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Chapter 57. Appeals.

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8 AAC 57.010. Appeals to the Workers' Compensation Appeals Commission.

The provisions of this chapter apply to appeals of final decisions and orders of the board to the commission, as provided in AS 23.30.125 – 23.30.128. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197)

Authority: AS 23.30.007, AS 23.30.125 AS 23.30.128
AS 23.30.008 AS 23.30.127

8 AAC 57.020. Parties to an appeal. (a) All individuals or entities that were parties in proceedings that resulted in issuance of a final decision or order of the board are parties to an appeal of that decision or order to the commission.

(b) The party filing an appeal is the appellant.

(c) If the director files an appeal, as provided in AS 23.30.127(a) and 8 AAC 57.030(a)(2), the director is the appellant.

(d) All other parties to an appeal are appellees, regardless of their status in proceedings before the board.

(e) If the director intervenes in an appeal, as provided in AS 23.30.127(a) and 8 AAC 57.030(a)(1), the director is an appellee.

(f) An appellee may choose at any time not to participate in an appeal by filing a notice of nonparticipation. Any decision or order issued in an appeal may apply to a

nonparticipating appellee, including an order awarding attorney fees and costs to a successful party, as provided in AS 23.30.008(d) and 8 AAC 57.260.

(g) If an individual who is a party to an appeal dies or is adjudged incompetent, the duly appointed representative of that deceased or incompetent individual may be substituted for that individual as a party to an appeal by filing a notice of substitution and copies of documents demonstrating appointment as representative. (Eff. 12/5/2005, Register 176; am 4/21/2006, Register 178; am 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.127

8 AAC 57.030. Intervention and request for ruling by the director. (a) The director may

(1) intervene in an appeal; or

(2) file an appeal requesting a ruling if a party in interest to a compensation order is not represented by an attorney and the compensation order concerns an unsettled question of law.

(b) If the director intervenes in or files an appeal, as provided in (a) of this section, the other parties to that appeal shall serve all documents filed with the commission on the director, as provided in 8 AAC 57.040(b) or 8 AAC 57.050(c). (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.127

8 AAC 57.040. Filing and service of documents. (a) Filing is the procedure whereby a party submits documents to the commission for its consideration in an appeal.

Each document a party files with the commission must

- (1) be signed and dated by the party or the party's attorney filing it; and
- (2) be hand-delivered, sent by first class mail, or transmitted as provided in

8 AAC 57.050(a).

(b) Service is the procedure whereby a party provides copies of documents filed with the commission to the other parties to an appeal. A copy of each document a party files with the commission must

(1) be served on each of the other parties except an appellee that has filed a notice of nonparticipation, as provided in 8 AAC 57.020(f); and

(2) be hand-delivered, sent by first class mail, or transmitted as provided in 8 AAC 57.050(c).

(c) A document is considered filed or served on receipt unless received on a Saturday, Sunday, or legal holiday, or after 5:00 p.m. Alaska time, in which event the document is considered filed or served on the next day that is not a Saturday, Sunday, or legal holiday.

(d) The appellant shall also serve a copy of the notice of appeal on the director as provided in 8 AAC 57.070(b)(3).

(e) Service on a party represented by an attorney must be on the attorney.

(f) Service by hand-delivery under (b)(2) of this section is accomplished by

- (1) handing the document to a party or to a party's attorney; or

(2) leaving the document at a party's residence or at the attorney's office with an individual of suitable age and discretion who occupies the residence or is employed at the office.

(g) Proof of service is the procedure whereby a party serving copies of documents on the other parties confirms that the documents were served. Proof of service for each document served by a party must

(1) be shown in writing at the end of the document or in a separate document;

(2) identify each document being served;

(3) state the name and address of each party being served;

(4) state the date and method of service;

(5) state the name and contain the signature of the person serving the document; and

(6) be filed simultaneously with each document being filed with the commission if proof of service is in a separate document. (Eff. 12/5/2005, Register 176; am 4/21/2006, Register 178; am 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.128

8 AAC 57.050. Facsimile transmission or electronic mail filing and service.

(a) A party may file a document with the commission by facsimile transmission or electronic mail if the document is 50 pages or less in length and

(1) if the document filed by facsimile transmission or electronic mail is an affidavit, the affidavit bearing the original signature of the affiant is hand-delivered or sent by first class mail to the commission the same day the affidavit is transmitted to the commission by facsimile transmission or electronic mail;

(2) any document filed by electronic mail is attached in portable document format to an electronic mail message that contains only the title of the document and the addresses of the sender and the recipient; and

(3) on request by the chair, the document bearing the original signature of the party is hand-delivered or sent by first class mail to the commission.

(b) Filing of a document by

(1) facsimile transmission is considered complete on receipt of the entire document by the commission's facsimile machine; or

(2) electronic mail is considered complete on receipt of the entire document at the commission's electronic mail address.

(c) A party may serve a document on another party by facsimile transmission or electronic mail if the party being served has filed with the commission and served on the other parties a notice of consent to service by

(1) facsimile transmission, including the recipient's facsimile number; or

(2) electronic mail, including the recipient's electronic mail address.

