Rule 32. Sentence and Judgment.

(a) **Sentence.** Sentence shall be imposed without unreasonable delay. Sentencing in felony cases shall follow the procedures established in this rule and Rules 32.1 through 32.6. Sentencing in misdemeanor cases shall follow the procedures established in this rule and Rules 32.2, 32.3, 32.5, and 32.6. When imposing sentence, the judge or magistrate shall explain on the record the reasons for the sentence.

(b) **Other Counts.** At sentencing, the prosecuting attorney must announce the disposition of all counts brought under the same case number that are not addressed in the judgment or in a written notice of dismissal or deferred prosecution. The court will notify the Department of Public Safety of any counts dismissed on the record.

(c) **Judgment**

(1) *Conviction.* A judgment of conviction must, for each count, set forth the offense, including the statute or regulation violated, the defendant's plea, the verdicts or findings, and the sentence imposed. The judge or magistrate must sign the judgment.

(A) *Incarceration.* When the sentence includes a term of incarceration, the clerk promptly shall deliver a copy of the judgment to a peace officer or correctional facility. If the defendant does not appear at the correctional facility at the time specified, the peace officer or a representative of the correctional facility promptly shall notify the court by sworn statement on the record or by affidavit.

(B) *Restitution.* When the sentence includes a requirement that the defendant pay restitution, the judge shall order restitution as described in Rule 32.6. The judgment for restitution is enforceable in the same manner as a judgment in a civil action. If the defendant is placed on probation, the judgment of conviction shall include the payment of restitution as a condition of probation.

(C) *Conviction of a Corporation.* If a corporation is convicted of any criminal offense, the judge shall enter judgment against the corporation and the judgment shall be enforced in the same manner as a judgment in a civil action, or as otherwise provided by law.

(2) *Discharge.* If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly.

(d) **Judgment for Sex Offenses or Child Kidnapping.** When a defendant is convicted of a sex offense defined in AS 12.63.100 or child kidnapping as defined in AS 12.63.100, the written judgment must state the requirements of AS

12.63.010 and the period of registration required under AS 12.63 if the required period can be determined by the court.

(e) **Judgment for Crimes Involving Domestic Violence.** In a case in which the defendant is convicted of an offense listed in AS 18.66.990(3) and the prosecution claims at sentencing that the offense is a crime involving domestic violence, the written judgment must set forth whether the offense is a crime involving domestic violence as defined in AS 18.66.990(3) and (5). A factual and legal determination supporting this finding must be made on the record.

(f) **Judgment for Crime Against a Person.** In a case in which the defendant is convicted of a crime against a person as defined in AS 44.41.035(j), the written judgment must set out the requirements of AS 12.55.015(h).

(g) **Information To Be Included in Judgment.** If provided by the prosecuting authority in the charging document, the judgment must include the following information:

(1) the defendant's full name, including middle name or initial;

(2) the defendant's date of birth;

(3) the defendant's Alaska Public Safety Information Network (APSIN) identification number;

(4) the defendant's driver's license number or state identification number, including the issuing state and whether the license is a commercial driver's license;

(5) the arrest tracking number (ATN) on the Criminal Case Intake and Disposition (CCID) form for each offense being addressed in the judgment;

(6) the three-digit charge tracking number assigned on the CCID form for each offense being addressed in the judgment; and

(7) the statute, regulation, or ordinance, as identified in the Uniform Offense Citation Table,** corresponding to each offense being addressed in the judgment. Regulations not listed in the Uniform Offense Citation Table must be cited by the regulation number.

** The Uniform Offense Citation table was developed by the Department of Public Safety. Changes to the table must be approved by the Department of Law or the appropriate municipal prosecuting authority. It is available at http://www.dps.state.ak.us/statewide/uoct/.

(Adopted by SCO 4 October 4, 1959; amended by SCO 157 effective February 15, 1973; by Amendment No. 5 to SCO 157 effective July 1, 1974; by SCO 330 effective January 1, 1979; by SCO 418 effective August 1, 1980; by SCO 436 effective October 21, 1980; by SCO 437 effective October 21, 1980; by SCO 550 effective February 1, 1983; by SCO 554 effective April 4, 1983; by SCO 603 effective September 14, 1984; by SCO 976 effective January 15, 1990; by SCO 979 effective August 28, 1989; by SCO 1028 effective July 15, 1990; by SCO 1049 effective January 15, 1991; by SCO 1092 effective July 15, 1992; repealed and reenacted by SCO 1136 effective July 15, 1993; amended by SCO 1204 effective July 15, 1995; by SCO 1289 effective January 15, 1998; by SCO 1341 effective September 10, 1998; by SCO 1343 effective January 1, 1999; by SCO 1464 effective March 5, 2002; and by SCO 1614 effective October 15, 2006)

Note to SCO 1204: The requirement that a judgment for conviction of a sex offense must set out the requirements of AS 12.63.010 was added by ch. 41 3 SLA 1994. Section 7 of this order is adopted for the sole reason that the legislature has mandated the amendments.

Note to SCO 1341: Paragraph (e) of Criminal Rule 32 was added by 11 ch. 95 SLA 1998. Section 3 of this order is adopted for the sole reason that the legislature has mandated the amendment.

Rule 32.1. Presentence Procedure for Felony Sentencings.

(a) **Scheduling & Preliminary Filings.**

(1) At the time guilt in a felony case is established by verdict or plea, the judge shall establish the date for a sentencing hearing and a presentencing hearing, if appropriate, and, except as provided in paragraph (g) of this rule, shall order a presentence investigation by the Department of Corrections. The judge may order a presentence investigation in a case in which an investigation is not required under paragraph (g). If the judge elects to schedule a single hearing, all of the procedures for the presentencing and sentencing hearings shall be applicable at the single hearing.

(2) At the time guilt is established as described in (a)(1) above, the parties shall be directed to make the following preliminary filings within ten days, unless otherwise ordered by the court:

(A) *Presumptive Sentencing.* The state shall file a notice indicating whether the defendant's sentence is governed by presumptive sentencing and, if so, listing the defendant's prior convictions that qualify as prior felony convictions under AS 12.45.145, as well as any other factor that triggers a specific presumptive term; and

(B) *Financial Statement.* In cases where restitution may be ordered, the defendant shall submit a financial statement on a form designated by the Administrative Director to the probation office.

