

APPELLANT INSTRUCTIONS

Appeal to Superior Court from Administrative Revocation of Driver's License Under Alaska Statute 28.15.165

Court staff can usually answer questions about court procedures, court rules, court records, and forms. Court staff must remain neutral and impartial. They are not allowed to give legal advice. Court staff cannot:

- advise you how statutes and rules apply to your case
- tell you whether you presented your case properly and with the best evidence and arguments
- tell you which procedures are the best ones to use in your case
- interpret laws for you

If you need help with your case, you should talk to a lawyer.

April 2022 ALASKA COURT SYSTEM

Most of the forms referenced in this booklet are available on the court system's website here: <http://www.courts.alaska.gov/forms/index.htm>

The Appellate Rules cited in this booklet are available on the court system's website here: <https://courts.alaska.gov/rules/docs/app.pdf>

You can also find copies of the book *Alaska Rules of Court* at any local court.

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INSTRUCTIONS FOR FILING AN APPEAL TO THE SUPERIOR COURT FROM AN ADMINISTRATIVE REVOCATION OF DRIVER'S LICENSE UNDER AS 28.15.165

Appellate Rules 601-612 govern appeals to the superior court. Appeals are complicated, and you may want to talk to a lawyer before you start this process.

I. INTRODUCTION

These instructions describe the procedure **only** for the following circumstances:

1. You allegedly failed a breath test for alcohol or refused to submit to one, and therefore your driver's license was subject to automatically being revoked under AS 28.15.165;
2. You had a hearing at the Division of Motor Vehicles (DMV)¹ where you asked that your driver's license not be revoked;
3. The administrative hearing officer decided to uphold the Department of Administration's revocation of your driver's license; **and**
4. You want to appeal that hearing officer's decision to the superior court.

This appeal is called an "administrative appeal" because you are appealing the decision of an administrative agency, the DMV. These instructions are only applicable to the special type of administrative appeal as described above.

If you are appealing **any other type** of agency decision, including another type of decision by the DMV, see *Appellant Instructions – Appeal from Administrative Agency to Superior Court* (form [AP-210](#)) instead.

Definitions:

- A. **ADMINISTRATIVE APPEAL.** In an administrative appeal, the superior court reviews the final decision of a state or local government agency, board, or commission—in this case, the DMV. An appeal is **not** a new hearing or a trial. You cannot present any new evidence to the superior court. The only information that the superior court will consider on appeal is:
1. an electronic recording of the administrative hearing (unless the court requires a typed transcript instead);
 2. any exhibits (documents, photographs, videos, or physical items) offered as evidence at the administrative hearing;
 3. the documents and depositions in the agency file; and
 4. legal briefs filed in the appeal.²
- B. **APPELLANT.** The appellant is the party who files the appeal. In this case, you are the appellant.
- C. **APPELLEE.** The appellee is the party who defends against the appeal. In this case, the appellee is DMV.

¹ For purposes of these instructions, the "Department of Administration," the "Division of Motor Vehicles (DMV)," and the "Department" all refer to the same agency.

² See section VI(B)(1) of these instructions for more information on legal briefs.

II. COPIES TO OTHER PARTIES

The court rules require each party to give a copy of any document that the party files with the court to all other parties.³ You can give the documents to the other party by hand-delivering or mailing the documents. You can also email or fax a copy if the other party agreed to this type of service. For every document that you file, you must include a signed statement that you gave a copy to the other parties. This is called “proof of service.” The court forms include a certificate of service section. Make sure that you always complete this section before you file the form with the court. The DMV is usually represented by an attorney, so the documents must be served on the attorney instead of the agency. Contact DMV to find out the name and address of the attorney representing it on appeal, or wait to see the attorney’s information when the attorney files an *Entry of Appearance*. See section III(C)(4) on page 4 about where you must send copies of your notice of appeal.

III. TO FILE AN APPEAL

A. Grounds for Appeal.⁴

You may only file an appeal if you believe that DMV:

- misinterpreted the law,
- acted in an arbitrary and capricious manner, or
- made a determination unsupported by the evidence in the record.