(d) Service of a document by

(1) facsimile transmission is considered complete on receipt of the entire document by the recipient's facsimile machine; or

(2) electronic mail is considered complete on receipt of the entire document at the recipient's electronic mail address. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.009 AS 23.30.128

Editor's note: The commission's office is located at 1016 W. 6th Ave., Suite 405, Anchorage, Alaska 99501. The commission's telephone number is (907) 269-6738; the commission's facsimile number is (907) 269-6737; and the commission's website is located at: www.labor.alaska.gov/WCcomm/home.htm.

8 AAC 57.060. Time computation. (a) In computing a time period specified in AS 23.30.125 – 23.30.128, in this chapter, or in an order of the chair or commission,

(1) the day of the act, event, or default from which the designated time period begins to run is excluded;

(2) the last day of the time period is included, unless it is a Saturday, Sunday, or legal holiday, in which event the designated time period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday; and

(3) if the designated time period is less than seven days, intermediate Saturdays, Sundays, and legal holidays are excluded.

(b) A party may request an extension of time by filing a motion, as provided in 8 AAC 57.140. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.009 AS 23.30.127

8 AAC 57.065. Representation of parties to an appeal. (a) In an appeal,

(1) a corporation must be represented by an attorney admitted to practice law in the state or permitted to appear under the Alaska Rules of Court;

(2) a partnership or other unincorporated association must be represented as provided by law; or

(3) an individual or sole proprietorship may be self-represented or represented by an attorney admitted to practice law in the state or permitted to appear under the Alaska Rules of Court.

(b) Whenever a provision in this chapter refers to a party, appellant, or appellee, and that party, appellant, or appellee, is represented by an attorney, the provision refers to the attorney, unless the context indicates otherwise.

(c) If, under (a) of this section, a party required to be represented by an attorney is not, the chair shall issue a written notice to the party that the party is required to be represented by an attorney and that the appeal may be dismissed or the party may be prohibited from participating in the appeal if the party fails to take appropriate corrective action no later than 20 days after receipt of the notice. (Eff. 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.127

8 AAC 57.070. Notice of appeal. (a) To begin an appeal, an appellant shall file a notice of appeal, as provided in AS 23.30.127(a) and (b).

(b) The notice of appeal must

(1) specify the board decision or order appealed from;

(2) state the grounds for the appeal; and

(3) be served on the director, as provided in 8 AAC 57.040(d), in addition to the other parties, unless the director is the appellant.

(c) At the same time the notice of appeal is filed, the appellant shall also file

(1) a list of the name, and if known, current mailing address, and telephone and facsimile numbers of each party to the appeal; and

(2) a list of the name, and if known, current mailing address, and telephone and facsimile numbers of each attorney known to be representing a party to the appeal.

(d) Unless the appellant is the state or a political subdivision of the state, at the same time the notice of appeal is filed, the appellant shall

(1) pay a filing fee of \$50, payable by money order, or by business, certified, or cashier's check; or

(2) file a motion for exemption from payment of the filing fee or transcript costs and a completed *Financial Statement Affidavit*, as provided in 8 AAC 57.090.

(e) An appellee may begin a cross-appeal by filing a notice of cross-appeal in the original appeal, as provided in AS 23.30.127(c).

(f) No later than 10 days after service of the notice of appeal and the documents specified under (a) – (c) of this section, the appellees may file supplemental or responsive documents, including

(1) entries of appearance; or

(2) notices of consent to service by facsimile transmission or by electronic mail, as provided in 8 AAC 57.050(c). (Eff. 12/5/2005, Register 176; am 4/21/2006, Register 178; am 3/27/2011, Register 197)

Authority: AS 23.30.007 AS 23.30.008 AS 23.30.127

8 AAC 57.072. Timing of motions for extraordinary review. Repealed. (Eff. 12/5/2005, Register 176; repealed 3/27/2011, Register 197)

8 AAC 57.073. Petitions or cross-petitions for review of interlocutory or other non-final board decisions or orders. (a) A party may petition or cross-petition the commission, as provided in 8 AAC 57.075, for review of an interlocutory or other non-final board decision or order that is not otherwise appealable under this chapter.

(b) Review will be granted only if the policy that appeals be taken only from final decisions and orders is outweighed because

(1) postponement of review until appeal may be taken from a final decision or order will result in injustice because of impairment of a legal right, or because of unnecessary delay, expense, hardship, or other related factors;

(2) the decision or order involves an important question of law on which there is substantial ground for difference of opinion, and an immediate review of the decision or order may materially advance the ultimate resolution of the claim;

(3) the board has so far departed from the accepted and usual course of proceedings as to call for the commission's review; or

(4) the issue is one that might otherwise evade review, and an immediate decision by the commission is needed for the guidance of the board. (Eff. 12/23/2011, Register 200)

Authority: AS 23.30.008 AS 23.30.127 AS 23.30.128
AS 23.30.125

8 AAC 57.074. Motions and consideration of extraordinary review. Repealed. (Eff. 12/5/2005, Register 176; am 4/21/2006, Register 178; repealed 3/27/2011, Register 197)

8 AAC 57.075. Procedure on petitions or cross-petitions for review. (a)
Unless a petition for reconsideration of a board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed with the commission no later than 15 days after the date that the board serves on the parties the decision or order for which commission review is sought.