(b) **Presentence Investigation and Report.**

(1) *Contents and Filing.* The Department of Corrections shall prepare a presentence report. The report shall be filed with the court and served on counsel at least 30 days before the sentencing hearing, or 30 days before the presentencing hearing, if one is scheduled. The report shall contain all of the defendant's prior criminal convictions and findings of delinquency and any other information about the defendant's characteristics, financial condition, and the circumstances affecting the defendant's behavior that may be helpful in fashioning the defendant's sentence, a victim impact statement, and any other information required by the judge. The presentence report shall comply with the Victims' Rights Act, AS 12.61.100 - .12.61.150 and AS 12.55.022.

(2) *Restitution Information.* In cases where the court may order the defendant to pay restitution, the presentence report must include:

(A) defendant's financial statement completed under subparagraph (a)(2)(B) of this rule; and

(B) information concerning the identity of any victims or other persons seeking restitution and, if known, whether any victim or other person expressly declines restitution, the nature and amount of any damages together with any supporting documentation, a restitution amount recommendation, and the names of any co-defendants and their case numbers.

(3) *Disclosure.* Unless the judge finds that providing specific portions of the report to the defendant would prove detrimental to the rehabilitation of the defendant or the safety of the public, the defense attorney may give a full copy of the report to the defendant. Unless otherwise ordered, or except as specifically allowed by other provisions of law, further disclosure of the report shall be limited to agents of the state's attorney or the defendant's attorney, any reviewing courts, and the agencies having charge of the defendant's rehabilitation.

(4) *Plea Agreements.*

(A) If the parties request preparation of a presentence report to aid them in reaching a plea agreement, the judge may order the department to prepare such a report prior to the time stated in this rule. If a report is prepared prior to entry of a verdict or plea of guilty or no contest, the report shall be submitted only to the parties and not to the judge.

(B) Notwithstanding subparagraph (b)(4)(A), the judge may use the presentence report to determine whether to accept a plea agreement under Criminal Rule 11.

(5) *Service.* The parties must serve the Department of Corrections with all filings relating to sentencing, and the court must distribute all orders related to sentencing to the department.

(c) **Notice of Aggravating Factors, Extraordinary Circumstances, and Restitution.** Within seven days after service of the presentence report on the parties:

(1) The state shall list the aggravating factors and describe the nature of any extraordinary circumstances on which the state intends to rely at sentencing. This notice shall include a written summary of the evidence that the state will rely on to establish each aggravating factor or extraordinary circumstance.

(2) The state shall give notice if it will seek restitution from the defendant in an amount different from the recommendation in the presentence report. The notice shall specify the amount of restitution sought and shall set forth the facts establishing the basis for this amount, and shall include information concerning the identity of any victims or other persons seeking restitution and, if known, whether any victim or other person expressly declines restitution, the nature and amount of any damages together with any supporting documentation, and the names of any co-defendants and their case numbers.

(3) The state shall give notice of any evidence on which it intends to rely at sentencing that is not contained in the presentence report. If the state intends to present any witness, the notice shall contain a brief summary of the witness's anticipated testimony. The notice need not include any information to be presented by a victim's oral or written statement.

(4) Notices under this rule shall be served by delivery to parties in the same community as the party making service, and by facsimile transmission ("fax") to parties in outlying communities. When service is made by fax, a paper copy of the notices shall also be mailed to the intended recipient.

(d) **Notice of Mitigating Factors, Extraordinary Circumstances, and Responses to State's Notices.** Within seven days after service of the notices required by paragraph (c):

(1) The defendant shall file a notice responding to each notice filed by the state under paragraphs (a)(2)(A) and (c)(1). The notice shall indicate whether the defendant concedes or disputes each felony conviction, aggravating factor and extraordinary circumstance and, if so, shall include a description of the basis for the opposition.

(2) The defendant shall list the mitigating factors and describe the nature of any extraordinary circumstances on which the defense intends to rely at sentencing. This notice shall include a written summary of the evidence that the defendant will rely on to establish each mitigating factor or extraordinary circumstance.

(3) If the defendant objects to any recommendation for restitution included in the presentence report or in a notice filed by the state under paragraph (c)(2), the defendant shall file a notice disputing the legal basis for restitution, the factual basis for restitution, or the amount sought. The notice shall set out the specific grounds for contesting the restitution or provide information that the victim or other person entitled to the restitution expressly declines restitution.

(4) The defendant shall give notice of any evidence on which the defendant intends to rely at sentencing that is not contained in the presentence report. If the defendant intends to present any witness, the notice shall contain a brief summary of the witness's anticipated testimony. The notice need not include any information to be presented in the defendant's allocution.

(5) The defendant shall give notice of any objection to any information contained in the presentence report or to any other material the judge or the state has identified as a source of information to be relied upon at sentencing. The notice shall state the basis for the defendant's objection. If the defendant objects to information as inaccurate, the notice shall include any information upon which the defendant intends to rely to refute the objected-to information.

(6) Notices under this rule shall be served by delivery to parties in the same community as the party making service, and by fax to parties in outlying communities. When service is made by fax, a paper copy of the notices shall also be mailed to the intended recipient.

(e) **Disputing Mitigating Factors, Extraordinary Circumstances, and Objections to Restitution.** Within seven days after service of the notices required by paragraph (d):

(1) The state shall file a notice responding to each notice filed by the defendant under paragraph (d)(2). The notice shall indicate whether the state concedes or disputes each mitigating factor and extraordinary circumstance, and shall include a description of the basis for the opposition.

(2) The state shall file a notice responding to each notice filed by the defendant under paragraph (d)(3). The notice shall indicate whether the state disagrees with the contention of the defendant concerning restitution and shall include a brief summary of the basis for its position.

(3) Notices under this rule shall be served by delivery to parties in the same community as the party making service, and by fax to parties in outlying communities. When service is made by fax, a paper copy of the notices shall also be mailed to the intended recipient.