B. When to File.

1. You can only file an appeal to the superior court after the DMV has held the administrative review hearing and made its final decision. If DMV did not hold a hearing for any reason, you may appeal the denial of a hearing.
2. You must file a notice of appeal **within 30 days** from the date the hearing officer's decision is mailed or otherwise distributed to you.⁵ If you want to file a notice of appeal after the 30 days, you must ask the court for permission to accept it. You can use *Request and Order* (form [AP-135](#)) for this. File your request to accept the late notice at the same time you file your notice of appeal.

C. How to File.

1. Notice.

File *Notice of Appeal* (form [AP-102](#)) with the superior court in the location that would “best serve the convenience of the parties.”⁶ Most often this means near where you live or where a traffic stop occurred. Attach a copy of the DMV decision.⁷

³ Appellate Rule 602(j).

⁴ AS 28.15.166(m).

⁵ Appellate Rule 602(a)(2). For the 30-day time limit to apply, an agency must clearly indicate that its decision is a final order and that the claimant has 30 days to appeal. *Manning v. Alaska Railroad Corporation*, 853 P.2d 1120, 1124 (Alaska 1993).

⁶ Appellate Rule 602(b)(2).

⁷ Appellate Rule 602(c)(1)(D).

2. Filing Fee.
 - a. When you file, you will be required to pay a \$250 filing fee. Make your check or money order payable to "Clerk of Court."
-OR-
 - b. If you cannot afford to pay the filing fee, file *Request for Exemption from Payment of Fees* (form [TF-920](#)) asking the court to waive it.

3. Bond.

You must file **one** of the following at the time you file your notice of appeal:

- a \$750 cost bond
- a motion to waive or reduce cost bond

- a. \$750 Cost Bond.

The purpose of this bond is to make sure DMV's appeal costs will be reimbursed by you if you lose your appeal or if the appeal is dismissed. To meet the cost bond requirement, you can either file a surety bond **or** make a cash deposit:

- (1) Surety Bond. This is a document that guarantees payment of money if certain things occur. The person or company that writes the bond is called the surety. The surety guarantees the payment by becoming responsible for it. Such bonds are generally available from insurance companies or third parties qualified to write surety bonds. There will be a fee. The court system does not provide forms for surety bonds.
- (2) Cash Deposit. If you want to make a cash deposit with the court instead of filing a surety bond, complete *Cash Deposit on Appeal* (form [AP-110](#)). Check the first box on the form, fill out the rest of it, acknowledge it before a court clerk or notary public, and give it to the clerk along with your money.

- b. Motion to Waive or Reduce Cost Bond.

The cost bond is \$750 unless the superior court fixes a lesser amount.⁸ If you think this amount is too high because the expected appeal costs (including attorney fees) for DMV will be a lot less than \$750, you may file:

- (1) *Motion to Waive or Reduce Cost Bond* (form [AP-120](#)).
- (2) *Order Re Cost Bond* (form [AP-130](#)). Only fill out the top part of the AP-130 (the case caption). The judge will fill out the rest.

If you believe you cannot afford to post a \$750 cost bond, you may file:

- (1) *Motion to Waive or Reduce Cost Bond* (form [AP-120](#)).
- (2) *Order Re Cost Bond* (form [AP-130](#)). Only fill out the top part of the AP-130 (the case caption). The judge will fill out the rest.
- (3) *Financial Statement* (form [CR-206](#)).

⁸ Appellate Rule 602(e)(1).

The court will notify you of its decision. If the court orders you to post a cost bond, you must file a surety bond or cash deposit in the amount set by the court or your appeal will be dismissed.

c. Return of Bond.

After the appeal is decided, the court will send you and DMV a notice that the bond will be released unless there is an objection. If you lose your appeal, DMV may file an objection and request that the bond be applied to DMV's appeal costs. If DMV doesn't file an objection, the court will return your cash deposit to you.

4. Copies to DMV and Attorney General. In this type of appeal, you must send a copy of your notice of appeal and all attachments to **both** of the following:

a. Director of Driver Licensing, DMV
3901 Old Seward Hwy, Suite 101
Anchorage, AK 99503

b. Attorney General of Alaska
P.O. Box 110300
Juneau, AK 99811-0300

Once the DMV's lawyer files an *Entry of Appearance*, you only need to send future documents to the lawyer.

