

ALASKA RULES OF COURT 2017-2018 Edition

DISTRICT COURT RULES OF CIVIL PROCEDURE

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ALASKA COURT RULES

PART I. PROCEEDINGS BEFORE DISTRICT JUDGES AND MAGISTRATE JUDGES.

Rule 1. Scope of Rules—Construction.

(a) Scope of Rules.

(1) [Applicable to cases filed before August 7, 1997.]

The procedure in civil actions and proceedings before district judges and magistrate judges shall be governed by the rules governing the procedure in the superior court to the extent that such rules are applicable.

(1) [Applicable to cases filed on or after August 7, 1997.] The procedure in civil actions and proceedings before district judges and magistrate judges shall be governed by the rules governing the procedure in the superior court to the extent that such rules are applicable. However, in a civil action for personal injury or property damage, unless otherwise agreed by all parties or permitted by order of the court in exceptional cases and for good cause shown, discovery shall be limited to the disclosures required under Civil Rule 26(a) and to the taking by each party of the deposition of one or more opposing parties and of one additional person who is not a party.

(2) If in any action or proceeding a magistrate judge finds it impracticable to proceed or is at a disadvantage because of the application of any of such rules, the magistrate judge may hold the action or proceeding in abeyance, without prejudice to the rights of the parties, for further action by a district judge.

(3) The following rules are inapplicable in their entirety to proceedings before district judges and magistrate judges:

CIVIL RULE TITLE

| | |
|------------|--|
| Rule 18(b) | Joinder of Remedies—Fraudulent Conveyances. |
| Rule 27 | Deposition Before Actions or Pending Appeal. |
| Rule 40(c) | Visiting Judges. |
| Rule 40(d) | Applications for Orders. |
| Rule 48(b) | Instructions; Argument; Retirement of Jury. |
| Rule 57(a) | Declaratory Judgments. |
| Rule 65 | Injunctions. |
| Rule 66 | Receivers. |
| Rule 70 | Judgment for Specific Acts—Vesting Title. |
| Rule 72 | Eminent Domain. |
| Rule 84 | Change of Name. |

(4) To the extent authorized by law, the provisions of Civil Rule 100 apply to any civil matter brought in district court.

(b) **Construction.** Where the words “court” or “judge” are used in these rules, they shall be construed to include a district judge or a magistrate judge, and where functions and duties are prescribed for the clerk, they shall be performed by a magistrate judge or a clerk.

(Amended by SCO 540 effective October 1, 1982; by SCO 1153 effective July 15, 1994; by SCO 1281 effective August 7,

1997; by SCO 1469 effective October 15, 2002; by SCO 1522 effective October 15, 2003; and by SCO 1829 effective October 15, 2014)

Note to SCO 1281: Subparagraph (a)(1) of this rule was amended by ch. 26, sec. 44, SLA 1997. According to sec. 55 of the Act, the amendment to District Court Civil Rule 1 applies “to all causes of action accruing on or after the effective date of this Act.” The amendment to District Court Civil Rule 1 adopted by paragraph 11 of this order applies to all cases filed on or after August 7, 1997. See paragraph 17 of this order. The change is adopted for the sole reason that the legislature has mandated the amendment.

Note: The maximum amount of a district court civil claim under AS 22.15.030 is \$100,000.

Cross References

CROSS REFERENCE: AS 22.15.030

Rule 2. Record of Proceedings—Transcript as Evidence.

There shall be kept an electronic record of the following:

(1) All contested actions and proceedings had in open court unless the parties with the approval of the judge shall specifically agree to the contrary; and

(2) Such other proceedings as the judge may direct or as may be required by order of the court or as may be requested by any party to the action or proceeding.

Rule 3. Notice of Orders or Judgments.

Notice of the entry of an order or judgment shall be given as provided by Civil Rule 73(d). Every order and judgment shall include a clerk’s certificate of distribution as defined in Civil Rule 58.1(d).

(Amended by SCO 554 effective April 4, 1983)

Rule 4. Assignment and Hearing of Cases—Calendars.

(a) The assignment and calendaring of cases in the district court shall be as set forth in Civil Rule 40(a), or by such procedures established by the presiding judge as will cause all cases to be regularly reviewed for placement on the trial calendar for dismissal for want of prosecution, or other appropriate disposition.