(f) **Adjudicating Disputed Factual and Legal Issues.** The court shall give the parties the opportunity to present evidence and argument on the disputed factual and legal issues related to sentencing at the sentencing hearing or at any presentencing hearing or other supplemental evidentiary hearings that the court may order.

(1) The court shall enter findings regarding whether the defendant's sentence is governed by presumptive sentencing, the number of the defendant's prior felonies as defined in AS 12.55.145, and the existence of any other factor that triggers a specific presumptive term.

(2) The court shall enter findings regarding the aggravating factors, mitigating factors, and extraordinary circumstances raised by the parties. However, no finding is necessary if the court affirmatively determines that resolution of a disputed factor or extraordinary circumstance is immaterial to the imposition of a just sentence.

(3) If the sentencing judge believes that the parties have overlooked a prior felony conviction or any other factor triggering a specific presumptive term, or have overlooked an applicable aggravating or mitigating factor or extraordinary circumstance, the judge shall notify the parties of the court's belief. The judge shall inform the parties of the specific facts which the judge believes establish the

prior felony or presumptive sentencing factor, and the judge must allow the parties an opportunity to respond to the judge's information.

(4) The court shall resolve any factual disputes related to restitution.

(5) The court shall enter findings regarding any disputed assertion in the presentence report. Any assertion that has not been proved shall be deleted from the report; any assertion that has been proved only in part shall be modified in the report. Alternatively, if the court determines that the disputed assertion is not relevant to its sentencing decision so that resolution of the dispute is not warranted, the court shall delete the assertion from the report without making any finding. After the court has made the necessary deletions and modifications, the court's corrected copy shall be labeled the "approved version" of the presentence report. A copy of the approved version must be delivered to the Department of Corrections within seven days after sentencing.

(g) **When Presentence Investigation Not Required.** Unless the defendant may be sentenced to a presumptive term of imprisonment under AS 12.55.125(e)(1) or (2), or the court otherwise orders, a presentence investigation by the Department of Corrections is not required if the defendant is convicted of the following offenses:

(1) vehicle theft in the first degree in violation of AS 11.46.360;

(2) driving while intoxicated under AS 28.35.030(n); or

(3) refusal to submit to a chemical test under AS 28.35.032(p).

(h) **Restitution Procedures When No Presentence Investigation.**

(1) In cases where the court may order the defendant to pay restitution but no presentence investigation report is submitted, the prosecuting authority must file a notice concerning restitution at least ten days before the sentencing hearing, unless otherwise ordered by the court. The notice shall include information concerning the identity of any victims or other persons seeking restitution and, if known, whether any victim or other person expressly declines restitution, the nature and amount of any damages together with any supporting documentation, a restitution amount recommendation, and the names of any co-defendants and their case numbers.

(2) Unless otherwise ordered by the court, the defendant shall file any objections to the information submitted under paragraph (h)(1), or provide information that the victim or other person expressly declines restitution, at least five days before the sentencing hearing, together with defendant's financial statement on a form designated by the Administrative Director.

Rule 32.3 Judgments and Orders.

(a) **Effective Dates of Orders and Judgments.** Orders and judgments become effective the date they are entered.

(1) *Oral Orders.* The date of entry of an oral order is the date the order is put on the official electronic record by the judge unless otherwise specified by the judge. At the time the judge announces an oral order, the judge also shall announce on the record whether the order shall be reduced to writing. If the oral order is reduced to writing, the effective date shall be included in the written order.

(2) *Written Orders Not Preceded by Oral Orders.* The date of entry of a written order not preceded by an oral order is the date the written order is signed unless otherwise specified in the order.

(3) *Judgments.* The date of entry of a criminal judgment is the date the judgment is put on the official electronic record by the judge unless otherwise specified by the judge. All judgments shall be reduced to writing and the effective date shall be included in the written judgment.

(b) **Commencement of Time for Appeal, Review and Reconsideration.** The time within which a notice of appeal may be filed and reconsideration or review of orders and judgments may be requested begins running on the date of notice as defined below.

(c) **Date of Notice.**

(1) *Oral Orders.*

(i) As to the parties present when an oral order is announced, the date of notice is the date the judge announces the order on the official electronic record, unless at that time the judge announces that the order will be reduced to writing in which case the date of notice is the date shown in the clerk's certificate of distribution on the written order.

(ii) As to parties not present at the announcement of an oral order the date of notice is the date shown in the clerk's certificate of distribution of notice of the order. If, however, at the time the judge announces the oral order the judge announces that the order will be reduced to writing, the date of notice is the date shown in the clerk's certificate of distribution on the written order.

(2) *Written Orders.* The date of notice of a written order is the date shown in the clerk's certificate of distribution on the written order.

(3) *Judgments.* All judgments must be reduced to writing. The date of notice of a judgment is the date shown in the clerk's certificate of distribution on the written judgment.

(4) *Other Service Requirements.* These notice provisions apply to the notice of orders and judgments under Rule 44(c) and do not affect the service requirements of any other rule of criminal procedure.

(d) **Clerk's Certificate of Distribution.** Every written notice of an oral order and every written order and judgment shall include a clerk's certificate of distribution showing the date copies of the notice, order or judgment were distributed, to whom they were distributed, and the name or initials of the court employee who distributed them.

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; or

(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.

(4) *Motions That Terminate Time for Filing Appeals in Criminal Cases.* In a criminal case, if a timely motion for a new trial or in arrest of judgment, or a timely

motion for reconsideration has been filed in the superior court, or if a motion for reduction, correction, or suspension of sentence under Criminal Rule 35 has been made within the 30-day period following the date shown in the clerk's certificate of distribution on the judgment, an appeal from a judgment may be filed within 30 days after the date of notice of the order deciding the motion. Date of notice is defined in Criminal Rule 32.3(c).

(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).

(6) *Premature Appeals.* If a notice of appeal is filed after the announcement of a decision but before the date shown in the clerk's certificate of distribution on the judgment, the notice of appeal shall be treated as filed on the date shown in the clerk's certificate of distribution on the judgment.