IV. PREPARATION OF RECORD

In addition to the documents you file, the court needs the DMV's records about the hearing and decision in your case. The record on appeal will include all original papers and exhibits filed with DMV, and electronic recordings of all proceedings before the agency.

The court will notify DMV to prepare the agency file by a certain deadline. DMV must number the pages in its file, make a copy of the file, and send it to the court. DMV must also make a copy of the electronic recordings of the hearings to send to the court. Unless you and DMV agree otherwise, or the court orders otherwise, **you** must pay DMV to do this (usually in advance).⁹ DMV will notify you when it is ready to accept payment and how much it will be. **Within 30 days** after this notice, you must pay DMV for preparation of the record. If you do not, your appeal may be dismissed.¹⁰

V. STAY OF ADMINISTRATIVE ORDER

The filing of your appeal does not automatically "stay" (stop) the revocation of your license. If you think that your license should not be revoked while the appeal is pending, you must ask the court for a stay. The court may grant the stay only if the court finds that there is a reasonable probability that (1) you will win your appeal; (2) you will suffer irreparable harm if the license revocation is not stayed; and (3) if you operate a commercial motor vehicle, the public can be adequately protected by conditions imposed by the court.¹¹

⁹ Appellate Rule 604(b)(1)(B)(iv).

¹⁰ Appellate Rule 606(b).

¹¹ Alaska Statute 28.15.166(n).

Use *Motion and Affidavit for Stay* (form [AP-145](#)) to ask for this. If you file this motion at the same time you file your notice of appeal, include a copy of the motion in the packet that you send to DMV in Anchorage and the Attorney General in Juneau (see section III(C)(4) on the previous page). If you file your motion later, send a copy of it to DMV's attorney. You can find out who that is by calling DMV.

VI. WHAT HAPPENS AFTER YOUR APPELLATE CASE IS OPENED

A. Assignment of Judge.

After you have opened your appellate case, the court will notify you of the name of the judge assigned to hear it. You have the right to a "peremptory challenge" (to ask for a different judge) **one time** only, without giving a reason. If you do this, you will be randomly assigned a different superior court judge to hear the appeal. Use *Notice of Change of Judge* (form [TF-935](#)). You must file this notice **within five days** of being notified of the assigned judge.

B. Briefing Schedule.

A "legal brief" is a document that you write to explain your side of the case to the judge. When the case is ready for briefing, the court will send you and DMV's attorney *Notice Setting Appeal Procedure* (form AP-307). This notice will tell you the time schedule for filing legal briefs and requesting oral argument.

You **must** file a brief within the time limit set by the court's notice. If you do not, your appeal may be dismissed. If you cannot file within the time limit, file *Request and Order* (form [AP-135](#)) asking the court for more time.

Along with your brief, you must prepare an "excerpt of record." Instructions for preparing an excerpt are in paragraph 2 on the next page.

1. **Legal Brief.** The full rules for what your legal brief must include and what format it must be in are in Appellate Rules 605(a), 212(c), and 513.5. These instructions only provide a summary of these rules. Read the full text of the rules to make sure you are complying with all requirements.

The substance of your brief must include the following sections, in the following order:

- a. a table of contents
- b. a table of all legal authorities cited to in your brief (case law, statutes, and regulations) and the text of the primary laws you are relying on
- c. a "jurisdictional statement"¹²
- d. a statement of the issues you want the court to review
- e. a summary of the facts of the case and the agency proceedings
- f. a discussion of the law and its application to the facts (this is where you discuss your appeal arguments in detail)
- g. a short conclusion explaining what you want the court to order

¹² The includes a statement about the date of the final agency decision, whether the decision is final on all issues, and the legal authority of the superior court to hear the appeal (this authority can be found in the rules and statutes referred to in the beginning of these instructions).

Sections e and f must include citations to the record for each argument or statement you make. See "Citation Guidelines" below for how to do this.

