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**Chapter 57. Appeals.**

8 AAC 57.010 is amended to read:

**8 AAC 57.010. Appeals and petitions for review 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 **and petitions for review of interlocutory and other non-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; am \_\_\_/\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

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

The section heading of 8 AAC 57.020 is changed to read:

**8 AAC 57.020. Parties to an appeal of a final board decision or order.**

8 AAC 57.020(f) is amended to read:

(f) An appellee may choose at any time **to not** [NOT TO] participate in an appeal by filing a notice of nonparticipation. **An appellee may choose to not participate in a motion for stay filed in an appeal, but still choose to participate in the remainder of the appeal, by filing a notice of nonparticipation that specifically states that the appellee chooses to not participate in the motion for stay, but chooses to participate in the remainder of the appeal.**

A [ANY] decision or order issued in an appeal may apply to a nonparticipating appellee,

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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.

(Eff. 12/5/2005, Register 176; am 4/21/2006, Register 178; am 3/27/2011, Register 197; am \_\_\_\_/\_\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.008 AS 23.30.127

8 AAC 57.030 is amended to read:

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

(1) intervene in an appeal **or petition for review**; or

(2) file an appeal **or petition for review to request** [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 **or petition for review** [,] as provided in (a) of this section, **any** [THE] other **party** [PARTIES] to that appeal **or petition for review** shall serve all documents filed with the commission on the director, as provided in **8 AAC 57.040 or 8 AAC 57.050** [8 AAC 57.040(b) OR 8 AAC 57.050(c)]. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197; am \_\_\_\_/\_\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.008 AS 23.30.127

8 AAC 57.040 is repealed and readopted to read:

**8 AAC 57.040. Filing and service of documents.** (a) Filing is the procedure whereby a party submits a document to the commission for the commission's consideration in an appeal or petition for review. Each document a party files with the commission must be

(1) signed and dated by the party or the party's attorney filing the document; and

(2) hand-delivered or sent by first-class United States mail, facsimile

transmission, or electronic mail as provided in 8 AAC 57.050 or this section.

(b) Service is the procedure whereby a party provides a copy of a document filed with the commission to another party to an appeal or petition for review. A copy of every document the party files with the commission must be

(1) served on every other party, except an appellee or respondent that has filed a

notice of nonparticipation as provided in 8 AAC 57.020(f); and

(2) hand-delivered or sent by first-class United States mail, facsimile

transmission, or electronic mail as provided in 8 AAC 57.050 or this section.

(c) A document is considered filed or served upon receipt unless the document is received on a Saturday, on a Sunday, on a 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. A document filed with the commission by United States mail is considered filed on the date the document is received at the commission's office, unless received on a Saturday, on a Sunday, on a legal holiday, or after 5:00 p.m. Alaska time, in which event the document is considered filed on the next day that is not a Saturday, Sunday, or legal holiday. A document filed by United States mail is not considered filed on the date it is postmarked.

(d) An 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 made 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 a party's attorney; or

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

(g) Service by United States mail under (b)(2) of this section is complete when deposited in the United States mail with sufficient postage and properly addressed to a party at the party's last known address of record.

(h) Proof of service is the procedure whereby a party serving a copy of a document on another party confirms that the document was 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, simultaneously filed document;

(2) state the date of service;

(3) identify each document being served;

(4) state the name and method of service of each party being served; in this paragraph, "method of service" means the party's mailing address, electronic mail address, or facsimile number; and

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

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(i) While an appeal or petition for review is pending before the commission, an attorney representing a party or any self-represented party shall immediately inform the clerk and any other party to the appeal or petition for review, in writing, of a change in the party's mailing address, electronic mail address, telephone number, or facsimile number. (Eff. 12/5/2005, Register 176; am 4/21/2006, Register 178; am 3/27/2011, Register 197; am \_\_\_\_/\_\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.008 AS 23.30.128

8 AAC 57.050 is repealed and readopted to read:

**8 AAC 57.050. Filing and service by electronic mail and facsimile transmission.** (a) A party may file a document with the commission by electronic mail or facsimile transmission.

(b) A document filed by electronic mail must be attached in portable document format (.pdf) to the electronic mail message. A party filing a document by electronic mail shall include in the subject line of the electronic mail

- (1) the commission's case number;
- (2) the case name; and
- (3) a brief description of the document to be filed.

(c) A document filed by facsimile transmission must include a cover sheet that includes

- (1) the commission's case number;
- (2) the case name;
- (3) a list of each document to be filed; and
- (4) the total number of pages being transmitted.

(d) A document that is filed by

(1) electronic mail is considered complete upon receipt of the entire document at the commission's electronic mail address, unless the document is received on a Saturday, on a Sunday, on a 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; or

(2) facsimile transmission is considered complete upon receipt of the entire document by the commission's facsimile machine, unless the document is received on a Saturday, on a Sunday, on a 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.

(e) It is the filing party's responsibility to verify that a document that is filed with the commission by either electronic mail or facsimile transmission is complete and legible. The commission is not responsible for verifying that a document that is filed electronically was received correctly, is legible, or includes all the transmitted pages. The commission is not responsible for any technical problem that may occur as a party files a document electronically.