(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:

(1) a completed docketing statement in the form prescribed by these rules, which includes a list of the parties to the appeal;

(2) a copy of the final order or judgment from which the appeal is taken;

(3) a statement of points on appeal as required by Rule 204(e);

(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;

(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),

(A) the cost bond or deposit re-qui red by Rule 204(c)(1);

(B) a copy of a superior court order approving the party's supersedeas bond or other security in lieu of bond or a copy of the party's motion to the superior court for approval of a supersede-as bond or other security;

(C) a motion for waiver of cost bond; or

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

(6) a designation of transcript if the party intends to have portions of the electronic record transcribed pursuant to Rule 210(b); and

(7) proof of service of the notice of appeal and all required accompanying documents, except the filing fee, on all other parties to the appeal.

A party may move for an extension of time to file the statement of points on appeal and the designation of transcript. The clerk of the appellate courts shall refuse to accept for filing any notice of appeal not conforming to this paragraph and accompanied by the items specified in [1]-[7] or a motion to extend the time for filing item [3] or [6].

(c) **Bond on Appeal.**

(1) Unless a party is exempted by law, a bond for costs on appeal shall be filed with the notice of appeal in a civil case. The bond shall be in the sum of seven hundred fifty dollars ($750.00), unless the superior court fixes a different amount or unless a supersedeas bond is filed, in which event no separate bond on appeal is required. The bond on appeal shall have sufficient surety and shall be conditioned to secure the payment of costs if the appeal is dismissed or the judgment affirmed, or such costs as the supreme court may award if the

judgment is modified. If a bond on appeal in the sum of seven hundred fifty dollars ($750.00) is given, no approval thereof is necessary. After a bond on appeal is filed, an appellee may by motion raise objection to the form or amount of the bond or to the sufficiency of the surety which shall be determined by the superior court. In lieu of filing such cost bond, the appellant may deposit in the office of the clerk of the court from which the appeal is taken a sum of money reasonably sufficient to cover such costs, the amount thereof to be fixed by the superior court.

(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).

(d) **Supersedeas Bond.** Whenever in a civil case an appellant entitled thereto desires a stay on appeal, the appellant may present to the superior court for its approval a supersedeas bond which shall have such surety or sureties as the court requires. The bond shall be conditioned for the satisfaction of the judgment in full, together with costs and interest, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs and interest as the supreme court may adjudge and award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, and interest, unless the superior court, after notice and hearing and for good cause shown, fixes a different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy as in real actions, replevin, and actions to foreclose mortgages or when such property is in the custody of the court or the state troopers or when the proceeds of such property of a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the cost of the action, costs on appeal, and interest, unless the superior court, after notice and hearing and for good cause shown, fixes a different amount or orders security other than the bond. A municipality or an officer or agent thereof desiring a stay on appeal is exempted from the requirement of posting supersedeas bond imposed by this subsection.

(e) **Statement of Points.** At the time of filing the notice of appeal, the appellant shall serve and file a concise statement of the points on which appellant intends to rely in the appeal. The appellate court will consider only points included in the statement, and points that the court can address effectively without reviewing untranscribed portions of the electronic record. On motion in the appellate court, and for cause, the statement of points may be supplemented.

(f) **Judgment Against Surety.** By entering into an appeal or supersedeas bond given pursuant to subdivisions (c) and (d) of this rule, the surety submits to the jurisdiction of the superior court and irrevocably appoints the clerk of that court as the surety's agent upon whom any papers affecting the surety's liability on the bond may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the superior court prescribed may be served on the clerk of the superior court who shall forthwith mail copies to the surety if the surety's address is known.

(g) **Parties to the Appeal.** All parties to the trial court proceeding when the final order or judgment was entered are parties to the appeal. A party who files a notice of appeal, whether separately or jointly, is an appellant under these rules. All other parties are deemed to be appellees, regardless of their status in the trial court. An appellee may elect at any time not to participate in the appeal by filing and serving a notice of non-participation. The filing of a notice of non-participation shall not affect whether the party is bound by the decision on appeal.

(h) **Service of Documents.** Papers filed or served in the appeal must be served on all parties, except appellees who have elected not to participate in the action.

(i) **Joint or Consolidated Appeals.** If two or more parties are entitled to appeal from a judgment or order of a court and their interests are such as to make joinder practical, they may file a joint notice of appeal. Appeals may be consolidated by order of the appellate court upon its own motion or upon motion of a party.

Rule 209. Appeals at Public Expense.

(a) **Civil Matters.**

(1) A party to a civil action may file in the supreme court a motion to appeal or to petition for review at public expense. The motion shall be accompanied by a sworn financial statement on a form provided by the clerk of the appellate courts.

(2) In considering the motion to appeal or petition for review at public expense, the court shall determine the indigence or nonindigence of the party.

(3) If the motion is granted:

[a] The court shall specify in the order granting the motion which of the following costs or partial costs are to be covered at public expense:

[1] Filing fees,

[2] Transcript fees,

[3] Costs of printing briefs,

[4] Other costs;

[b] Any costs and attorney fees awarded to the appellant or petitioner as a prevailing party in the supreme court shall accrue to the state to reimburse it for costs relating to the appeal or petition for review.

(4) Leave to file at public expense may be conditioned on repayment of costs to the state. The conditions may include the imposition of liens in favor of the state on costs, attorney fees and other recoveries awarded to the indigent appellant or petitioner.

(5) An appeal or petition for review at public expense will be allowed without additional motion in cases where the appellant is represented by court-appointed counsel.

(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).

(b) **Criminal Matters.**

(1) In criminal matters the appellate court shall authorize appeals and petitions for review at public expense on behalf of defendants who are "indigent," as defined by statute, in accordance with the rules and decisions of the appellate courts of Alaska, and where such proceedings are required to be provided by state courts by decisions of the Supreme Court of the United States. Where an appeal or petition for review at public expense is authorized by the court, the costs which shall be borne at public expense include those of providing counsel and of preparing a transcript and briefs.

(2) If a defendant is allowed to proceed at public expense, the clerk of the appellate courts shall send the defendant a written notice and order, to the address provided under Appellate Rule 204(b), that

(A) advises defendant that, if the defendant's conviction is not reversed, the defendant will be ordered to repay the prosecuting authority for the cost of appointed appellate counsel, in accordance with the schedule of costs set out in subparagraph 209(b)(6); and

(B) orders the defendant to apply for permanent fund dividends every year in which the defendant qualifies for a dividend until the cost is paid in full.