(b) If a petition for reconsideration of a board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed with the commission no later than 15 days after the date that the board serves on the parties the reconsideration decision, or the date that the petition for reconsideration is considered denied in the absence of any board action, whichever is earlier.

(c) When a petition for review is filed, any other party may file a cross-petition for review of the same decision or order. A cross-petition must be filed no later than 15 days after service of the petition for review.

(d) The party filing a petition for review is the petitioner. Any other parties are respondents. Any party filing a cross-petition for review is a cross-petitioner.

(e) Upon the filing of a petition for review, the commission clerk shall promptly notify the board, informing the board of the date and number of the decision or order sought to be reviewed, the name of the party filing the petition, and the docket number assigned to the petition by the commission.

(f) A petition or cross-petition for review may not exceed 15 pages in length, exclusive of appendices, must conform to the requirements in 8 AAC 57.150(a), and must include

(1) the name, current mailing address, and telephone and facsimile numbers of the party filing the petition or cross-petition;

(2) the names, current mailing addresses, and telephone and facsimile numbers of counsel, if the parties are represented by counsel;

(3) a copy of the decision or order for which review is sought, or a statement of the substance of the decision or order, if it was rendered orally;

(4) a statement of facts necessary to an understanding of the question determined by the order or decision of the board;

(5) a statement of the issue sought to be reviewed;

(6) reasons why review should not be postponed until appeal may be taken from a final decision or order;

(7) reasons why the board's decision or order is alleged to be erroneous;

(8) a statement of the precise relief sought; and

(9) proof of service on the office of the board panel involved and all parties to the board proceeding when the decision or order was entered.

(g) No later than 15 days after service of a petition or cross-petition for review, a party may file an opposition, not exceeding 15 pages in length, exclusive of appendices. The opposition must conform to the requirements in 8 AAC 57.150(a), and must include

(1) objections to the commission's consideration of the petition or cross-petition for review; and

(2) proof of service on the office of the board panel involved and all parties to the board proceeding when the decision or order was entered.

(h) A petitioner or cross-petitioner for review may not file a reply to an opposition filed under (f) of this section, unless ordered by the commission. (Eff. 12/23/2011, Register 200)

Authority: AS 23.30.008 AS 23.30.127 AS 23.30.128

AS 23.30.125

8 AAC 57.076. Commission consideration of motions for extraordinary review. Repealed. (Eff. 12/5/2005, Register 176; repealed 3/27/2011, Register 197)

8 AAC 57.077. Commission consideration of petitions or cross-petitions for review. (a) The commission will consider and decide a petition or cross-petition for review under this section as soon as practicable. Oral argument will not be held on the question of whether the petition or cross-petition for review should be granted.

(b) The commission will promptly notify the parties and the board of the action taken on a petition or cross-petition for review filed under 8 AAC 57.075 and furnish a copy of any commission order denying or granting a petition or cross-petition for review to the parties and to the office of the board panel involved. A motion for rehearing of the denial of a petition or cross-petition for review may not be filed. (Eff. 12/23/2011, Register 200)

Authority: AS 23.30.008 AS 23.30.127 AS 23.30.128
AS 23.30.125

8 AAC 57.080. Panel to hear an appeal. (a) On the filing of a notice of appeal, the chair will issue a written notice to the parties identifying the members of the panel assigned to hear an appeal.

(b) Unless the commission is hearing a request for reconsideration, as provided in AS 23.30.128(f), the chair may assign, temporarily or permanently, another member of the commission to fill a vacancy on a panel assigned to hear an appeal if a member is unable to serve on the panel, because of absence or illness, or for some other reason. The member assigned to fill a panel vacancy shall meet the requirements for panel

composition, as provided in AS 23.30.007 and 23.30.128. The chair will issue a written notice to the parties identifying the member assigned to fill a panel vacancy.

(c) No later than 10 days after receipt of a notice under (a) or (b) of this section, a party may file a motion to remove and replace a member of the panel for any reason provided in AS 23.30.007(l). Members of the panel assigned to that appeal who are not the subject of the motion will decide the motion. (Eff. 12/5/2005, Register 176; am 4/21/2006, Register 178; am 3/27/2011, Register 197)

Authority: AS 23.30.007 AS 23.30.009 AS 23.30.128
AS 23.30.008

8 AAC 57.090. Requests for exemption from payment of filing fee or transcript costs. (a) At the same time the notice of appeal is filed, the appellant may request an exemption from payment of the filing fee or transcript costs by filing a motion and the commission's *Financial Statement Affidavit*, revised as of November 2010 and adopted by reference.

(b) No later than 10 days after service of a motion for an exemption, any other party may file an opposition to the motion.

(c) The commission may order, with or without a hearing, the exemption of the appellant from full or partial payment of

(1) the filing fee, as provided in 8 AAC 57.070(d)(1); or

(2) the costs of preparation of the transcript of board hearings that the board has not already had transcribed, as provided in 8 AAC 57.120.

(d) The commission may order, with or without a hearing, cross-appellants or intervenors to share in payment of the costs under (c)(2) of this section, as provided in AS 23.30.127(d).