(b) [Applicable to cases filed on or after August 7, 1997.] In a civil action for personal injury or property damage, unless otherwise permitted by order of the court in exceptional cases and for good cause shown, all parties shall file a memorandum to set the case for trial, as set out in Civil Rule 40(b), no later than 180 days after service of the complaint on all parties to the case. The memorandum shall contain a certification that each party has exchanged the information described in Civil Rule 26(a) and may state their separate positions if they do not agree concerning information or

estimates to be provided in the memorandum. After the court satisfies itself that the information described in Civil Rule 26(a) has been disclosed, the court shall set the case for trial as soon as practicable, but no sooner than 30 days after the court makes the determination regarding disclosure.

(Amended by SCO 838 effective August 1, 1987; and by SCO 1281 effective August 7, 1997)

Note to SCO 1281: Paragraph (b) of District Court Civil Rule 4 was added by ch. 26, § 45, SLA 1997. According to § 55 of the Act, the amendment to District Court Civil Rule 4 applies ‘to all causes of action accruing on or after the effective date of this Act.’ The amendment to District Court Civil Rule 4 adopted by paragraph 13 of this order applies to all cases filed on or after August 7, 1997. See paragraph 17 of this order. The change is adopted for the sole reason that the legislature has mandated the amendment.

Rule 5. Jurors.

The procedure for the selection, summoning and impaneling of jurors shall be as provided by statute. The procedure for the examination of jurors shall be governed by Civil Rule 47.

Cross References

CROSS REFERENCE: AS 09.20.010— AS 09.20.090

Rule 6. Instructions to the Jury.

If an action is tried by a jury, the district judge is not required to instruct the jury other than to define the nature of the action and the issues of fact to be determined by the jury.

Rule 7. Appointment and Authority of Clerk. (Rescinded)

(Amended by SCO 290 effective January 15, 1978; by SCO 554 effective April 4, 1983; and rescinded by SCO 1700 effective October 15, 2009)

PART II. SMALL CLAIMS RULES*

Rule 8. Scope and Applicability.

(a) Procedure in small claim actions, as defined by AS 22.15.040, is governed by these rules and other rules specifically incorporated herein by reference, when all parties to the action elect to be governed by them. Part I of the District Court Rules of Civil Procedure governs small claim actions when the parties do not elect small claim procedure.

(b) A party having a claim or claims exceeding the maximum amount of a small claim as defined by AS 22.15.040 may waive the right to recover the excess amount and elect to proceed under this Part II, by filing a written waiver of the excess amount.

(c) Actions to foreclose or enforce statutory, common law or possessory liens and actions for recovery of real property may not be brought as small claims actions. The court may, on its own motion, order the rules in Part I to apply in

any other action when important or difficult questions of fact or law are involved.

(SCO 225 effective May 1, 1976*; amended by SCO 854 effective January 15, 1988; and by SCO 1153 effective July 15, 1994)

Note: The maximum amount of a small claim under AS 22.15.040 is \$10,000. (Amended by SCO 1556, effective September 14, 2004)

***Editor’s Note:** The effective date of Supreme Court Order 225, amending all of the small claims rules, was postponed by Supreme Court Orders 235, 237 and 242. The small claims rules were finally effective on May 1, 1976.

Cross References

CROSS REFERENCE: AS 22.15.040

Rule 9. Informality.

Formality in pleadings, motions, and the introduction of evidence is not required. A writing filed as a complaint, answer, or application shall be legible and brief.

(SCO 225 effective May 1, 1976)

Rule 10. Pleadings.

(a) A small claim action is commenced by filing a complaint on the form provided by the Alaska court system. The complaint is a short, plain written statement showing the nature of the claim for relief, signed by the plaintiff. The complaint shall contain a statement that the plaintiff elects to have the claim treated as a small claim and waives the right to jury trial and the right to proceed formally. A complaint which does not contain a waiver of the right to jury trial and formal proceedings is governed by Part I of the District Court Rules of Civil Procedure. The plaintiff’s mailing address shall be shown on the complaint. When the complaint is based upon a written document, the document or a copy of it shall be attached to the complaint.