(3) A defendant authorized to proceed at public expense in the trial court is presumed to be entitled to appeal or petition for review at public expense.

(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 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 public defender agency or the office of public advocacy 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.

(5) At the conclusion of the appellate proceeding, the clerk of the appellate courts shall enter judgment against the defendant for the cost of appointed appellate counsel unless the defendant's conviction was reversed by the appellate court. The amount of the judgment shall be determined by reference to the schedule in subparagraph 209(b)(6). Before entering judgment, the clerk shall mail, to the defendant's address of record, a notice that sets out the amount of the proposed judgment. The defendant may oppose entry of the judgment by filing a written opposition within 45 days after the date shown in the clerk's certificate of distribution on the notice. The opposition shall specifically set out the grounds for opposing entry of judgment. The prosecuting authority may oppose the amount

of the judgment by filing a written opposition within the same deadline. Criminal Rule 39(c)(1)(C) and (c)(2) shall apply to judgments entered under this subparagraph.

(6) The following schedule governs the cost of appointed appellate counsel:

Type of Appellate Proceeding	**Misdemeanor**	**Felony**
Sentence Appeal or Petition for Sentence Review	$ 250	$ 500
Merit Appeal or Appeal from Post-Conviction Relief Proceedings	$ 750	$ 1,500
Combined Merit Appeal and Sentence Appeal or Petition for Sentence Review	$ 1,000	$ 2,000
Other Appellate Actions (Petition for Review, Petition for Hearing, etc.)	$ 500	$ 1,000

(c) **Costs.** Costs, attorney's fees, damages, and interest may be allowed as in other cases, but the state shall not be liable for any of them.

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, the electronic record of proceedings before the trial court, and transcripts, if any, of the trial court proceedings. Except as otherwise ordered by the appellate court, the record does not include documents or exhibits filed after, or electronic records or transcripts of proceedings occurring after, the filing date of the notice of appeal, and does not include transcripts not designated under subsection (b)(1) of this rule unless those transcripts were filed with the trial court prior to the filing date of the notice of appeal. Filings, exhibits, electronic recordings, or transcripts presented to the trial court after the filing date of the notice of appeal may be added to the record on appeal only upon motion pursuant to subsection (i). Material never presented to the trial court may not be added to the record on appeal.

(b) **Preparation of Transcript.**

(1) *Designation of Parts of Record to be Transcribed.*

(A) At the time the notice of appeal is filed, the appellant shall file and serve on the other parties to the appeal a designation of the parts of the electronic record which appellant intends to transcribe. The appellant shall designate all parts which are essential to a determination of the issues on appeal. If appellant claims that the written findings of fact or conclusions of law are insufficient or erroneous, the designation shall include any oral findings of fact and conclusions of law. Within 10 days after service of appellant's designation, any other party to the appeal may file and serve a designation of additional parts of the electronic record to be transcribed.

(B) If a party designates an entire trial or hearing, the partys designation shall include only the nature and dates of the proceeding. If a party designates parts of a trial or hearing, the partys designation shall include the nature and dates of the proceeding, the CD or tape number and log numbers or time where these parts appear [CD (#), at Time 00:00:00 or Tape (#), at Log 00:00:00], and a narrative description of the portions requested. If a party designates a portion of a witness testimony, it must appear from the partys narrative description that part of the witness testimony has been omitted.

(2) *Preparation at Public Expense.* The clerk of the appellate courts shall arrange for preparation of the transcript in cases in which the transcript is prepared at public expense. The transcript shall include all parts of the electronic record designated by the parties to the appeal; however, the voir dire examination of jurors and jury instructions shall not be transcribed unless a party has specifically requested these portions of the trial.

(3) *Preparation Not at Public Expense.* In cases in which the transcript is not prepared at public expense, the appellant shall arrange for preparation of a transcript of all parts of the electronic record designated by the parties to the appeal. Upon request, the clerk of the trial courts shall provide to the transcriber a copy of the designations, a copy of the electronic record or parts thereof, a copy of the log notes and other information necessary for preparation of the transcript. Unless the parties agree otherwise by stipulation, or unless otherwise ordered by the appellate court, the person designated to prepare the transcript shall not be a relative, employee, or attorney of any of the parties, or a relative or employee of that attorney, or be financially interested in the action. Apart from contracting for the preparation of the transcript within a given period of time and at a given price, neither the party nor the party's attorney may exercise control over the preparation of the transcript.

(4) *Time for Completion.* Preparation of the transcript shall be completed within 40 days after filing of the notice of appeal. If the transcript is not being prepared at public expense and the transcriber is unable to complete the transcript within this time, the appellant shall move the appellate court for an extension of time. The motion shall comply with Appellate Rule 503, shall also be served on the clerk of the trial courts, and shall be considered a routine motion within the meaning of Rule 503(b).

(5) *Filing and Distribution.* Upon completion of the transcript, the transcriber shall promptly notify the parties that the transcript has been completed and shall file with the clerk of the appellate courts (i) the original and one copy of the transcript; and (ii) an electronic version of the transcript in the form and format prescribed by administrative bulletin.

(6) *Costs.* If the transcript is not being prepared at public expense, the cost of preparing the original transcript, the copy filed with the court and the computer diskette shall be paid by the appellant. This cost may be taxed as a cost in the case, but if any party causes parts of the electronic record to be transcribed unnecessarily, the court may impose the cost of transcribing such parts on that party.

(7) *Form of Transcript.* Transcripts shall be in the form and format prescribed by administrative bulletin.

(8) *Statement in Lieu of Transcript.* If there is no electronic recording from which a transcript can be prepared, the appellant may prepare a statement of the evidence of proceedings from the best available means, including the appellants recollection, for use instead of a stenographic or electronically recorded transcript. This statement shall be served on the appellee, who may serve objections or proposed amendments, and shall be submitted to the court from which the appeal is being taken for settlement and approval. As settled and

approved, the statement shall be filed with the clerk of that court and transmitted to the appellate court in lieu of a transcript.