Your brief must be typed or written (using black ink), double-spaced on 8.5" x 11" white paper. Number all of the pages except for the cover, the table of contents, and the table of legal authorities. Only type or write on one side of each page. Your initial brief must be no longer than 50 pages (excluding the cover, table of contents, and table of legal authorities). If DMV files a brief in response, you have the option (but are not required) to file a reply brief, addressing any new points brought up in the DMV's brief. Your reply brief must be no longer than 20 pages.

Appellant Brief Cover Sheet (form [AP-162](#)) may be used as the cover of your brief. It is available as a fillable form online. It is also included as the second-to-last page of these instructions, which you may detach and fill out by hand.

Citation Guidelines. In your brief, you must refer to specific pages in the excerpt of record or a deposition that support your arguments or statements about the facts.¹³ After each argument or statement of fact, place the referral citation in parenthesis at the end.

- a. To cite to the **excerpt of record**, write "(Exc. ___)" -- write the appropriate page number of the excerpt on the blank line.
- b. To cite to a **deposition**, write "(Dep. of ___, page ___)" -- write the name of the person who gave the deposition on the first blank line, and the page of that deposition on the second blank line.

Examples:

Documents in an Excerpt of Record: (Exc. 26)

Deposition: (Dep. of Tom Davis, page 20)

2. **Excerpt of Record.** In addition to your brief, you must prepare an excerpt of record. You **must** include copies of the following in your excerpt:

- the notice of license revocation
- the law enforcement officer's sworn report that was filed with DMV
- your request to DMV for review
- the decision or order of DMV that you are appealing
- any other orders or rulings DMV made in your case that you want the court to review
- any written opinion, findings, or other statements issued by DMV to explain the reasons for its decision
- any other documents in DMV's file that you cite in your brief, or that you think the court must look at to properly review the case

Do **not** simply use the entire agency file or include extra documents that are not listed above. The court needs to be able to easily locate the relevant parts of the record that support your statements, and not search through a large stack of papers.

¹³ For purely legal arguments, you may cite to a statute, a regulation, a constitutional provision, or case law instead.

Do **not** include anything in your excerpt that was not presented in the original DMV proceeding. You cannot present new evidence in the appeal.

To prepare your excerpt:

- a. Look through the agency file that was prepared after you filed your notice of appeal (see section IV of these instructions). The DMV gives the file to the court, so if DMV did not provide you a copy, it is also available at the court where you filed your appeal. Make copies of all of the pages that you need need from the file (or pull them out from your own copy). Consult the list on the previous page to make sure you are including just the documents that you need, and are not leaving any required ones out.
 - b. Arrange the documents in chronological order by the date they were signed, with the oldest one on top.
 - c. Put page numbers on the bottom of each page, starting with "1" and numbering each new page until the last page is numbered. Do not start over the numbering for each document.
 - d. Create a table of contents. List the title of each document, the date it was signed, and the page number (from c above) on which it begins. Put the table of contents on top.
 - e. Prepare a cover page. *Excerpt of Record Cover Sheet* (form [AP-165](#)) may be used. It is available as a fillable form online. It is also included as the last page of these instructions, which you may detach and fill out by hand.
 - f. Staple the excerpt separately from your brief.
3. **Service.** Send or give a copy of both your brief and your excerpt to DMV's attorney. You must show proof that you did this by filling out and filing a certificate of service. These certificates are already included on the sample cover sheets (forms AP-162 and AP-165). You can find the name and address of DMV's attorney by calling DMV.
 4. **File with the Court.** After you have given copies to the DMV's attorney, file both your brief and your excerpt of record with the court by the deadline in the notice that the court clerk previously sent to you.
 5. **Reply Brief.** If you choose to file a reply brief, you may also include an additional excerpt of record. Only do this if there are new excerpts that you want to refer to that were not already included in your initial excerpt or in the excerpt that the DMV filed with its brief.

C. Oral Argument.

"Oral argument" is when you explain your side of the case to the appellate judge and try to persuade the judge why you should get what you are asking for. Oral argument is **not** a new trial or a chance to present more evidence. You cannot call witnesses to testify. You are limited to explaining in more detail the arguments you made in your legal brief. Sometimes, the judge will ask you questions about what you say during oral argument or what you wrote in your brief. Each side gets 15 minutes to speak, unless otherwise ordered.¹⁴

¹⁴ An exception is if the DMV does not file a legal brief, the DMV waives (gives up) the right to speak at oral argument.