(b) A party defending against a claim shall file an answer on the form provided by the Alaska court system. The answer is a short, plain statement showing the nature of the defense and any claim that the defendant has against the plaintiff arising from the same transaction or occurrence and shall conform with Rule 12 of these rules. The answer must be filed with or mailed to the court where the action was commenced and be signed by the defendant. When the answer or counterclaim is based upon a written document, the document or a copy of it shall be attached to the answer. The defendant’s mailing address shall be shown on the answer. The clerk or magistrate judge shall mail a copy of the answer to the plaintiff, and shall maintain a record of the mailing.

(c) An answer form shall be served with the complaint and shall advise the defendant of the right to proceed informally under this Part II or formally under Part I of these rules. The form shall contain a statement that when the defendant requests informal proceedings, the defendant waives the right to trial by jury and to proceed formally. A plaintiff

against whom a counterclaim is filed shall have ten days after such claim is mailed to the plaintiff to withdraw the plaintiff's election to proceed under Part II, and failure to withdraw the election waives the plaintiff's right to trial by jury and formal procedure as to the counterclaim.

(d) A defendant who does not wish to contest the claim may default by failing to file an answer or may file an answer agreeing with the complaint. The latter shall be sufficient basis for entry of judgment on the pleadings by the court or clerk when the claim is for a specific amount of damages.

(SCO 225 effective May 1, 1976; amended by SCO 713 effective September 15, 1986; by SCO 740 effective August 28, 1986; by SCO 1153 effective July 15, 1994; and by SCO 1829 effective October 15, 2014)

Rule 11. Process.

(a) The summons shall be issued and the summons and complaint served, according to the procedures of Civil Rule 4, except that:

(1) If personal service is used, the clerk shall deliver the summons for service to a peace officer or to a person specially appointed to serve it.

(2) If service is by registered or certified mail, the clerk shall mail the summons and a copy of the complaint as provided in Civil Rule 4(h).

(3) Service by publication or posting shall not be allowed.

(4) Service on a defendant who is outside the state shall be allowed

(A) in accordance with the Landlord-Tenant Act, AS 34.03.340;

(B) in accordance with AS 09.05.020, entitled Service of Process on Nonresident Owner or Operator of Motor Vehicle; or

(C) as otherwise permitted under Civil Rule 4.

(5) The affidavit required by Civil Rule 4(f) is not required in small claims cases and Civil Rule 4(j) shall not apply.

(b) A copy of the Alaska Small Claims Handbook and a blank answer form shall be served with the summons and complaint.

(c) If the summons and complaint are served by registered or certified mail, a delivery receipt returnable to the district court shall be required. All returned delivery receipts shall be attached to the copy of the summons retained by the court.

(d) All parties shall inform the court and other parties of any change in mailing address during the pendency of the action. The parties are deemed to have received all documents mailed to them at the addresses furnished by them.

(e) Service of any pleading or process, including the summons and complaint, shall be valid even though refused by the recipient and returned after such refusal. Upon receiving a returned refused mailing, the clerk shall mail to the refusing party by first class mail a copy of the mailing refused and a notice that service of the original was valid upon refusal and that the case will proceed as if the recipient had accepted the original mailing.

(f) Civil Rule 45(a), (b), (c), (e), and (f), concerning subpoenas is incorporated in these rules for the purpose of securing the attendance of witnesses at trial, except that the fee tendered with a subpoena need only cover the fees for mileage and for one-half day's attendance if the person's attendance, including travel time, requires no more than three consecutive hours.

(SCO 225 effective May 1, 1976; amended by SCO 264 effective February 15, 1977; by SCO 381 effective October 1, 1979; by SCO 713 effective September 15, 1986; by SCO 754 effective December 15, 1986; by SCO 1075 effective January 15, 1992; and by SCO 1138 effective July 15, 1993; and by SCO 1556 effective September 14, 2004)

Note to SCO 1556: Chapter 65 § 6 SLA 2004 amended District Court Civil Rule 11(a)(4)(C) to allow service of process on out-of-state defendants in small claims actions to the extent permitted by Civil Rule 4. Section 1 of this order is adopted for the sole reason that the legislature has mandated the amendments.

Rule 12. Venue.