(c) **Excerpts of Record.**

(1) *Duty to Prepare.*

(A) Each party shall file and serve an excerpt of record with the party's brief.

(B) In cases involving multiple appellants or appellees, each side shall prepare a single excerpt of record. In a case involving multiple appellants who are filing separate briefs, the appellant who filed the first notice of appeal shall prepare and file the excerpt for the appellants, unless the appellants otherwise agree. In a case involving multiple appellees who are filing separate briefs, the appellees shall decide among themselves which appellee shall prepare and file the excerpt for the appellees. Ten days prior to the date on which a side's briefs are due, the parties who are not responsible for preparation of the excerpt shall transmit to the responsible party a list of documents to be included in the excerpt. The responsible party shall include in the excerpt all documents which are specified by the other parties, provided such documents are in the record. A party who fails to transmit a list of documents to the responsible party by the 10 day deadline waives the right to designate documents for inclusion in the excerpt. The responsible party shall mail a copy of the excerpt to each of the other parties on that side six days before the date the briefs are due, or deliver a copy of the excerpt three days before the date the briefs are due, so that the other parties may include the appropriate citations in their briefs. The cost of copying and mailing the excerpt shall be borne equally by all parties on the side.

(C) A cross-appellant or cross-appellee who elects to file a single brief shall file a single excerpt with that brief. A cross-appellant who makes this election shall include in the excerpt those documents that are properly included in an appellee's excerpt under Rule 210(c)(2). A cross-appellant who elects to file separate briefs shall file and serve notice of this election within 10 days after service of the notice of the due date for appellant's brief. If a cross-appellant makes this election, the cross-appellant and the appellant shall be treated as co-appellants filing separate briefs and shall prepare and submit a combined excerpt as required by Rule 210(c)(1)(B). The cross-appellee and the appellee shall be treated as co-appellees filing separate briefs for purposes of that rule.

(2) *Contents.*

(A) *Appellant's Excerpt.* The appellant's excerpt of record must contain the following parts of the record:

(i) all charging documents, or the petition or complaint, counterclaim, crossclaim, and answer setting out the issues to be tried;

(ii) the judgment or interlocutory order from which the appeal is taken;

(iii) other orders or rulings sought to be reviewed;

(iv) supporting opinions, findings of fact, conclusions of law, or other statements showing the reasoning of the trial court and, if appellant claims that the written findings of fact or conclusions of law are insufficient or erroneous, a copy of the pages of the transcript at which any relevant oral findings of fact and conclusions of law are recorded;

(v) if the appeal is from the grant or denial of a motion, relevant portions of briefs, memoranda, and documents filed in support of and in opposition to the motion;

(vi) if the appellant is challenging the admission or exclusion of evidence, the giving or failure to give a jury instruction, or another oral ruling or order, a copy of the pages of the transcript at which the evidence, offer of proof, ruling, or order and relevant discussion by the court, and any necessary objection are recorded;

(vii) if the appeal is from a final decision in a child-in-need-of-aid proceeding under AS 47.10.080(c) or a case involving the termination of parental rights under AS 25.23.180, the predisposition report prepared in the case; and

(viii) specific portions of other documents in the record, including documentary exhibits, that are referred to in appellant's brief and essential to the resolution of an issue on appeal.

(B) *Appellee's Excerpt.* The appellee's excerpt of record must contain those parts of the record required under (c)(2)(A) and relied on by appellee that were not included in the appellant's excerpt.

(C) *Portions of the Transcript.* Parties may also include in the excerpt selected pages of the transcript that are critical to the appeal.

(D) *Items Not to Be Included in the Excerpts.* Pages of the transcript and briefs and memoranda filed in the trial court may only be included in the excerpts if required under (c)(2)(A) or permitted under (c)(2)(C).

The fact that parts of the record are not included in the excerpts does not prevent the parties or the appellate court from relying on those parts.

(3) *Supplemental Excerpts.* Appellant may file and serve a supplemental excerpt of record with appellant's reply brief or within the time specified for filing a reply brief. No other supplemental excerpt may be filed except by leave of the appellate court granted on motion, or at the request of the appellate court. A supplemental excerpt may not include parts of the record that appear in another excerpt filed in the appeal.

(4) *Form, Filing and Service.* Each party's excerpt of record must be arranged in chronological order, must be bound separately from the party's brief, and must contain a table of contents at the beginning of the first volume. The excerpt and the table of contents must be in the form specified in the Clerk's Instructions for Preparation of Excerpts published in these rules. One copy of the excerpt must be filed and served with the party's original brief. Six copies of the excerpt must be filed with the bound copies of the brief, and one copy must be served on counsel for each party separately represented. The appellate court may specify the filing or service of a different number of copies than required by this rule.

(5) *Excerpts to be Abbreviated.* The parties shall include in the excerpts only those parts of the record which are essential to a determination of the questions presented on appeal. For any infraction of this rule, the appellate court may impose sanctions and withhold or impose costs as the circumstances of the case and discouragement of like conduct in the future may require.

(6) *Costs.* Subject to (c)(5), the prevailing party shall be entitled to recover the cost of copying its excerpt of record under Appellate Rule 508(d).

(d) **RESERVED.**

(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 record, assembled in accordance with subsection (a) of this rule, 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.

(2) *Confidential Materials.* Papers filed under seal in the trial court and exhibits submitted or introduced at closed hearings in the trial court shall be maintained under seal while they constitute part of a record on appeal, and access to them shall be governed by Rule 512.5(c).

(f) **Briefing Schedule.** Upon filing of the transcript and completion of the page numbering, the clerk of the trial courts shall notify the clerk of the appellate courts that the case is ready for briefing. Upon receiving this notice, the clerk of the appellate courts shall give notice of the due date for the appellant's brief.

(g) **Transmission of the Record.**

(1) *Transmission to Appellate Court.* Upon notification that briefing is complete, the clerk of the trial courts shall transmit the record, excluding physical exhibits,

to the clerk of the appellate courts. Physical exhibits shall be retained by the trial court unless specifically requested by the appellate court. As used in this paragraph, "physical exhibits" includes exhibits other than documents or photographs, and also includes documents or photographs of unusually large size or unusual bulk or weight.