(e) At the conclusion of an appeal, with or without a hearing and with or without a motion for an award of costs by a successful party that was found fully or partially exempt from payment of costs, the commission may order payment of costs to the commission by the unsuccessful party to the extent necessary to reimburse the commission for the costs it paid. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.127 AS 23.30.128

Editor's note: The Workers' Compensation Appeals Commission *Financial Statement Affidavit*, adopted by reference in 8 AAC 57.090, may be obtained from the commission's office, located at 1016 W. 6th Ave., Suite 405, Anchorage, Alaska 99501 or through the commission's website at: www.labor.alaska.gov/WCcomm/home.htm.

8 AAC 57.100. Applications for stays. (a) In connection with the filing of an appeal or petition for review, the appellant may apply for a stay by filing and serving a motion. The motion must state whether new or additional evidence will be presented at the hearing on the motion, as provided in AS 23.30.128(c), identify the new or additional evidence, and include copies of any new or additional documentary evidence.

(b) The motion may include a request for relief in the form of a stay of payments under a compensation order that includes the appropriate showing of the grounds for a stay of compensation payments, as provided in (f) or (g) of this section.

(c) As soon as practicable following the filing of a motion for a stay, the chair will issue a written notice to the parties of the hearing on the motion, to be held after not less than three days, as provided in AS 23.30.125(c), and the deadline for oppositions to the motion.

(d) Any other party may file and serve an opposition to the motion. The opposition must state whether the party intends to present new or additional evidence at the hearing, identify the new or additional evidence, and include copies of any new or additional documentary evidence.

(e) Service of any document under this section must be through one of the methods provided for in 8 AAC 57.040 or 8 AAC 57.050, whether it be hand-delivery, first class mail, facsimile transmission, or electronic mail, that is reasonably calculated to provide maximum notice to each of the other parties.

(f) To stay continuing future periodic compensation payments, the appellant must demonstrate by affidavit or other evidence

(1) that it would suffer irreparable damage; and

(2) the existence of the probability that the merits of the appeal will be decided adversely to the compensation recipient.

(g) To stay lump-sum compensation payments, the appellant must demonstrate by affidavit or other evidence that it would suffer irreparable damage.

(h) As soon as practicable following the hearing, the commission will enter an appropriate order on the motion. The commission's action under this subsection may include entry of an order *nunc pro tunc* that stays compensation payments retroactively. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197; am 3/24/2012, Register 201)

Authority: AS 23.30.008 AS 23.30.125 AS 23.30.128
 AS 23.30.009 AS 23.30.127

Editor's note: 8 AAC 57.100 took effect on December 5, 2005 as an emergency regulation, and was first published in Register 176 (January 2006). In reviewing the "permanent" regulation in accordance with AS 44.62.060 and 44.62.125(b), the regulations attorney made technical changes to 8 AAC 57.100. The technical changes appeared in the "permanent" regulations as published in Register 178 (July 2006). The history note for 8 AAC 57.100 does not reflect the changes made by the regulations attorney.

8 AAC 57.110. Record on appeal. (a) The record on appeal consists of

(1) the recordings of board hearings not previously transcribed by the board; and

(2) the entire board file, including all original papers, exhibits, depositions, and transcripts of board hearings previously transcribed by the board.

(b) No later than 15 days after receipt of notice of an appeal from the commission clerk, the board's appeals clerk shall transfer to the commission clerk

(1) the recordings of board hearings under (a)(1) of this section; and

(2) a list of board hearings previously transcribed by the board.

(c) No later than 45 days after receipt of notice of an appeal from the commission clerk, the board's appeals clerk shall transfer the entire board file under (a)(2) of this section to the commission clerk.

(d) In connection with the transfer of the record on appeal under this section, the board's appeals clerk shall

(1) number the pages of the entire board file under (a)(2) of this section in a single sequence; and

(2) certify that the record is complete. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.127

8 AAC 57.120. Transcript. (a) No later than 10 days after receipt of the recordings of board hearings and the list of board hearings previously transcribed by the board, as provided in 8 AAC 57.110(b), the commission clerk shall issue a written notice to the parties that identifies which recordings of board hearings have been transcribed and which recordings have not been transcribed.

(b) No later than 10 days after receipt of the notice under (a) of this section, the appellant shall file a designation for transcription of all portions of board hearings not previously transcribed by the board that are essential to consideration of the issues on appeal.

(c) No later than 10 days after service of the appellant's designation under (b) of this section, any other party may file a designation for transcription of portions of board hearings not previously transcribed by the board and not designated by the appellant that are essential to consideration of the issues on appeal.

(d) The appellant shall coordinate with the commission clerk the selection of a transcriptionist and the preparation of a transcript of all portions of board hearings designated by the parties and not previously transcribed by the board.

(e) The commission clerk shall provide to the transcriptionist

(1) copies of the recordings of board hearings not previously transcribed by the board;

(2) copies of the parties' designations;

(3) a copy of any other relevant document; and

(4) as soon as it is available, the last page number assigned to the entire board file, as provided in 8 AAC 57.110(d)(1).

(f) The commission clerk shall issue a written notice to the parties of the date the transcript is due to be completed.

(g) The transcriptionist shall complete the preparation of the transcript no later than 15 days after receipt by the transcriptionist of the documents or information specified under (e)(1) – (4) of this section. If the transcriptionist is unable to complete the transcript during the 15-day period, the transcriptionist shall notify the commission clerk, in which event an extension of time to complete the transcript may be ordered by the chair.

