 213:

Note: In 1997 the legislature enacted AS 18.16.030(j), which specifies the procedure for appeal of an order denying a petition to bypass parental consent to an abortion. According to ch. 14, § 8 SLA 1997, AS 18.16.030(j) has the effect of amending Appellate Rules 204, 210, 212, and 213 by establishing specific time limits applicable to certain appeals and by instructing the supreme court to modify or dispense with formal requirements applicable to certain briefs. Instead of amending individual rules to implement AS 18.16.030, the supreme court has adopted a separate rule on judicial bypass appeals. See Appellate Rule 220.

12. Paragraph (b) of Appellate Rule 503.5 is amended to read:

(b) **Routine Motions.**

* * * *

(3) Motions requesting routine extensions may not be filed in the following matters:

[a] appeals filed under Rules 215-220;

* * * *

13. The following note is added at the end of Appellate Rule 512.5:

Note: In 1997 the legislature enacted AS 18.16.030(k), which requires that documents and records in a judicial bypass appeal be kept confidential. According to ch. 14, § 9 SLA 1997, this provision has the effect of amending Appellate Rule 512.5 by making certain appellate records and papers confidential. Instead of amending individual rules to implement AS 18.16.030, the supreme court has adopted a separate rule on judicial bypass appeals. See Appellate Rule 220.

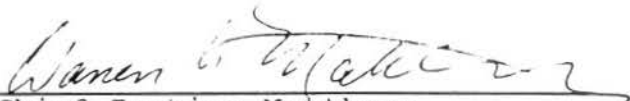
14. The following note is added at the end of Administrative Rule 9, Civil Rule 79, and Appellate Rule 508:

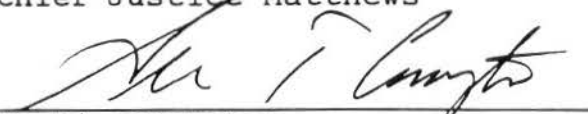
Note: In 1997 the legislature enacted AS 18.16.030(m), which provides that a filing fee may not be required of, and court costs may not be assessed against, a minor in a proceeding to bypass parental consent to an abortion. According to ch. 14, § 10 SLA 1997, AS 18.16.030(m) has the effect of amending Administrative Rule 9, Civil Rule 79, and Appellate Rule 508 by prohibiting filing fees and assessment of court costs in certain actions. Instead of amending individual rules to implement AS 18.16.030, the supreme court has adopted a separate rule on judicial bypass proceedings in the superior court and a separate rule on judicial bypass appeals. See Probate Rule 20 & Appellate Rule 220.


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DATED: July 29, 1997

EFFECTIVE DATE: July 31, 1997


Chief Justice Matthews


Justice Compton


Justice Eastaugh


Justice Fabe


Justice Bryner