(2) *Transfer to Other Court Locations.* The clerk of the appellate courts may direct that the record be temporarily transferred to another court location within the state for the accommodation of counsel in the preparation of briefs.

(h) **Several Appeals.** When more than one appeal is taken to the appellate court from the same judgment, there shall be a single record on appeal. In preparing the record, deadlines which run from filing of the notice of appeal shall run from filing of the last notice of appeal.

(i) **Power of Court to Correct, Modify, or Supplement.** It is not necessary for the record on appeal to be approved by the trial court or a judge thereof except as provided in paragraph (b)(8) and in Rule 211, but if any difference arises whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to that courts decision. If anything material to either party is omitted from the record on appeal by error or accident by court personnel, or is misstated therein, the parties by stipulation, the trial court, or the appellate court, on a proper suggestion or of its own initiative, may direct that the omission or misstatement shall be corrected. All other questions as to the content and form of the record shall be presented to the appellate court. Materials (including filings, exhibits, electronic recordings, or transcripts) filed with the trial court after the filing date of the notice of appeal may be added to the record on appeal only upon motion designating by title, description, and filing date the materials sought to be added, and are limited to the following:

(1) materials pertaining to attorneys fees, costs, or prejudgment interest;

(2) amended judgments, and all materials pertaining to those judgments;

(3) oppositions or replies responding to, or orders determining, motions that were filed on or before the filing date of the notice of appeal, and materials pertaining to those documents;

(4) any orders listed in Rule 204(a)(3), together with any motions, oppositions, and replies leading to such orders, and any materials pertaining to those documents;

(5) materials to be added to the record upon entry of an order amending or supplementing the points on appeal; and

(6) materials to be added to the record for other good cause found by the appellate court.

On motion in the appellate court, and for cause, an excerpt of record may also be modified or supplemented to correct omissions by counsel.

Rule 212. Briefs.

(a) **Filing and Serving Briefs.**

(1) *Initial Submission.*

(A) *Time for Serving and Filing Briefs.* The appellant shall serve and file the appellant's brief within 30 days after the court gives notice under Rule 210(f) of the due date for appellant's brief. The appellee shall serve and file the appellee's brief within 30 days after service of the appellant's brief. Within 20 days after service of the appellee's brief, appellant shall serve and file either a reply brief or a notice that no reply brief will be filed. In cases involving multiple appellants or appellees who are filing separate briefs, including parties who are deemed to be co-parties under Rule 210(c)(1)(C), the time for filing these briefs shall be extended by 10 days if the parties are preparing excerpts of record in order to allow compliance with Rule 210(c)(1)(B).

(B) *Number of Copies.* On or before the date the party's brief is due, the party shall file with the clerk the original plus one copy of the brief, printed or written on only one side of each page, together with proof of service on all parties.

(C) *Compliance Check.* The court will review the brief for compliance with (b) and (c) of this rule and return the original to the party, with a notice of rejection, conditional acceptance, or acceptance, for correction or for duplication and binding.

(D) *Changes Not Permitted.* After a brief is returned for correction or binding, the party shall make no changes to the brief other than those required by the binding process or required by the court in any notice of rejection or conditional acceptance. The party may also correct spelling and typographical errors and correct and update citations for cases already cited in the originally submitted brief.

(2) *Bound Copies of Briefs.*

(A) *Time for Service; Number of Copies.* Within ten days after the clerk returns the brief, the party shall serve two bound copies on each party and shall file with the clerk eight bound copies in an appeal before the supreme court or seven bound copies in an appeal before the court of appeals. The clerk may specify a different number of copies or a different time period than required by this rule.

(B) *Form of Bound Copies.* Bound copies must be printed or written on both sides of the paper and securely bound along the left margin in a manner that does not obscure the text, and that permits the brief to lie reasonably flat when open. Unless otherwise permitted by the clerk, the copies must be bound using

comb or spiral binding, but not staples or metal fasteners. The copies must have a suitable cover consisting of heavy paper in the color indicated:

- brief of appellant - ivory or light tan;
- brief of appellee - blue;
- reply brief - green; and
- brief of intervenor or amicus curiae - red.

(b) **Form.** The form of a brief is governed by Rule 513.5(b)(1)-(5) and (c) and by this rule. The left and right margins of a brief must each be one inch. The front cover of a brief must contain: (1) the name of the court and the number of the case; (2) the title of the case; (3) the nature of the proceeding (e.g., appeal, petition for review); (4) the name of the court or agency below, the name of the individual who rendered the decision below, and the case number below; (5) the title of the document (e.g., brief of appellant); and (6) the names, addresses, telephone numbers, and bar numbers of counsel for the party concerned and the name of the law firm or organization with whom counsel is affiliated. In criminal cases, the front cover must also include a certificate indicating whether the brief contains information that is confidential under AS 12.61.100 through 12.61.150. The administrative director shall specify the form and content of the certificate.

(c) **Substantive Requirements.**

(1) *Brief of Appellant.* The brief of the appellant shall contain the following items under appropriate headings and in the order here indicated:

(A) A table of contents, including the titles and subtitles of all arguments, with page references.

(B) A table of cases alphabetically arranged, statutes, and other authorities cited, with references to the pages of the brief where they are cited.

(C) The constitutional provisions, statutes, court rules, ordinances, and regulations principally relied upon, set out verbatim or their pertinent provisions appropriately summarized.

(D) A jurisdictional statement of the date on which judgment was entered and of the legal authority of the appellate court to consider the appeal.

(E) A list of all parties to the case, without using "et al.," or any similar indication, unless the caption of the case on the cover of the brief contains the names of all parties. This list may be contained in a footnote.

(F) A statement of the issues presented for review. In cases of cross-appeal, the cross-appellant may present a statement of the issues presented for review which would require determination if the case is to be reversed and remanded for

further proceedings in the trial court. In the event that the decision is affirmed on the appeal, such issues on the cross-appeal may be deemed waived by the appellate court.