(f) A party who files a document by electronic mail or facsimile transmission shall keep the original of the document so that the original is available to resolve any question of completeness or authenticity.

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

(1) electronic mail, including the recipient's electronic mail address; or

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(2) facsimile transmission, including the recipient's facsimile number.

(h) An attorney filing a consent to service by electronic mail may designate an electronic mail address for the attorney and one more either for a legal assistant, for a paralegal, or as a general service electronic mail address.

(i) A document that is served by

(1) electronic mail is considered complete upon receipt of the entire document at the recipient's electronic mail address, unless the document is received on a Saturday, on a Sunday, on a 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; or

(2) facsimile transmission is considered complete upon receipt of the entire document by the recipient's facsimile machine, unless the document is received on a Saturday, on a Sunday, on a 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. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197; am \_\_\_\_/\_\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.008 AS 23.30.128

**Editor's note:** The commission's office is located at **3301 Eagle Street, Suite 305** [1016 W. 6TH AVE., SUITE 405], Anchorage, Alaska **99503** [99501]. The commission's telephone number is (907) 269-6738; facsimile number is (907) 269-6737; electronic mail address is [awcac.clerk@alaska.gov](mailto:awcac.clerk@alaska.gov); and website is **www.labor.alaska.gov/WCcomm** [WWW.LABOR.ALASKA.GOV/WCCOMM/HOME/HTM].

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8 AAC 57 is amended by adding new sections to read:

**8 AAC 57.055. Service by United States mail.** When a document is served by a party on another party by United States mail, three calendar days will be added to the prescribed number of days to respond or act, unless a commission order specifies a particular calendar date by which an act must occur. (Eff. \_\_\_\_/\_\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.008 AS 23.30.127

**8 AAC 57.057. Distribution of notices, orders, and decisions by the commission.** (a)  
The commission will use electronic mail to distribute notices, orders, and decisions issued by the commission to the parties. If a self-represented party does not have an electronic mail address, the commission will send notices, orders, and decisions issued by the commission to the self-represented party by means of United States certified mail, return receipt requested, to the party's last known address of record. If a notice, order, or decision is sent to a self-represented party by means of United States mail, three calendar days will be added to the prescribed number of days to respond or act, unless a commission order specifies a particular calendar date by which an act must occur.

(b) If the clerk is notified that an electronic mail sent to an attorney or a self-represented party was undeliverable, the clerk shall print the rejection page and place it in the case file. The clerk shall also distribute a printed rejection page to the attorney or self-represented party by United States mail. The attorney or self-represented party is responsible for updating the party's electronic mail address of record. (Eff. \_\_\_\_/\_\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.008 AS 23.30.127



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8 AAC 57.060(a) is amended to read:

(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; **and**

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

**Authority:** AS 23.30.008 AS 23.30.009 AS 23.30.127

8 AAC 57.065 is repealed and readopted to read:

**8 AAC 57.065. Representation of parties to an appeal or petition for review.** (a) In an appeal or petition for review,

(1) a corporation or limited liability 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, a non-profit corporation, an unincorporated association, a guardian, or a personal representative of an estate must be represented as provided by law; and

(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) An attorney for a party filing an appeal or petition for review shall file an entry of appearance simultaneously with the notice of appeal or petition for review.

(c) An attorney for any other party to an appeal or petition for review shall file and serve an entry of appearance not later than 10 days after the date shown in the certificate of distribution, unless distributed by mail, of the clerk's docket notice regarding the filing of the appeal or petition for review.

(d) Whenever a provision in this chapter refers to a party, appellant, appellee, petitioner, or respondent and an attorney represents that party, appellant, appellee, petitioner, or respondent, the provision applies to the attorney.

(e) If a party that is required to be represented by an attorney under (a) of this section does not have attorney representation, the chair shall issue a written notice to that party that the party is required to be represented by an attorney. In the notice the chair shall inform the party that the appeal or petition for review may be dismissed or the party may be prohibited from participating in the appeal or petition for review if the party fails to obtain attorney representation within 20 days after the date shown in the certificate of distribution, unless distributed by mail, of the written notice.

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(f) If a party's attorney wishes to withdraw representation of that party, the attorney shall file a written notice of withdrawal with the commission and serve the notice on all parties. The notice of withdrawal must include the current mailing address, telephone number, facsimile number, and electronic mail address of that party. The withdrawal becomes effective upon receipt by the commission.

(g) If a party has another attorney ready to substitute for an attorney who wishes to withdraw, the attorneys shall file a stipulation for substitution of the attorney with the commission and serve notice on all parties. The stipulation must be signed by the withdrawing attorney and the substituting attorney.

(h) When an attorney in the same law firm or agency as the attorney of record assumes responsibility for the case, the new attorney must file a replacement entry of appearance with the commission and serve notice on all parties.