(h) The transcriptionist shall number the pages of the transcript consistently with the board's appeals clerk's numbering of the entire board file, as provided in 8 AAC 57.110(d)(1), beginning with the next number.

(i) On completion of the transcript, including the numbering of the transcript under (h) of this section, the transcriptionist shall provide to the commission the original and one copy of the transcript. The commission may request an electronic version of the transcript.

(j) Unless otherwise ordered by the commission, the appellant shall pay the costs of preparing the original transcript, a copy of the transcript to be filed with the commission, and the appellant's copy. The other parties shall pay the costs of their copies of the transcript.

(k) If any party designates portions of the recordings of board hearings for transcription that are not essential to consideration of the issues on appeal, the chair may order that party to pay the cost of transcribing those portions of the recordings.

(l) The transcriptionist shall prepare the transcript in the form and format prescribed in the Alaska Court System's *Manual of Transcript Procedures*, revised as of October 2009 and adopted by reference. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.127

Editor's note: The Alaska Court System's *Manual of Transcript Procedures*, October 2009, adopted by reference in 8 AAC 57.120, is available from the Alaska Court System website, at <http://courts.alaska.gov/trialcts.htm#trans>, from the Alaska Court

System, Customer Service, located at 825 West 4th Avenue, Anchorage, Alaska 99501-2004, telephone number: (907) 264-0450, or from the commission's office, located at 1016 W. 6th Ave., Suite 405, Anchorage, Alaska 99501; telephone number (907) 269-6738.

8 AAC 57.120 took effect on December 5, 2005 as an emergency regulation, and was first published in Register 176 (January 2006). In reviewing the "permanent" regulation in accordance with AS 44.62.060 and 44.62.125(b), the regulations attorney made a technical change to 8 AAC 57.120. The technical change appeared in the "permanent" regulations as published in Register 178 (July 2006). The history note for 8 AAC 57.120 does not reflect the change made by the regulations attorney.

8 AAC 57.130. Briefing schedule. (a) On receipt of both the record on appeal, as provided in 8 AAC 57.110, and the transcript, as provided in 8 AAC 57.120(i), the chair will issue a written notice to the parties of the briefing schedule.

(b) The appellant's brief must be filed no later than 30 days after receipt of the notice issued under (a) of this section.

(c) Appellees' briefs must be filed no later than 30 days after service of the appellant's brief.

(d) The appellant may file a reply brief no later than 20 days after service of the appellees' briefs.

(e) In the event of a cross-appeal, an appellee who is also a cross-appellant shall file a single brief that satisfies the requirements provided in 8 AAC 57.150(g). An

appellee who is also a cross-appellant shall file the single brief no later than 30 days after service of the appellant's brief.

(f) In the event of a cross-appeal, an appellant who is also a cross-appellee shall file a single reply brief that satisfies the requirements provided in 8 AAC 57.150(h). The appellant who is also a cross-appellee shall file the reply brief no later than 30 days after service of the brief from the appellee who is cross-appealing.

(g) On or before the date a party's brief is due, the party shall file with the commission

(1) the original plus three copies of the brief;

(2) the original plus three doubled-sided copies of the excerpt of record or supplemental excerpt of record for that brief, as provided in 8 AAC 57.170; and

(3) proof of service on each party, as provided in 8 AAC 57.040(g), of one copy of the brief and one copy of the excerpt of record or supplemental excerpt of record.

(Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.127

8 AAC 57.140. Motions for extensions of time. (a) When, in this chapter, an act is to be done within a specified time period, each party may request one routine extension of time per appeal by filing a motion before the expiration of that time period.

(b) Oppositions to motions for routine extensions of time under (a) of this section are not permitted.

(c) Except as provided under (h) of this section, the chair may order a routine extension of time not to exceed 10 days.

(d) When, in this chapter, an act is to be done within a specified time period,

(1) on motion of a party showing good cause filed before the expiration of that time period, except as provided under (h) of this section, the chair may order an extension of time not to exceed 30 days; or

(2) on motion of a party showing good cause filed after the expiration of that time period, except as provided under (h) of this section, the chair may order an extension of time not to exceed 20 days.

(e) To show good cause, for purposes of a motion for an extension of time under (d) of this section, the moving party must demonstrate diligence and substantial need. A representation that the press of business gives rise to the need for an extension of time does not constitute a demonstration of diligence and substantial need.

(f) A motion for an extension of time under (d) of this section must state

- (1) whether the motion is unopposed;
- (2) when the document was or is due;
- (3) the number and length of previous extensions requested;
- (4) the length of the requested extension; and
- (5) the reasons an extension is necessary.

(g) No later than 10 days after service of a motion for an extension of time under (d) of this section, any other party may file an opposition to the motion.

(h) The commission will rule on a motion for an extension of time to file a notice of appeal. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.127 AS 23.30.128
AS 23.30.009

8 AAC 57.150. Content and form of briefs and memoranda. (a) Briefs and memoranda must

- (1) be in clear and legible black typeface or hand printing in black ink;
- (2) be in 12 or 13 point font size;
- (3) be double-spaced;
- (4) contain no more than 6-1/2 x 9-1/2 inches of printed or written matter on a page; footers and footnotes may be single-spaced and typed in a smaller font, but not smaller than 10 point;
- (5) if longer than one page, have pages numbered consecutively; and
- (6) provide proof of service on the other parties.