(G) A statement of the case, which shall provide a brief description of the case and a concise statement of the course of proceedings in, and the decision of, the trial court. Appellant shall state the facts relevant to each issue, with references to the record as required by paragraph (c)(8), in this section or in the appropriate argument sections.

(H) A discussion of the applicable standard of review. (If the brief concerns several issues with different standards of review, the discussion of each issue should be preceded by a discussion of the standard of review applicable to that issue).

(I) An argument section, which shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on. The section may be preceded by a summary. Each major contention shall be preceded by a heading indicating the subject matter. References to the record shall conform to the requirements of paragraph (c)(8).

(J) A short conclusion stating the precise relief sought.

(K) If the appeal concerns a property division in a divorce case, an appendix consisting of a table listing all assets and liabilities of the parties as reflected in the record, including the trial court's findings as to the nature (marital or individual), value, and disposition of each asset or liability.

(2) *Brief of Appellee.* The brief of the appellee shall conform to the requirements of subdivisions (1)(A) through (1)(J) except that a statement of jurisdiction, of the issues, or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant, and a list of all parties need not be included.

(3) *Reply Brief.* The appellant may file a brief in reply to the brief of the appellee. The reply brief shall conform to the requirements of subdivisions (1)(A), (1)(B), (1)(C), (1)(I), and (1)(J). This brief may raise no contentions not previously raised in either the appellant's or appellee's briefs. If the appellee has cross-appealed and has not filed a single brief under (c)(6) of this rule, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. No further briefs may be filed except with leave of the court.

(4) *Length.* Exclusive of appendices, the appellant's and appellee's briefs may not exceed 50 numbered pages each. Numbered pages for purposes of this paragraph begin with the jurisdictional statement required by (c)(1)(D) of this rule. The appellant's reply brief may not exceed 20 pages. A motion for leave to file a

brief longer than permitted by this paragraph must be accompanied by a copy of the over-length brief proposed to be filed.

(5) *Brief in Cases of Multiple Parties.* In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another.

(6) *Briefs in Cases Involving Cross-Appeals.*

(A) Cross-Appellant. An appellee who is also a cross-appellant may elect to file a single brief that both discusses the appellee's claims of error and answers the original appellant. Such a single brief shall be filed on the date the appellee's brief is due. It shall be divided into two sections: the first section shall contain the issues and arguments involved in the cross-appeal and shall be prepared in accordance with (c)(1) of this rule; the second section shall contain the answer to the brief of the appellant and shall be prepared in accordance with (c)(2) of this rule. The single brief may not exceed 50 numbered pages. If the cross-appellant elects to file a single brief, the right to file a reply brief to the answer to the cross-appeal is waived. If the cross-appellant does not elect to file a single brief, the schedule and form for filing briefs in the cross-appeal shall be in accordance with the procedures for an original appeal.

(B) Cross-Appellee. If the appellee/ cross-appellant elects to file a single brief under [a], the appellant/cross-appellee may file a single brief containing its reply on the appeal and its response to the cross-appeal This combined brief may not exceed 50 numbered pages. The portions of the combined brief that comprise the reply may not exceed 20 numbered pages. The combined brief must be filed within 30 days of the appellee/cross-appellant's single brief.

(7) *References in Briefs and in Oral Arguments to Parties.* In briefs and oral arguments, counsel are expected to minimize references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the trial court or in the agency proceedings, or the actual names of parties, or descriptive terms such as"the employee," the "injured person," "the taxpayer," and so forth.

(8) *References in Briefs to the Record.*

(A) *References in Cases in Which Excerpts are Prepared.* References in the briefs to parts of the record reproduced in an excerpt shall be to the pages of the excerpt at which those parts appear. The form for references to pages of the excerpt is [Exc. _____]. Briefs may reference parts of the record not reproduced in an excerpt. The form for references to pages of the transcript is [Tr. ___] and to pages of the trial court file is [R.___]. The form for references to untranscribed

portions of the electronic record is [CD (#), at Time 00:00:00 or Tape (#), at Log 00:00:00].

(B) *References to be Included.* If reference is made to evidence of which the admissibility is in controversy, reference shall be made to the pages of the transcript at which the evidence was identified, offered, and received or rejected. Appellant's brief shall indicate the pages of the record where each point on appeal was raised in the trial court. If the point on appeal was not raised in the trial court, the brief shall explain why the point is raised for the first time on appeal. Failure to comply with the requirements of this paragraph may result in return of the brief as provided in paragraph 11 of this subdivision.

(9) *Brief of an Amicus Curiae.* A brief of an amicus curiae may be filed only if accompanied by written consent of all the parties, or by leave of the appellate court granted on motion, or at the request of the appellate court. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Unless all parties otherwise consent, any amicus curiae shall file its brief within the time allowed to the party whose position as to affirmance or reversal the amicus brief will support, unless the court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer. The brief shall be in the form prescribed by this rule and shall be duplicated and served pursuant to the requirements of Rule 212(a)(2). A motion of an amicus curiae to participate in the oral argument will be granted only for extraordinary reasons.

(10) *Failure to File Brief.* When the appellant's opening brief is not filed as required, Rule 511.5 shall apply. When the appellee's brief is not filed as required, appellee will not be heard at oral argument except on consent of the appellant, or by request of the court.

(11) *Defective Briefs.* When a brief fails to comply with the requirements of these rules, the appellate court, on application of any party or on its own motion, and with or without notice as it may determine appropriate, may:

(A) Order the brief to be returned to counsel for correction by interlineation, cancellation, revisions or replacement in whole or in part, and to be refiled with the clerk within a time specified in the order; or

(B) Order the brief stricken from the files, with leave to file a new brief within a specified time; or

(C) Disregard defects and consider the brief as if it were properly prepared.

The authority to return briefs under this section may be exercised by the clerk of court pursuant to Rule 102 (f).

(12) *Citation of Supplemental Authorities.* When pertinent authorities come to the attention of a party after the party's brief has been filed, or after oral argument but before decision, the party may promptly advise the clerk of the court, by letter, with a copy to adversary counsel, setting forth the citations.

There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall contain no argument or explanations. Any response shall be made promptly and shall be similarly limited.