(i) A party who is represented by an attorney in an appeal or petition for review may not appear or act on the party's own behalf in that appeal or petition for review unless the attorney has withdrawn representation of that party. (Eff. 3/27/2011, Register 197; am  
\_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.008 AS 23.30.127

8 AAC 57 is amended by adding a new section to read:

**8 AAC 57.067. Self-represented parties.** (a) If a party is self-represented in an appeal or petition for review, all references in this chapter to a party's attorney are construed as referring to the self-represented party personally. Any document filed by a self-represented party must

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include a mailing address, electronic mail address, or facsimile number at which that party can be served, and a telephone number for contact.

(b) A self-represented party may not have a non-attorney representative but may have a non-attorney assistant. A non-attorney assistant may assist a self-represented party by

(1) assembling records, making copies, and typing documents;

(2) informing the self-represented party of the procedures, regulations, statutes, and decisions that may be applicable;

(3) completing forms and preparing correspondence and documents; however, all documents filed with the commission must be signed and dated by the self-represented party, whose signature on those documents constitutes certification that the self-represented party has read the documents; and

(4) preparing for and attending hearings or oral arguments and providing needed support; however, the non-attorney assistant may not address the commission, unless permitted by the commission or chair. (Eff. \_\_\_\_/\_\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.008 AS 23.30.127

8 AAC 57.070(a) is amended to read:

(a) To begin an appeal, an appellant shall file a notice of appeal **not later than 30 days after the date the board's decision and order is filed or, if a timely petition for reconsideration was filed with the board, not later than 30 days after the date the board's decision and order on reconsideration is filed. If the board does not act on the petition for reconsideration, the petition is considered denied. A notice of appeal must be filed not later**

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**than 30 days after the date the petition for reconsideration is considered denied**, as provided in AS 23.30.127(a) and (b).

8 AAC 57.070(b) is amended to read:

(b) The notice of appeal must

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

(2) state the grounds for the appeal **upon which the appellant intends to rely and wishes the commission to consider**; [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; **and**

**(4) be served on the attorney general's office in Juneau, Alaska, and the office of the assistant attorney general who appeared in the board proceeding, if the state or a political subdivision of the state is an appellee.**

8 AAC 57.070(c) is amended to read:

(c) **The following documents must be filed with a** [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 **number**, and facsimile **number or electronic mail address** [NUMBERS] of each party to the appeal, **if known**; [AND]

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(2) [A LIST OF] the name, [AND IF KNOWN,] current mailing address, [AND] telephone **number**, and facsimile **number or electronic mail address** [NUMBERS] of each attorney known to be representing a party to the appeal; **and**

**(3) an entry of appearance by the attorney representing the appellant, if applicable.**

8 AAC 57.070(f) is amended to read:

(f) **Not** [NO] later than 10 days after **the date shown in the certificate of service, unless served by mail,** of the notice of appeal and the documents specified under (a) - (c) of this section, the **appellee** [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(g)** [8 AAC 57.050(c)]. (Eff. 12/5/2005, Register 176;

am 4/21/2006, Register 178; am 3/27/2011, Register 197; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

**Authority:** AS 23.30.007 AS 23.30.008 AS 23.30.127

8 AAC 57.073 is repealed and readopted to read:

**8 AAC 57.073. Petitions for review 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) All individuals or entities that were parties in proceedings that resulted in issuance of the interlocutory or other non-final board decision or order are parties to a petition for review of that decision or order to the commission.

(c) The party filing a petition for review is the petitioner.

(d) All other parties to a petition for review are respondents, regardless of their status in proceedings before the board.

(e) If an individual who is a party to a petition for review 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 a petition for review by filing a notice of substitution and copies of documents demonstrating appointment as representative.

(f) A respondent may choose at any time not to participate in a petition for review by filing a notice of nonparticipation. A respondent may choose not to participate in a motion for stay filed in a petition for review, but still choose to participate in the remainder of the petition for review, by filing a notice of nonparticipation that specifically states that the respondent chooses not to participate in the motion for stay but wishes to participate in the remainder of the petition for review. A decision or order issued in a petition for review may apply to a nonparticipating respondent, 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) Review will be granted only if the sound policy that an appeal be taken only from a final decision and order of the board 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

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delay, expense, hardship, or other related factors;

(2) the interlocutory or other non-final board 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; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.008 AS 23.30.127 AS 23.30.128  
AS 23.30.125

8 AAC 57.075 is repealed and readopted to read:

**8 AAC 57.075. Procedure for petitions for review or cross-petitions for review of interlocutory or other non-final board decisions and orders.** (a) Unless a petition for reconsideration of an interlocutory or other non-final 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 not later than 15 days after the date that the board filed the decision or order for which commission review is sought.

(b) If a petition for reconsideration of an interlocutory or other non-final board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed



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with the commission not later than 15 days after the date that the board filed 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 not later than 15 days after the date shown in the certificate of service, unless served by mail, of the petition for review.

(d) The party filing a petition for review is the petitioner. All other parties to the interlocutory or non-final board decision or order are respondents, regardless of their status in proceedings before the board. A party filing a cross-petition for review is a cross-petitioner.