(b) The first page of briefs and memoranda must contain

- (1) the name, current mailing address, and telephone number of the party filing the document;
- (2) the commission case number and board claim number; and
- (3) the title of the document.

(c) Unless otherwise provided in this chapter or by order of the chair or commission, memoranda in support of or in opposition to a motion are limited to 15 pages. Reply memoranda are not permitted.

(d) The appellant's brief is limited to 50 pages and must include

- (1) a statement of the issues presented for review;
- (2) a statement of the facts;
- (3) a brief description of the proceedings before the board;
- (4) a statement of the applicable standard of review;
- (5) a section discussing the appellant's arguments on the issues presented;
- (6) a short conclusion stating the precise relief sought; and
- (7) references to documents in the appellant's excerpt of record that

support each factual assertion in the appellant's brief.

(e) Each appellee's brief is limited to 50 pages and must include

- (1) a section discussing that appellee's arguments on the issues presented;
- (2) a section addressing any of the subjects or requirements under (d) of

this section if that appellee is dissatisfied with the appellant's statements in those respects; and

- (3) references to documents in that appellee's excerpt of record that

support each factual assertion in that appellee's brief.

(f) The appellant's reply brief is limited to 20 pages and must include references to documents in the appellant's excerpt of record or supplemental excerpt of record that support each factual assertion in the appellant's reply brief.

(g) In the event of a cross-appeal, a brief from the appellee who is cross-appealing is limited to 50 pages and must include, in addition to the items required for an appellee's brief as provided in (e) of this section,

(1) a section discussing that party's claims of error and the claims of error raised in the original appellant's brief; and

(2) references to documents in the excerpt of record from the appellee who is cross-appealing that support each factual assertion in the brief.

(h) In the event of a cross-appeal, the reply brief from an appellant who is also a cross-appellee is limited to 30 pages and must include, in addition to the items required for an appellant's reply brief as provided in (f) of this section,

(1) a section discussing both the claims of error in the cross-appellant's brief and the claims of error in the original appellant's brief; and

(2) references to documents in the excerpt of record or supplemental excerpt of record from the appellant who is also a cross-appellee that support each factual assertion in the reply brief.

(i) References in briefing under (d)(7), (e)(3), (f), (g)(2), and (h)(2) of this section to documents in the parties' excerpts of record or supplemental excerpts of record must contain the respective excerpt of record or supplemental excerpt of record page number for each document, as provided in 8 AAC 57.180(d)(1).

(j) The chair may reject a party's brief, memorandum, or other document filed with the commission if it fails to conform to the requirements in AS 23.30.125 – 23.30.128 or the requirements in this chapter. In that event, the chair will issue a written

notice to the party that specifies the nature of the failure and states that the appeal may be dismissed or the party may be prohibited from further participation in the appeal if the party fails to take appropriate corrective action no later than 20 days after receipt of the notice. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.127 AS 23.30.128
AS 23.30.009

8 AAC 57.160. Amicus brief. (a) A non-party may request permission to file an amicus brief by filing a motion.

(b) On a motion under (a) of this section, the non-party shall identify its interest in the appeal and state the reasons why an amicus brief is desirable.

(c) No later than 10 days after service of a motion under (a) of this section, any party may file an opposition to the motion.

(d) The chair will decide a motion under (a) of this section. If permission to file an amicus brief is granted, it must be filed as ordered by the chair. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.127 AS 23.30.128
AS 23.30.009

8 AAC 57.170. Preparation of excerpts of record. Parties shall prepare excerpts of record or supplemental excerpts of record, as provided in 8 AAC 57.180, for

simultaneously filing with their briefs, as provided in 8 AAC 57.130(g)(2). (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.127

8 AAC 57.180. Contents of excerpts of record. (a) The excerpt of record from an appellant or from an appellant who is also a cross-appellee must include the following:

(1) the claim, accusation, answer, or petition setting out the issues to be decided;

(2) the order or decision of the board from which the appeal is taken;

(3) other decisions or orders of the board for which review is sought;

(4) if the party is challenging the admission or exclusion of evidence or other oral ruling or order, a copy of the pages of the transcript at which the evidence, ruling, or order, the relevant discussion by the board, and any necessary objection are recorded; and

(5) documents referenced in the party's brief that support each factual assertion of the appellant or appellant/cross-appellee.

(b) An excerpt of record from an appellee or from an appellee who is also a cross-appellant must include documents referenced in that party's brief that support each factual assertion of that party and are not included in the party's excerpt of record under (a)(5) of this section.

(c) An appellant who is also a cross-appellee may file a supplemental excerpt of record with the party's reply brief.

(d) The documents in a party's excerpt of record or supplemental excerpt of record must

(1) be numbered consecutively and arranged in numerical order;

(2) be referenced in a table of contents that includes a brief description of each document, the date of the document, and the number of the first page of each document, as provided in (1) of this subsection; and

(3) be bound separately from the party's brief. (Eff. 12/5/2005, Register 176; am 4/21/2006, Register 178; am 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.127

8 AAC 57.190. Evidence. (a) The introduction of new or additional evidence is not permitted in an appeal, except as provided in AS 23.30.128(a) and (c).