(a) The action shall be filed and the complaint shall contain a statement that it is filed:

(1) At the nearest place to the residence or place of employment of an individual defendant; or

(2) At the place where the defendant's alleged wrongful conduct caused personal injury or damage to the plaintiff's property; or

(3) At a place where the defendant does or solicits business; and

(4) At a place which will not cause unnecessary expense or inconvenience to the defendant.

(b) The answer shall contain any application of the defendant for change of place of trial. The change shall be granted if the action is not filed in accordance with Rule 12(a). An effective waiver of Rule 12(a) can be made only after the commencement of the action.

(c) The plaintiff shall have twenty days from the date of mailing receipt of the answer by the clerk or magistrate judge to file a statement opposing an application for change of place of trial. The court shall consider the application upon the statements of the parties, and shall issue an order granting or denying the application. A copy of the order shall be sent to the parties by first class mail at the addresses shown on their pleadings. When the application is granted, the file shall be

transferred. When the application is denied, the court shall set the action for trial.

(SCO 225 effective May 1, 1976; and amended by SCO 1829 effective October 15, 2014)

Rule 13. Defenses and Objections—When and How Presented.

(a) A defendant shall file or state an answer within 20 days after service of the summons and complaint upon the defendant. A counterclaim shall be deemed denied by the plaintiff.

(b) When an answer is plainly insufficient to state a defense, the court may on its own motion enter judgment on the pleadings without trial. A judgment on the pleadings shall state the reasons for its entry.

(SCO 225 effective May 1, 1976; amended by SCO 1153 effective July 15, 1994)

Rule 14. Joinder of Parties and Claims.

(a) Minors and other persons under legal disability may appear only through guardians, guardians ad litem, or conservators.

(b) Any person having a claim or against whom a claim is made arising from the same transaction or occurrence which gave rise to the complaint may be joined as a party to the action.

(c) Persons having a joint interest in the subject matter of the action and other persons whose participation is necessary for the court to give complete relief to those already parties shall be joined in the action if the court can obtain jurisdiction over them.

(d) Parties may be added or dropped by order of the court on application of any party or on its own motion at any stage of the action and on such terms as are just. A person not already a party to the action added by the court shall be served copies of all pleadings and a summons in the manner provided by these rules unless such service is waived.

(e) A party may join any number of claims arising from any number of transactions and occurrences against an opposing party, so long as the total amount of the claims does not exceed the small claim jurisdictional limitation.

(f) The court may order any claim against any party to be severed and proceed to try it separately.

(SCO 225 effective May 1, 1976)

Rule 15. Attorneys—Interns.

(a) A corporation or other public or private organization may be represented in any stage of a small claims proceeding including an appeal by any officer or employee authorized in writing to represent it, AS 22.20.040 notwithstanding.

(b) Any party to a small claims action may be represented at any stage of the proceedings by an attorney at law or a legal intern.

(c) Any party, except an attorney at law, asserting a claim as an assignee thereof, whether for collection, fee, or value, shall be represented at all stages of an action upon the claim by an attorney at law, or a legal intern. On application of a party or on its own motion, the court shall dismiss without prejudice any action filed or proceeded with in violation of this rule.

(d) Representation of a party by a legal intern at any stage of an action shall be governed by Part IV of the Alaska Bar Rules.

(SCO 225 effective May 1, 1976; amended by SCO 952 effective July 15, 1989; and by SCO 1085 effective January 15, 1992)

Rule 16. Trial.

(a) Every small claims action shall be tried by the court without a jury. A judge may not be peremptorily challenged either under Civil Rule 42(c) or AS 22.20.022.

(b) The court may admit any evidence that is relevant and material, despite the fact that such evidence might be inadmissible under formal rules of evidence.

(c) The court may investigate the controversy between the parties either in or out of court. The investigation must be made in the presence of the parties and the findings of fact resulting from the investigation must be stated on the record or reduced to writing and placed in the case file by the court.

(d) Testimony shall be given under oath and may be given in narrative fashion, and the examination of witnesses shall be informal. An adverse party has the right to cross-examine a party or witness. The court may take an active role in the examination of witnesses.

(e) The court may, at any time, consult with the parties on the record for the purpose of reaching a compromise or conciliation.