(e) Upon the filing of a petition for review, the 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 for review 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, telephone number, and facsimile number or electronic mail address of the party filing the petition for review or cross-petition for review, or the party's attorney if the party is represented by an attorney;

(2) an entry of appearance by the attorney representing the petitioner, if applicable;

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(3) the names, current mailing addresses, telephone numbers, and facsimile numbers or electronic mail addresses of the other parties to the decision or order for which review is sought, or the parties' attorneys if the parties are represented by attorneys;

(4) a copy of the interlocutory or other non-final board decision or order for which review is sought, or a statement of the substance of the decision or order if it was rendered orally;

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

(6) a statement of the issues sought to be reviewed;

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

(8) a statement of the reasons why the board's decision or order is alleged to be erroneous;

(9) a statement of the precise relief sought;

(10) an index of attachments; and

(11) proof of service on the office of the board panel involved and all parties to the board proceeding giving rise to the decision or order for which review is sought.

(g) Not later than 15 days after the date shown in the certificate of service, unless served by mail, of a petition for review 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

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(1) objections to the commission's consideration of the petition for review 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 giving rise to the decision or order for which review is sought.

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

**Authority:** AS 23.30.008 AS 23.30.127 AS 23.30.128  
AS 23.30.125

8 AAC 57.077 is repealed and readopted to read:

**8 AAC 57.077. Commission consideration of petitions for review or cross-petitions for review.** (a) The commission will consider and decide whether to grant or deny a petition for review or cross-petition for review under this section not later than 30 days after the response to the petition for review or cross-petition for review is filed or the due date to file the response has passed. Oral argument will not be held on the question of whether the petition for review or cross-petition for review should be granted.

(b) A motion for reconsideration of the denial of a petition for review or cross-petition for review may not be filed.

(c) If a petition for review or cross-petition for review is granted, the commission will specify in the order granting the petition for review or cross-petition for review whether

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additional briefing is required of the parties, and whether the commission wishes to hear oral argument on the petition for review or cross-petition for review.

(d) If the commission orders additional briefing or holds oral argument on the petition for review or cross-petition for review, the commission will issue its decision on the granted petition for review or cross-petition for review not later than 60 days from the date the last brief is filed or oral argument is held, whichever is later. (Eff. 12/23/2011, Register 200; am \_\_\_\_/\_\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.008 AS 23.30.127 AS 23.30.128  
AS 23.30.125

8 AAC 57 is amended by adding a new section to read:

**8 AAC 57.079. Decisions on petitions for review or cross-petitions for review.** In a decision on a granted petition for review or cross-petition for review, the commission will include a statement that if a party seeks review by the supreme court, a petition for review to the supreme court must be filed not later than 10 days after the date shown in the commission's notice of distribution of the decision on the granted petition for review or cross-petition for review. (Eff. \_\_\_\_/\_\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.008 AS 23.30.125

8 AAC 57.080 is amended to read:

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**8 AAC 57.080. Panel to hear an appeal or petition for review.** (a) On the filing of a notice of appeal or petition for review, the chair will issue a written notice to the parties identifying the members of the panel assigned to hear **the** [AN] appeal or petition for review.

(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 or petition for review if a member is unable to serve on the panel [,] because of **conflict of interest**, absence, [OR] illness, **death**, or **the expiration of a member's term with the commission** [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) **Not** [NO] later than 10 days after **the date shown in the certificate of distribution, unless distributed by** mail [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(I). Members of the panel assigned to that appeal or petition for review 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; am \_\_\_\_/\_\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.007            AS 23.30.009            AS 23.30.128  
AS 23.30.008

8 AAC 57.090(a) is amended to read:

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**8 AAC 57.090. Requests for exemption from payment of filing fee and 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 May 2023 [NOVEMBER 2010] and adopted by reference.

8 AAC 57.090(b) is amended to read:

(b) **Not** [NO] later than 10 days after the date shown in the certificate of service, unless served by mail, of a motion for an exemption, any other party may file an opposition to the motion.

8 AAC 57.090(c) is amended to read:

(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] transcripts [TRANSCRIPT] of board hearing recordings [HEARINGS] not previously [THAT THE BOARD HAS NOT ALREADY HAD] transcribed, as provided in 8 AAC 57.120.

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

**Authority:** AS 23.30.008 AS 23.30.127 AS 23.30.128

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The editor's note that follows 8 AAC 57.090 is changed to read:

**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 **3301 Eagle Street, Suite 305** [1016 W. 6TH AVE., SUITE 405], Anchorage, Alaska **99503** [99501] or through the commission's website at **www.labor.alaska.gov/WCcomm** [WWW.LABOR.ALASKA.GOV/WCCOMM/HOME/HTM].

8 AAC 57.100 is repealed and readopted to read:

**8 AAC 57.100. Motions for stays of board orders.** (a) In connection with the filing of an appeal or petition for review, an appellant or petitioner may file and serve a motion for a stay of a board order. 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 the new or additional documentary evidence.

(b) A motion for a stay 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 (g) or (h) of this section.

(c) Any other party may file and serve an opposition to a motion for a stay not later than 10 days after the date shown in the certificate of service, unless served by mail, of 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 new or additional documentary evidence.

(d) As soon as practicable following the filing of a motion for a stay and any opposition to the motion, 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' notice.