(b) If new or additional evidence is permitted, the commission is not bound by common law or statutory rules of evidence, except that rules of privilege apply to the same extent that they apply in the Alaska Court System. The chair may admit any evidence of the type on which a reasonable person might rely in the conduct of serious affairs.

(c) The chair may

(1) refuse to admit evidence that is unduly repetitious or likely to arouse prejudice or passion unrelated to the matter in issue; or

(2) exclude any documentary, testimonial, or physical evidence that was not disclosed in advance of filing to all parties, unless the failure to disclose was due to

surprise, newly discovered evidence that could not have been disclosed sooner through the exercise of due diligence, or the misconduct of a party.

(d) If new or additional evidence is permitted, oral evidence may be taken only on oath or affirmation. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.125 AS 23.30.128
AS 23.30.009

8 AAC 57.200. Oral argument. (a) No later than 10 days after the date on which the last brief in an appeal is filed or due to be filed, a party may request oral argument by filing a written request for oral argument.

(b) Oppositions to motions requesting oral argument are not permitted.

(c) If oral argument is requested, the chair will issue a written notice to the parties of the date, time, and place of oral argument.

(d) Unless otherwise ordered by the chair, the time permitted for oral argument is 30 minutes per side.

(e) Parties or their attorneys may participate in oral argument telephonically by filing a notice that includes the telephone number at which each party or attorney may be contacted at the time of oral argument. The chair may order one or more parties to pay all or a portion of the cost of any telephone charges associated with telephonic participation in oral argument. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.127 AS 23.30.128

AS 23.30.009

8 AAC 57.210. Motions and stipulations. (a) One or more parties may request or apply for specific action by the chair or commission relating to an appeal by filing

- (1) a motion;
- (2) an unopposed or joint motion; or
- (3) a stipulation signed by the parties.

(b) Unless, in this chapter, a different time period is specified for oppositions or oppositions are not permitted, no later than 10 days after service of a motion under (a)(1) of this section, any other party may file an opposition to the motion.

(c) Memoranda in support of or in opposition to a motion, including requests for exemption, as provided in 8 AAC 57.090, applications for stay, as provided in 8 AAC 57.100, and motions for attorney fees and costs, as provided in 8 AAC.57.260, must conform to the requirements for memoranda, as provided in 8 AAC 57.150(a) – (c), and also include

- (1) a brief, complete statement of the reasons in support of or in opposition to the motion;
- (2) an affidavit if the facts relating to the motion are not otherwise proven;
- (3) the points and authorities on which the moving party relies; and
- (4) a concise statement of the relief sought.

(d) Except as otherwise provided in this chapter, the chair may rule on procedural motions. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.127 AS 23.30.128
AS 23.30.009

8 AAC 57.220. Final commission decision. The commission will issue a final decision, as provided in AS 23.30.128. In a final decision, the commission will include a statement that, if a party seeks review by the supreme court, a notice of appeal to the supreme court must be filed no later than 30 days after the date shown in the commission's notice of distribution of the final decision. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.128

8 AAC 57.230. Reconsideration. (a) A party may request reconsideration of a final commission decision by filing a motion, supported by an affidavit or other evidence of the specific grounds for reconsideration, as provided in AS 23.30.128(f).

(b) Oppositions to requests for reconsideration are not permitted unless requested by the chair. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.009 AS 23.30.128

8 AAC 57.235. Commission clerk. (a) The commission clerk may not permit an original record of the commission, on paper or electronic media, to be removed from the commission's office, except as required by order of the chair or this chapter. The commission clerk shall maintain the record on appeal transferred from the board in the

commission office during the pendency of the appeal, unless the chair orders the record on appeal to be returned to the board for

- (1) consideration of a settlement or other action that may moot the appeal;
- (2) not more than 20 days to permit a party to the appeal to consult the record in Fairbanks or Juneau; or
- (3) other reasons to advance the prompt, fair, and orderly disposition of the appeal.

(b) Unless otherwise ordered by the chair, the commission clerk shall return the record on appeal intact to the board no later than 45 days after the commission's final disposition of the appeal. If a party appeals the commission's decision to the supreme court, the commission clerk shall assemble the board's record on appeal and the commission's record on appeal, and transfer the complete, combined records to the clerk of the appellate courts.

(c) On the filing of an appeal, the commission clerk shall request the board's appeals clerk to timely transfer

- (1) the recordings of board hearings not previously transcribed by the board; and
- (2) the entire board file, including all original papers, exhibits, depositions, and transcripts of board hearings previously transcribed by the board.

(d) The commission clerk shall prepare and issue to all parties and the board's appeals clerk a written docket notice stating the caption and number assigned to the appeal and a description of the documents filed with the notice of appeal.

(e) The commission clerk shall coordinate with the appellant and the transcriptionist the preparation of a transcript of board hearings designated by the parties and not previously transcribed by the board, as provided in 8 AAC 57.120.

