

Original sponsor: Croft

Offered: 5/4/77
Referred: Rules

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 89

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the exemption of municipalities and
7 indigents from the requirement of posting bonds for
8 court costs and the amount of judgment; amending Rule
9 65(c), Rules of Civil Procedure, and Rule 7(d) Rules of
10 Appellate Procedure; and changing the effect of Rules
11 7(c), 24(d), 45(c) and 45(d), Rules of Appellate Pro-
12 cedure, and Rules 23(e), 24(b), 25(b), 31(c)(2) and
13 31(d)(3), District Court Civil Rules."

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

15 * Section 1. AS 09.65.040 is amended to read:

16 Sec. 09.65.040. PARTIES EXEMPT FROM GIVING BOND. (a) In an
17 action or proceeding in a court in which the state or a municipality is
18 a party or in which the state or a municipality is interested, no bond
19 or undertaking is required of the state, a municipality, or an officer
20 of the state or municipality.

21 (b) No bond for costs on appeal need be filed by a party to an
22 action if a court finds that party to be indigent and his appeal not
23 frivolous; this finding may be made upon an affidavit filed by that
24 party showing that the party is unable to pay for a bond and further
25 stating the grounds for the appeal and the party's belief that he is
26 entitled to redress.

27 * Sec. 2. Rule 65(c) of the Alaska Rules of Civil Procedure is amended to
28 read:

29 (c) SECURITY. No restraining order or preliminary injunction shall

1 issue except upon the giving of security by the applicant, in such sum
2 as the court deems proper, for the payment of such costs and damages as
3 may be incurred or suffered by any party who is found to have been
4 wrongfully enjoined or restrained. No such security shall be required
5 of the state or a municipality or of an officer or agency thereof, or
6 unless otherwise ordered by the court, in domestic relations actions or
7 proceedings.

8 A surety upon a bond or undertaking under this rule submits himself
9 to the jurisdiction of the court and irrevocably appoints the clerk of
10 the court as his agent upon whom any papers affecting his liability on
11 the bond or undertaking may be served. His liability may be enforced on
12 motion without the necessity of an independent action. The motion and
13 such notice of the motion as the court prescribes may be served on the
14 clerk of the court who shall forthwith mail copies to the persons giving
15 the security if their addresses are known.

16 * Sec. 3. Rule 7(d) of the Alaska Rules of Appellate Procedure is amended
17 to read:

18 (d) Supersedeas Bond. Whenever an appellant entitled thereto
19 desires a stay on appeal, he may present to the superior court for its
20 approval a supersedeas bond which shall have such surety or sureties as
21 the court requires. The bond shall be conditioned for the satisfaction
22 of the judgment in full, together with costs and interest, if for any
23 reason the appeal is dismissed or if the judgment is affirmed, and to
24 satisfy in full such modification of the judgment and such costs and
25 interest as the supreme court may adjudge and award. When the judgment
26 is for the recovery of money not otherwise secured, the amount of the
27 bond shall be fixed at such sum as will cover the whole amount of the
28 judgment remaining unsatisfied, costs on the appeal, and interest,
29 unless the court after notice and hearing and for good cause shown,

1 fixes a different amount or orders security other than the bond. When
2 the judgment determines the disposition of the property in controversy
3 as in real actions, replevin, and actions to foreclose mortgages or when
4 such property is in the custody of the marshal or state police or when
5 the proceeds of such property or a bond for its value is in the custody
6 or control of the court, the amount of the supersedeas bond shall be
7 fixed at such sum only as will secure the amount recovered for the use
8 and detention of the property, the cost of the action, costs on appeal,
9 and interest, unless the court, after notice and hearing and for good
10 cause shown, fixes a different amount or orders security other than the
11 bond. A municipality or an officer or agency thereof desiring a stay on
12 appeal is exempted from the requirements of posting supersedeas bond
13 imposed by this subsection.

14 * Sec. 4. This Act has the effect of excluding municipalities and their
15 officers and agencies, as well as indigent parties with appeals found not
16 frivolous, from application of rules regarding posting of bonds to cover
17 costs on appeal imposed by Rules 7(c), 24(d), and 45(c), Alaska Rules of
18 Appellate Procedure, and Rules 23(e), 25(b), 31(c)(2), and 31(d)(3) of the
19 Alaska District Court Civil Rules. This Act also has the effect of excluding
20 municipalities and their officers and agencies from application of rules re-
21 garding posting of bonds concomitant to obtaining a stay of the operation of
22 a judgment, imposed by Rule 45(d) Rules of Appellate Procedure, and Rules
23 24(b) and 25(b), Alaska District Court Civil Rules.