The deadline to request oral argument is:

- (1) If the DMV files a brief, then within 10 days after the date your **reply** brief is due; **or**
- (2) If the DMV does **not** file a brief, then within 10 days after the due date for the DMV's brief expired.

If DMV timely requests oral argument, you may not object to the request.¹⁵ As long as at least one party makes a timely request, the court will automatically schedule oral argument. The request must be in writing, but does not need to explain why oral argument is necessary. You may use *Request and Order* (form [AP-135](#)) to ask for oral argument.

If your request for oral argument is filed after the deadline, you must also include a request for the court to accept your late filing. You may use *Request and Order* (form [AP-135](#)) to both ask for the oral argument to be scheduled, and to explain why the court should accept your late request.

If you file a request for oral argument, you must serve a copy of your request on the DMV's attorney. Make sure to fill out the certificate of service showing that you did this.

VII. DECISION

The superior court will decide the appeal based on the record, the briefs and excerpts submitted, and oral arguments (if held). The court will send you a copy of the decision. The decision may:

- **affirm** (agree with) the DMV decision,
- **remand** (send the case back for additional action by DMV),
- **reverse** the decision made by DMV, or
- **dismiss** your appeal.

VIII. ATTORNEY FEES AND COSTS

In administrative appeals, Appellate Rule 508 determines who may apply for costs and attorney fees at the end of an appeal. Generally, you (the appellant) may apply for costs and attorney fees if DMV's decision is reversed.¹⁶

Costs. The clerk will send the parties *Notice Re Costs and Attorney Fees on Appeal* (form AP-333) along with a copy of the appeal decision. If you won the appeal, and you want to recover costs, file a verified¹⁷ and itemized bill of costs **within 10 days** after the date shown in the clerk's certificate of distribution on the appeal decision. If the decision was mailed to you, you have an additional three calendar days to file your bill of costs.

¹⁵ Appellate Rule 605.5.

¹⁶ If the decision is affirmed or if the appeal is dismissed, then the DMV may ask the court to award costs and attorney fees against you.

¹⁷ "Verified" means your cost bill must include a statement signed by a court clerk or notary public that you have sworn or affirmed that the information in the cost bill is true. See Alaska Statute 09.63.030 for the wording of a verification.

The only costs you may ask for are:

1. the filing fee
2. the fee DMV charged you for preparing the agency file and copying the electronic recording of the hearing for the court
3. the cost of copying and mailing briefs and excerpts of record
4. extra costs related to bonds, such as surety fees or bank fees

You must serve a copy of your bill of costs on DMV's attorney, who has seven days to file objections. The clerk will then decide what costs to award and send both parties a copy of the decision.

Attorney Fees. File a request for attorney fees **within 10 days** after the date shown in the clerk's certificate of distribution on the appeal decision. You may use *Request and Order* (form [AP-135](#)) to do this. Be sure to attach a detailed invoice showing your actual attorney fees. Non-attorneys cannot request attorney fees for representing themselves. Include an explanation of why you are allowed to recover attorney fees under Appellate Rule 508(e). You must send a copy of the request to DMV's attorney, who has seven days to file objections. The court will send you a copy of the judge's decision on the request.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA AT _____

	}	
Appellant,	}	
vs.	}	
STATE OF ALASKA	}	
DEPARTMENT OF ADMINISTRATION	}	
DIVISION OF MOTOR VEHICLES,	}	
Appellee.	}	
	}	CASE NO. _____

BRIEF OF APPELLANT

Appeal from the decision of the Department of Administration, Division of Motor Vehicles.

Party or Attorney Filing Brief:

Name: _____

Mailing Address:

Phone Number: _____

Attorney's Bar Number: _____

I certify that on _____
at _____ [date/time], a copy of
this brief was

- mailed personally delivered
 emailed* faxed*

to: _____
 Attorney for DMV

By: _____

*Email and fax may only be used if DMV consented to this method of service.