(e) An appellee or respondent may choose not to participate in a motion for stay filed in an appeal or petition for review, but still choose to participate in the remainder of the appeal or petition for review, by filing a notice of nonparticipation that specifically states that the appellee or respondent chooses not to participate in the motion for stay but wishes to participate in the remainder of the appeal or petition for review.

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

(g) To stay continuing future periodic compensation payments, an appellant or petitioner must demonstrate by affidavit or other evidence

(1) that the appellant or petitioner would suffer irreparable damage;

(2) that there is a serious and substantial question on the merits; and

(3) the existence of the probability that the merits of the appeal or the petition for review will be decided adversely to the compensation recipient.

(h) To stay lump-sum compensation payments, an appellant or petitioner must demonstrate by affidavit or other evidence that the appellant or petitioner would suffer irreparable damage, and that there is a serious and substantial question on the merits.



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(i) As soon as practicable following the hearing, the commission will enter an order on the motion for a stay. The commission's action under this subsection may include entry of an order *nunc pro tunc* that stays compensation payments retroactively.

(j) If a stay of a board compensation order is granted, the commission may require a supersedeas bond in an amount up to 125 percent of the compensation amount stayed. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197; am 3/24/2012, Register 201; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

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

8 AAC 57.110(a) is amended to read:

(a) The record on appeal consists of

(1) [THE RECORDINGS OF] board **hearing recordings** [HEARINGS] not previously transcribed [BY THE BOARD]; and

(2) the entire board file, including all [ORIGINAL] papers, exhibits, depositions, **electronic records, electronic mail messages, records of walk-in and telephonic communications with claimants relied upon by the board,** and transcripts of board **hearing recordings** [HEARINGS] previously transcribed [BY THE BOARD].

8 AAC 57.110(b) is amended to read:

(b) **Not** [NO] later than 15 days after **the date shown in the certificate of distribution of the commission clerk's docket notice regarding the filing of the appeal** [RECEIPT OF

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NOTICE OF AN APPEAL FROM THE COMMISSION CLERK], the board's appeals clerk shall transfer to the commission clerk

(1) the [RECORDINGS OF] board **hearing recordings not previously transcribed** [HEARINGS UNDER (a)(1) OF THIS SECTION]; and

(2) a list of board **hearing recordings** [HEARINGS] previously transcribed [BY THE BOARD].

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

**Authority:** AS 23.30.008 AS 23.30.127

8 AAC 57.120 is repealed and readopted to read:

**8 AAC 57.120. Transcripts.** (a) Not later than 10 days after receipt of the board hearing recordings and the list of board hearing recordings previously transcribed, as provided in 8 AAC 57.110(b), the clerk shall issue a written notice to the parties that identifies which board hearing recordings have been previously transcribed and which board hearing recordings have not been previously transcribed.

(b) Not later than 10 days after the date shown in the certificate of distribution, unless distributed by mail, of the notice under (a) of this section, the appellant shall file a designation for transcription of board hearing recordings not previously transcribed that are essential to consideration of the issues on appeal.

(c) Not later than 10 days after the date shown in the certificate of service, unless served by mail, of the appellant's designation under (b) of this section, any other party may file a

designation for transcription of board hearing recordings not previously transcribed and not designated by the appellant that are essential to consideration of the issues on appeal.

(d) Not later than 10 days after the date shown in the certificate of service, unless served by mail, of the appellee's designation under (c) of this section or after the due date has passed, the appellant shall coordinate with the clerk the selection of a transcriptionist and the preparation of transcripts of all board hearing recordings not previously transcribed that are designated by the parties for transcription.

(e) The clerk shall provide to the transcriptionist

- (1) copies of the designated board hearing recordings not previously transcribed;
- (2) copies of the parties' designations for transcription; and
- (3) copies of the relevant board decisions to assist with transcription.

(f) The clerk shall issue a written notice to the parties of the date the transcripts are due to be filed with the commission.

(g) The transcriptionist shall complete the transcripts of the designated board hearing recordings not later than 20 days after the date of the letter requesting transcript preparation. If the transcriptionist is unable to complete the transcripts during the 20-day period, the transcriptionist shall notify the clerk, who may grant an extension of time to complete the transcripts.

(h) On completion of the transcripts, the transcriptionist shall file with the commission one electronic copy of each full-size transcript. No other copies are required.

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(i) Unless otherwise ordered by the commission, the appellant shall pay the costs of preparing the electronic copies of the transcripts to be filed with the commission, and the appellant's copies. The other parties shall pay the costs of their copies of the transcripts.

(j) If a party designates board hearing recordings 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 recordings.

(k) The transcriptionist shall prepare the transcripts in the form and format prescribed in the Alaska Court System's *Manual of Transcript Procedures*, revised as of February 2023 and adopted by reference. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197; am \_\_\_/\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.008 AS 23.30.127

**Editor's note:** The Alaska Court System's *Manual of Transcript Procedures*, revised as of February 2023, adopted by reference in 8 AAC 57.120, is available from the Alaska Court System website, at <https://public.courts.alaska.gov/web/forms/docs/tf-410.pdf>, or from the Alaska Court System, Customer Service, located at 825 West 4th Avenue, Anchorage, Alaska 99501-2004, telephone number: (907) 264-0450.