(f) The date set for trial shall be not less than 15 days from the date the court mails notice of the trial date to the parties.

(SCO 225 effective May 1, 1976; amended by SCO 674 effective June 15, 1986; by SCO 759 effective December 15, 1986; and by SCO 1758 effective October 14, 2011)

Rule 17. Judgment.

(a) If the defendant fails to answer the complaint within 20 days after service of process or fails to attend trial, the defendant is in default. Default judgment shall be entered only after the plaintiff files an affidavit made upon good faith belief, after diligent inquiry, stating that the defendant is not an infant or otherwise incompetent, and that the defendant is not in the active military service of the United States or, if the plaintiff is

unable to determine whether the defendant is in military service, stating that the plaintiff is unable to determine that fact. The court shall also require proof under oath, made upon personal knowledge or based on business records, of the truth of every essential element of the claim for relief. The clerk may enter a default judgment if the damages alleged are liquidated and no default hearing is required. If the defendant answers but fails to appear at trial, the court may nevertheless consider any relevant and material evidence filed with the answer. The court may allow an answer to be filed after the defendant is in default, but before judgment is entered, upon a showing of good cause. The plaintiff may move the court to enter a default judgment if the defendant is in default. Affidavits or exhibits necessary to the entry of default judgment under this rule shall accompany the motion.

(b) Judgment on the pleadings may be entered pursuant to Rules 13(b) and 10(d).

(c) If the plaintiff fails to attend the trial, the plaintiff is in default. When neither party appears, the court may dismiss the action with prejudice. When the defendant appears and the plaintiff does not, the court shall inquire of the defendant concerning the validity of the defendant's defense and the defendant's knowledge, if any, of the reasons for the plaintiff's absence. The court may then, in its discretion, enter judgment dismissing the claim with prejudice. If the defendant has asserted a counterclaim, it shall be disposed of according to paragraph (a) of this rule.

(d) When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all of the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(e) A default judgment shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a default judgment is entered, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the pleadings.

(f) **Dismissal for Want of Prosecution.** Actions which have been pending in a court for more than six months without any proceedings having been taken may be dismissed as a matter of course for want of prosecution by the court on its own motion or on motion of a party to the action. The clerk shall review all pending cases semi-annually, and in all cases in which no proceedings have been taken for more than six months, shall send notice to the parties to show cause in writing why the action should not be dismissed. If good cause

to the contrary is not shown within 30 days of distribution of the notice, the court shall dismiss the action. The clerk may dismiss actions under this paragraph if a party has not opposed dismissal. A dismissal for want of prosecution is without prejudice unless the court states in the order that the case is dismissed with prejudice.

(g) A claim may be dismissed with or without prejudice and without court order at any time by agreement of the parties, or upon written notice by the plaintiff at any time before the defendant has filed an answer. A dismissal with prejudice bars action in any court based on the claim dismissed.

(h) Judgment by confession may be entered pursuant to Civil Rule 57. Judgment pursuant to a compromise may be entered by written agreement of the parties or by oral declarations on the record at trial.

(i) After trial, the court shall enter judgment. The judgment need not be supported by findings of fact or conclusions of law. The judgment shall specify the exact relief given.

(j) If the judgment is entered upon a written instrument, the instrument shall be filed with the court and canceled by marks or writing across its face, unless the court orders otherwise.

(k) The court or the clerk may order a money judgment payable in installments and stay levy of execution upon stipulation of the parties. In the event the judgment is ordered payable in installments, it shall bear interest as provided by law. If the terms of a judgment made payable in installments are violated, execution may issue for the balance of the judgment remaining unpaid.

(l) The clerk shall distribute a copy of every order or judgment entered to all parties to the action. Every order and judgment shall include a clerk's certificate of distribution as defined in Civil Rule 58.1(d).

(SCO 225 effective May 1, 1976; amended by SCO 554 effective April 4, 1983; by SCO 745 effective December 15, 1986; by SCO 753 effective December 15, 1986; by SCO 799 effective February 17, 1987; by SCO 839 effective August 1, 1987; by SCO 1153 effective July 15, 1994; and by SCO 1663 effective April 15, 2009)

Rule 18. Appeal.