(f) The commission clerk shall publish all final or memorandum decisions of the commission and all other orders that the chair or commission shall require to be published. The commission clerk shall certify that the published decision or order is the full text of the decision or order issued by the commission, noting if changes in format were made for publication or minor typographical or grammatical errors were corrected.

(g) The commission clerk shall preserve copies of the recordings of commission hearings and make copies of the recordings as requested by a party or to comply with AS 40.25.100 – 40.25.295. (Eff. 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.009

8 AAC 57.240. Dismissal of appeals. (a) The chair may issue an order dismissing an appeal on a stipulation signed by the parties that states

- (1) whether any fees and costs are owed to the commission;
- (2) their agreement that the appeal be dismissed; and
- (3) the terms for allocating payment of fees and costs between the parties,

including any fees and costs owed to the commission and attorney fees and costs on appeal, as provided in AS 23.30.008(d).

(b) The chair may issue an order dismissing an appeal on motion by any party that states

(1) whether any fees and costs are owed to the commission;

(2) the reasons for dismissal; and

(3) any proposed terms for allocating payment of fees and costs between the parties, including any fees and costs owed to the commission.

(c) No later than 10 days after service of a motion under (b) of this section, any other party may file an opposition to the motion that may include different proposed terms for allocating fees and costs between the parties, including any fees and costs owed to the commission. (Eff. 12/5/2005, Register 176; am 4/21/2006, Register 178; am 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.009

8 AAC 57.250. Dismissal of appeals for failure to prosecute or on settlement.

(a) If an appellant fails to comply with AS 23.30.125 - 23.30.128, fails to comply with this chapter, fails to pay the cost of preparing the transcript, as provided in 8 AAC 57.120(j), or fails to comply with an order of the chair or commission, the chair will issue written notice to the appellant that specifies the nature of the failure and states that the appeal may be dismissed for failure to prosecute if the appellant fails to take appropriate corrective action no later than 20 days after receipt of the notice.

(b) If, under (a) of this section, the appellant fails to take appropriate corrective action, the chair may issue an order to the appellant to show good cause, in writing, why the appeal should not be dismissed.

(c) The commission may dismiss an appeal, with or without a hearing, on the failure of the appellant to show good cause under (b) of this section.

(d) An appellee may request that an appeal be dismissed for failure to prosecute by filing a motion that states the grounds for requesting dismissal.

(e) No later than 10 days after service of a motion for dismissal for failure to prosecute under (d) of this section, the appellant may file an opposition to the motion.

(f) Following the filing of a motion under (d) of this section and any opposition under (e) of this section, the commission may issue an order dismissing an appeal for failure to prosecute, with or without a hearing.

(g) On the filing of an unopposed or joint motion, or on a stipulation signed by the parties, the commission may issue an order dismissing an appeal on settlement, with or without a hearing, on condition that any fees or costs owed to the commission are paid.

(Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.009 AS 23.30.128

8 AAC 57.260. Motions for attorney fees and costs. (a) A party may request an award of attorney fees and costs on appeal by filing a motion no later than 10 days after the date shown in the commission's notice of distribution of the final decision.

(b) A request under (a) of this section for an award of attorney fees must include an affidavit of the party's attorney itemizing the services performed, the amount of time devoted to those services, and the amount sought.

(c) A request under (a) of this section for an award of costs must include an itemization of costs.

(d) No later than 10 days after service of a motion for attorney fees and costs under (a) of this section, any other party may file an opposition to the motion.

(e) The commission may award attorney fees and costs to a successful party on appeal, with or without a hearing, as provided in AS 23.30.008(d). (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.127 AS 23.30.128

8 AAC 57.270. Relaxation of rules. (a) In an appeal, the chair or commission may order time periods or procedures that differ from time periods or procedures specified in this chapter, if

(1) strict adherence to time periods or procedures specified in this chapter would work injustice; and

(2) the change would assist in facilitating the business of the commission or advance the prompt, fair, and just disposition of appeals.

(b) The chair will issue written notice of any change ordered by the chair or commission under (a) of this section to the parties to any appeal affected by the change. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197)

Authority: AS 23.30.008 AS 23.30.127 AS 23.30.128
AS 23.30.009

8 AAC 57.990. Definitions. In this chapter, unless the context otherwise requires,

(1) “board” means the Alaska Workers’ Compensation Board;

(2) “chair” means the executive officer of the commission, as provided in AS 23.30.007 and 23.30.009;

(3) “commission” means the Workers’ Compensation Appeals Commission;

(4) “director” has the meaning given in AS 23.30.395;

(5) repealed 3/27/2011;

(6) repealed 3/27/2011;

(7) “legal holiday” has the meaning given in AS 44.12.010;

(8) “motion” means a formal request or application by a party for specific action by the chair or commission relating to an appeal

(A) orally, in the presence of all other parties; or

(B) in writing, served on all other parties;

(9) “panel” means the three-member panel of the commission as provided in AS 23.30.128.

(10) repealed 3/27/2011;

(11) repealed 3/27/2011. (Eff. 12/5/2005, Register 176; am 4/21/2006, Register 178; am 3/27/2011, Register197)

Authority: AS 23.30.007 AS 23.30.125 AS 23.30.128

AS 23.30.008 AS 23.30.127 AS 23.30.395

AS 23.30.009