8 AAC 57.130 is repealed and readopted to read:

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

(b) An appellant's brief must be filed not later than 30 days after the date shown on the certificate of distribution, unless distributed by mail, of the notice of the briefing schedule issued under (a) of this section.

(c) An appellee's brief must be filed not later than 30 days after the date shown in the certificate of service, unless served by mail, of the appellant's brief. If there is more than one appellant, an appellee's brief must be filed not later than 30 days after the date shown in the certificate of service, unless served by mail, of the last appellant's brief that is filed.

(d) An appellant may file a reply brief, or a notice that no reply brief will be filed, not later than 20 days after the date shown in the certificate of service, unless served by mail, of the appellee's brief. If there is more than one appellee, the reply brief or notice that no reply brief will be filed may be filed not later than 20 days after the date shown in the certificate of service, unless served by mail, of the last appellee's brief that is filed.

(e) In 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) not later than 30 days after the date shown in the certificate of service, unless served by mail, of the appellant's brief.

(f) In 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) not later than 30 days after the date shown in the certificate of service, unless served by mail, 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) its original brief and three copies;

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(2) its original excerpt of record or supplemental excerpt of record and three double-sided copies; and

(3) proof of service on each of the other parties, as provided in 8 AAC 57.040 or 8 AAC 57.050, of one copy of the brief and one copy of the excerpt of record or supplemental excerpt of record.

(h) If a party files a brief and excerpt of record by electronic mail or facsimile transmission, that party must either

(1) hand-deliver the three copies of the brief and three double-sided copies of the excerpt of record to the commission; or

(2) mail the three copies of the brief and three double-sided copies of the excerpt of record to the commission.

(i) If there is only one appellee and that appellee has elected not to participate in the appeal, the appellant shall file only one brief and one excerpt of record. The appellant may request permission to file an overlength brief of up to 70 pages, which is the combined maximum lengths of an appellant's opening brief and reply brief. After the appellant's brief and excerpt of record are filed, the commission will issue a notice requesting the appellant to file a written request for oral argument if the appellant wishes to have oral argument heard on the appeal.

(j) If a brief fails to comply with the requirements of this chapter, the commission, on the application of any party or on its own motion, with or without notice as it may determine appropriate, may

(1) order the brief to be returned to the party for correction and refile with the clerk within a time specified in the order;

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

(3) disregard defects and consider the brief as if it were properly prepared.

(k) If an appellant fails to file an opening brief as required, the appeal may be dismissed for failure to prosecute under 8 AAC 57.250. If an appellee's brief is not filed as required, that appellee will not be heard at oral argument except on consent of the appellant, or by request of the commission. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197; am \_\_\_ / \_\_\_ / \_\_\_, Register \_\_\_)

**Authority:** AS 23.30.008 AS 23.30.127

8 AAC 57.140(a) is amended to read:

(a) When, in this chapter, an action is **required or allowed** to be done within a specified time period, each party may request one routine extension of time **in an** [PER] appeal **or petition for review** by filing a motion before the expiration of that time period.

8 AAC 57.140(c) is amended to read:

(c) Except as provided under (h) of this section, the **clerk** [CHAIR] may order a routine extension of time not to exceed **30** [10] days.

8 AAC 57.140(g) is amended to read:

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(g) **Not** [NO] later than 10 days after **the date shown in the certificate of** service, **unless served by mail**, of a motion for an extension of time under (d) of this section, any other party may file an opposition to the motion.

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

**Authority:** AS 23.30.008 AS 23.30.127 AS 23.30.128  
AS 23.30.009

8 AAC 57 is amended by adding a new section to read:

**8 AAC 57.145. Stay of commission proceedings.** The parties may request that appeal or petition for review proceedings be stayed pending mediation, settlement negotiations, or board approval of a settlement between the parties by filing a stipulation signed by the parties that states the reasons the proceedings should be stayed and the requested length of the stay. If a stay of proceedings is granted, the commission may order the parties to file status reports to advise the commission on the progress of mediation, settlement negotiations, or board approval of a settlement. (Eff. \_\_\_\_/\_\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.008 AS 23.30.125

8 AAC 57.150 is repealed and readopted to read:

**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) be on white paper eight and one-half inches wide and 11 inches long;
  - (5) have one-inch margins all around;
  - (6) footers and footnotes are single-spaced; the footers and footnotes may be typed in a smaller font, but not smaller than 10 point;
  - (7) if longer than one page, have pages numbered consecutively; and
  - (8) include proof of service on the other parties.
- (b) The first page of briefs and memoranda must contain
- (1) the name, current mailing address, telephone number, and electronic mail address or facsimile number of the party filing the document;
  - (2) the commission case number, board decision 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 by the moving party are not permitted unless ordered by the chair.
- (d) An 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) An 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) An 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 a cross-appeal, a brief from an appellee who is cross-appealing is limited to 60 pages and must include, in addition to the items required for an appellee's brief as provided under (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 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 under (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

(1) specifies the nature of the failure; and

(2) states that if the party fails to take appropriate corrective action not later than 20 days after the date shown in the certificate of distribution, unless distributed by mail, of the written notice,

(A) the appeal may be dismissed; or

(B) the party may be prohibited from further participation in the appeal.