Either party may appeal a judgment or an order refusing to relieve any party from a default. The procedure on appeal shall be governed by the rules for appeal of judgments of the district court to the superior court, except that the superior court shall grant trial de novo if the proceedings in the district court were not of record.

(SCO 225 effective February 2, 1976; amended by SCO 440 effective November 15, 1980)

Rule 19. Relief from Judgment.

Civil Rule 60 applies to motions for relief from judgment in small claim actions.

(SCO 225 effective May 1, 1976)

Rule 20. Remedies.

(a) A small claims judgment may be enforced in the same manner as other judgments. No execution shall issue for two days after the date shown in the clerk's certificate of distribution on the judgment.

(b) No attachment or garnishment shall issue before judgment in a small claim action.

(c) Cost shall be allowed as a matter of course to a prevailing party. Allowable costs include the filing fee and other charges made by the court, the expense of service of process, and witness fees. An award of attorney's fees may also be made, but shall not exceed \$1,000. In cases where a default judgment is entered against a defendant, the clerk may enter the award of costs, as well as attorney's fees of 10% of the judgment or reasonable actual fees, whichever is less.

(d) A party may deposit with the court all or any part of any sum of money or any other thing capable of manual delivery which is sought in the action or due under a judgment. The party making the deposit shall inform all other parties to the action of the deposit. The court shall be governed by Rule 5, Alaska Rules Governing the Administration of All Courts, and shall release the deposit to the party entitled to it when the party becomes entitled to it. No interest shall accrue against a party making a deposit, to the extent of the deposit, after it is made.

(e) When the judgment has been satisfied, the judgment creditor shall file an acknowledgment of satisfaction with the court. The court may issue a satisfaction of judgment if the judgment debtor, by motion served on the judgment creditor, establishes that the judgment has been satisfied. The clerk may issue the satisfaction if the motion is unopposed.

(SCO 225 effective May 1, 1976; amended by SCO 449 effective November 24, 1980; by SCO 554 effective April 4, 1983; SCO 755 effective December 15, 1986 and by SCO 1783 effective October 15, 2012)

Cross References

(e) **CROSS REFERENCE:** AS 09.30.300 and AS 09.30.310

Rule 21. Assistance to Litigants—Handbook.

Magistrate judges and clerks of any district court are authorized, where necessary, to assist litigants in the preparation of complaints and answers. First recourse should be had to the Alaska Small Claim Handbook, which shall be available for distribution to prospective litigants at all locations of any court empowered to handle small claims actions, and shall be served upon the defendant with the summons and complaint. When a party is illiterate or otherwise unable to write his pleading, and is unable to obtain assistance from a friend or relative, the clerk or magistrate judge shall write it on

the appropriate form. A form written by the clerk or magistrate judge shall be signed by the party or bear the party's witnessed mark. The clerk shall note upon its face the method of preparing the pleading under this rule.

(SCO 225 effective May 1, 1976; amended by SCO 748 effective December 15, 1986; by SCO 1153 effective July 15, 1994; and by SCO 1829 effective October 15, 2014)

Rule 22. Legal Effect of Rules.

(a) The forms published by the Alaska Court System to accompany these rules are legally sufficient and are intended to indicate the simplicity and brevity which the rules contemplate.

(b) The Alaska Small Claims Handbook published by the Alaska Court System to accompany these rules is not a rule of court.

(c) The forms for the complaint, the summons and the answer published by the Alaska Court System shall be used by the parties. All other forms are illustrative and not mandatory.

(SCO 225 effective May 1, 1976; amended by SCO 333 effective January 1, 1979; and by SCO 713 effective September 15, 1986)

PART III. PROCEEDINGS AFTER TRIAL AND APPEALS

Rule 24. Stay of Proceedings to Enforce Judgment.

(a) **Automatic Stay.** Except as to judgments entered on default or by consent or on confession, no execution shall issue upon a judgment of the district court nor shall proceedings be taken for the enforcement of such judgment until the expiration of two days after the date shown in the clerk's certificate of distribution on the judgment.

(b) **Stay Upon Appeal.** When an appeal is taken, the appellant may obtain a stay of proceedings to enforce the judgment by following the procedure set forth in Appellate Rule 603(a).

