



LAWS OF ALASKA

1977

Source

HCSSB 89

Chapter No.

82

AN ACT

Relating to the exemption of municipalities and indigents from the requirement of posting bonds for court costs and the amount of judgment; amending Rule 65(c), Rules of Civil Procedure, and Rule 7(d) Rules of Appellate Procedure; and changing the effect of Rules 7(c), 24(d), 45(c) and 45(d), Rules of Appellate Procedure, and Rules 23(e), 24(b), 25(b), 31(c)(2) and 31(d)(3), District Court Civil Rules.

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

* Section 1. AS 09.65.040 is amended to read:

Sec. 09.65.040. PARTIES EXEMPT FROM GIVING BOND.

(a) In an action or proceeding in a court in which the state or a municipality is a party or in which the state or a municipality is interested, no bond or undertaking is required of the state, a municipality, or an officer of the state or municipality.

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

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

(c) SECURITY. No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the state or a municipality or of an officer or agency thereof, or unless otherwise ordered by the court, in domestic relations actions or proceedings.

A surety upon a bond or undertaking under this rule

submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the persons giving the security if their addresses are known.

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

(d) Supersedeas Bond. Whenever an appellant entitled thereto desires a stay on appeal, he 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 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 marshal or state police or when the proceeds of such property or 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 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 agency thereof desiring a stay on appeal is exempted from the requirements of posting supersedeas bond imposed by this subsection.

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