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

**Authority:** AS 23.30.008 AS 23.30.127 AS 23.30.128  
AS 23.30.009

8 AAC 57.160(c) is amended to read:

(c) **Not** [NO] later than 10 days after **the date shown in the certificate of** service, **unless served by mail,** of a motion under (a) of this section, any party may file an opposition to the motion.

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

**Authority:** AS 23.30.008 AS 23.30.127 AS 23.30.128  
AS 23.30.009

8 AAC 57.170 is amended to read:

**8 AAC 57.170. Preparation of excerpts of record.** **Each party** [PARTIES] shall prepare **an excerpt** [EXCERPTS] of record or supplemental **excerpt** [EXCERPTS] of record, as provided in 8 AAC 57.180, for **simultaneous** [SIMULTANEOUSLY] filing with **the party's brief** [THEIR BRIEFS], as provided in 8 AAC 57.130(g)(2). (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197; am \_\_\_\_ / \_\_\_\_ / \_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.008 AS 23.30.127

8 AAC 57.180 is repealed and readopted to read:

**8 AAC 57.180. Contents of excerpts of record.** (a) The excerpt of record from an appellant or 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) other decisions or orders of the board for which review is sought;
- (3) 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
- (4) true and correct copies of documents in the record that are referenced in the appellant's brief that support each factual assertion of the appellant.

(b) An excerpt of record from an appellee or an appellee who is also a cross-appellant must include true and correct copies of documents in the record that

- (1) are referenced in the appellee's brief
- (2) support each factual assertion of the appellee; and
- (3) are not included in the appellant's excerpt of record under (a) of this section.

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

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

- (1) be true and correct copies of documents in the record;
- (2) be arranged in chronological order by document date with the earliest date on top and numbered consecutively at the bottom of the page, with the appellant's numbering

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beginning with 1, and appellee's numbering beginning with the number immediately following the number of the last page of the appellant's excerpt;

(3) in the case of a supplemental excerpt, be numbered beginning with the number immediately following the number of the last page of the appellee's excerpt;

(4) 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 (2) or (3) of this subsection, as appropriate; and

(5) be filed separately from, but simultaneously with, the party's brief.

(e) Materials never presented to the board and not part of the board's record on appeal may not be added to a party's excerpt of record. (Eff. 12/5/2005, Register 176; am 4/21/2006, Register 178; am 3/27/2011, Register 197; am \_\_\_\_/\_\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.008 AS 23.30.127

8 AAC 57.200 is repealed and readopted read:

**8 AAC 57.200. Oral argument.** (a) Unless otherwise ordered by the commission, oral argument will be held only as provided in this subsection.

(b) Not later than 10 days after the date on which the reply brief is filed or due to be filed, or not later than 10 days after notice that a reply brief will not be filed, a party may request oral argument by filing a written request for oral argument.

(c) Oppositions to requests for oral argument are not permitted.

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(d) If oral argument is requested, the chair will issue a written notice to the parties of the date and time for oral argument, and whether oral argument will be held in person, by means of telephone conference, by means of video conference, or in any combination of the three.

(e) If the parties do not request oral argument, but the commission panel members have questions they would like addressed by the parties, the commission may schedule oral argument.

(f) Unless otherwise ordered by the chair, the time permitted for oral argument is 30 minutes for each side, excluding the time devoted to responding to questions by the commission panel members. If there is more than one appellant or appellee, the parties must decide among themselves the apportionment of the 30 minutes of argument allotted to their side. (Eff.

12/5/2005, Register 176; am 3/27/2011, Register 197; am \_\_\_\_/\_\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.008 AS 23.30.127 AS 23.30.128  
AS 23.30.009

8 AAC 57.210(a) is amended to read:

(a) One or more parties may request or apply for specific action by the chair or commission relating to an appeal **or petition for review** by filing

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

8 AAC 57.210(b) is amended to read:

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(b) Unless [,] in this chapter [,] a different time period is specified for oppositions or oppositions are not permitted, **not** [NO] later than 10 days after **the date shown in the certificate of service, unless served by mail,** of a motion under (a)(1) of this section, any other party may file an opposition to the motion.

8 AAC 57.210 is amended by adding a new subsection to read:

(e) The moving party may not file a reply to an opposition unless ordered to do so by the commission or chair. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197; am \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.008 AS 23.30.127 AS 23.30.128  
AS 23.30.009

8 AAC 57.230 is repealed and readopted to read:

**8 AAC 57.230. Reconsideration.** (a) A party may request reconsideration of a final commission decision or order 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), not later than 30 days from the commission's distribution of the final decision or order.

(b) A party may request reconsideration of a non-final decision or order of the commission by filing a motion, supported by an affidavit or other evidence of the specific grounds for reconsideration, not later than 10 days after the commission's distribution of the non-final decision or order.