(Rescinded by SCO 440 effective November 15, 1980; added by SCO 554, effective April 4, 1983)

PART V. SPECIAL PROCEEDINGS

Rule 32. Presumption of Death.

(a) **Petition.** Any interested person desiring to establish the presumption of death of a missing person in cases authorized by statute may file a verified petition in a district court in the district where it is believed the missing person has suffered death or in the district where such person last resided prior to the person's disappearance. The petition shall show the following:

- (1) The name of the person believed to have suffered death.
- (2) The circumstances leading to such belief.

(3) That after due and diligent search such person cannot be found.

(b) **Jury.** If the court is satisfied that the circumstances surrounding the disappearance of the missing person afford reasonable grounds for believing that such person has suffered death, the court shall summon and impanel a jury of qualified persons. The members of the jury, before beginning their duties, shall be sworn to diligently inquire into and justly consider all the facts and circumstances concerning the disappearance of the missing person, and from a fair consideration thereof to determine whether the court is justified in entering an order declaring that such person is presumed to be dead.

(c) **Hearing.** The jury shall inquire into the facts set forth in the petition. The testimony of witnesses under oath shall be heard and other evidence presented as upon the trial of an action. Depositions may be accepted where the magistrate judge believes that travel time and costs do not warrant a personal appearance.

(d) **Verdict—Approval by Court—Order.** After having heard all of the evidence presented, the jury shall retire for deliberation. If by its unanimous verdict in writing the jury finds that it may be fairly presumed that the missing person has suffered death, the court must endorse upon the verdict its approval or disapproval of such findings. If approval is given, the court shall enter an order declaring that the missing person is presumed to be dead. The order shall take effect at the expiration of six months from the date that the jury's findings and verdict are approved, except that in cases where there is clear and convincing evidence of the presumed death the order will take effect at such earlier time as the court shall specify therein.

(e) **Presumptive Death Certificate.** After the order of approval referred to in subdivision (d) has become effective or upon receiving a copy of an order or decree of the superior court that a person has not been heard of for a period of five continuous years and is presumed to be dead, the magistrate judge shall make out, sign, and file with the Bureau of Vital Statistics a presumptive death certificate containing such information as may be required by the bureau. On the effective date of the order of presumptive death, the missing person shall be presumed to be dead, and the person's estate may be administered in accordance with the then existing provisions of law applicable to the administration of the estates of deceased persons.

(f) **Correction of Presumptive Death Order and Certificate.** If the body of the missing person is found, or such **Note:** Rules 23 and 25 through 31 were rescinded by Supreme Court Order 440 effective Nov. 15, 1980.

person is discovered to be alive after an order of presumptive death has been entered, the court shall conduct a hearing, with or without a jury, to determine the facts, and shall enter an appropriate order for the correction, substitution or removal by the Bureau of Vital Statistics of the presumptive death certificate in accordance with the findings made if additional facts are brought to light.

(Renumbered by SCO 225 effective February 2, 1976; amended by SCO 554 effective April 4, 1983; by SCO 899 effective January 15, 1989; by SCO 1153 effective July 15, 1994; by SCO 1605 effective October 15, 2006; and by SCO 1829 effective October 15, 2014)

Cross References

CROSS REFERENCE: AS 09.55.020

(d) **CROSS REFERENCE:** AS 09.55.030

(e) **CROSS REFERENCE:** AS 09.55.050

(f) **CROSS REFERENCE:** AS 09.55.060

PART VI. TITLE—EFFECTIVE DATE

Rule 33. Title.

These rules shall be known and cited as the District Court Rules of Civil Procedure.

(Renumbered by SCO 225 effective February 2, 1976)

Rule 34. Effective Date.

These rules shall become effective on a date to be established by order of the supreme court.

(Renumbered by SCO 225 effective February 2, 1976)

Rule 35. Legal Effect of Rules—Procedural Portions of Statutes Superseded

These rules are promulgated pursuant to constitutional authority granting rule making power to the supreme court, and to the extent that they are inconsistent with any procedural provisions of any statute not enacted for the specific purpose of changing a rule, shall supersede such statute to the extent of such inconsistency.

(Renumbered by SCO 225 effective February 2, 1976)