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(c) 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; am \_\_\_/\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.008 AS 23.30.009 AS 23.30.128

8 AAC 235 is repealed and readopted to read:

**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 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 resolve the appeal; or
- (2) other reasons to advance the prompt, fair, and orderly disposition of the

appeal.

(b) Unless otherwise ordered by the chair, the clerk shall return the record on appeal to the board not 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 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 clerk shall request the board’s appeals clerk to timely transfer

- (1) the board hearing recordings not previously transcribed; and

(2) the entire board file, including all papers, exhibits, depositions, electronic records, electronic mail messages, records of walk-in and telephonic communications with claimants relied upon by the board, and transcripts of board hearing recordings previously transcribed.

(d) The 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 clerk shall coordinate with the appellant and the transcriptionist the preparation of transcripts of board hearing recordings not previously transcribed and designated by the parties, as provided in 8 AAC 57.120.

(f) The clerk shall publish all final and memorandum decisions of the commission and all other orders that the chair or commission shall require to be published. The 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 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.

(h) Motions for routine extensions of time may be ruled upon by the clerk without referral to the chair or commission panel. Unopposed non-routine motions for extensions of time may also be ruled upon by the clerk. The clerk may not determine a motion to extend the time for filing a notice of appeal or petition for review, nor determine a motion for extension of time to file a document if the time period for filing the document has already expired when the motion is

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filed. The clerk has the discretion to refer motions that may be determined by the clerk to the chair for decision. (Eff. 3/27/2011, Register 197; am \_\_\_\_/\_\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.008 AS 23.30.009

8 AAC 57.240 is repealed and readopted to read:

**8 AAC 57.240. Dismissal of appeals on settlement or motion of a party.** (a) On the filing of an unopposed or joint motion, or on a stipulation signed by the parties, the chair may issue an order dismissing an appeal upon settlement. The unopposed or joint motion, or stipulation must

(1) state the parties' agreement that the appeal be dismissed;

(2) state the terms for allocating payment of fees and costs between the parties, including attorney fees and costs on appeal, as provided in AS 23.30.008(d); and

(3) have an attached copy of the board-approved compromise and release agreement or settlement agreement if board approval of the settlement is required.

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

(1) states the reasons for dismissal;

(2) states the terms for allocating payment of fees and costs between the parties, including attorney fees and costs on appeal, as provided in AS 23.30.008(d); and

(3) has an attached copy of the board-approved compromise and release agreement or settlement agreement if board approval of the settlement is required. (Eff.

12/5/2005, Register 176; am 4/21/2006, Register 178; am 3/27/2011, Register 197; am \_\_\_\_/\_\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

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**Authority:** AS 23.30.008 AS 23.30.009

8 AAC 57.250(a) is amended to read:

**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 **transcripts** [TRANSCRIPT], as provided in **8 AAC 57.120(i) and (j)** [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 **not** [NO] later than 20 days after **the date shown in the certificate of distribution, unless distributed by mail,** [RECEIPT] of the **written** notice.

8 AAC 57.250(b) is amended to read:

(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, **not later than 20 days after the date shown in the certificate of distribution of the order, unless distributed by mail,** why the appeal should not be dismissed.

8 AAC 57.250(e) is amended to read:

(e) **Not** [NO] later than 10 days after **the date shown in the certificate of** service, **unless served by mail,** of a motion for dismissal for failure to prosecute under (d) of this section, the appellant may file an opposition to the motion.

8 AAC 57.250(g) is repealed:

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

**Authority:** AS 23.30.008 AS 23.30.009 AS 23.30.128

8 AAC 57.260 is amended by adding new subsections to read:

(f) If a party is unsuccessful on appeal to the commission, yet successful on appeal to the supreme court, that party may request an award of attorney fees and costs for work performed before the commission by filing a motion not later than 10 days after the date shown in the supreme court's notice of distribution of its decision.

(g) If an appeal to the supreme court is filed before a successful party files a motion for attorney fees for work performed before the commission, and that party also prevails in the supreme court appeal, that party may request an award of attorney fees and costs for work performed before the commission by filing a motion not later than 10 days after the date shown in the supreme court's notice of distribution of its decision.

(h) If an appeal to the supreme court is filed before the commission rules on a successful party's motion for attorney fees and costs for work performed before the commission already filed with the commission, and if the successful party prevails in the supreme court appeal, the successful party shall refile the prior motion for attorney fees and costs for work performed before the commission not later than 10 days after the date shown in the supreme court's notice

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of distribution of its decision. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197; am  
\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.008 AS 23.30.127 AS 23.30.128

8 AAC 57.270 is amended to read:

**8 AAC 57.270. Relaxation of rules.** (a) In an appeal **or petition for review**, 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 cause injustice; and

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

(b) The chair will issue written notice of **a** [ANY] change ordered by the chair or commission under (a) of this section to the parties to **an** [ANY] appeal **or petition for review** affected by the change. (Eff. 12/5/2005, Register 176; am 3/27/2011, Register 197; am  
\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.008 AS 23.30.127 AS 23.30.128  
AS 23.30.009

8 AAC 57.990(8) is amended to read:

(8) "motion" means a formal request or application by a party for specific action by the chair or commission relating to an appeal **or petition for review**

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

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

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

**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