RULES OF CIVIL PROCEDURE

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PART I. SCOPE OF RULES—CONSTRUCTION—ONE FORM OF ACTION

Rule 1. Scope of Rules—Construction.

The procedure in the superior court and, so far as applicable, in the district court shall be governed by these rules in all actions or proceedings of a civil nature—legal, equitable, or otherwise. These rules shall be construed to secure the just, speedy and inexpensive determination of every action and proceeding.

(Adopted by SCO 5 October 9, 1959; amended by SCO 993 effective January 15, 1990)

LAW REVIEW COMMENTARIES

"Summary Judgment In Alaska," 32 Alaska L. Rev. 181 (2015).

Rule 2. One Form of Action.

There shall be one form of action to be known as a "civil action."

(Adopted by SCO 5 October 9, 1959)

PART II. COMMENCEMENT OF ACTION—SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

Rule 3. Commencement of Action and Venue.

(a) A civil action is commenced by filing a complaint with the court. The complaint, in order to be accepted for filing, must be accompanied by a completed case description on a form provided by the clerk of court. The complaint shall also be accompanied by an envelope addressed to the plaintiff with sufficient postage to mail the envelope and all summonses that will be issued in the case.

(b) All actions in ejectment, for recovery of possession, for quieting title, for partition, or for the enforcement of liens upon real property shall be commenced in the superior court in the judicial district in which the real property, or any part of it affected by the action, is situated. Such actions may also be commenced in the venue district in which the real property is located if the superior court in the district accepts such cases for filing.

(c) If, in a civil action other than one specified in (b) of this rule, a defendant can be personally served within a judicial district of the State of Alaska, the action may be commenced either in: (1) the judicial district in which the claim arose; or (2) a judicial district where the defendant may be personally served; or (3) a venue district where the claim arose if the superior court in the district accepts such cases for filing.

(d) Subject to a change of venue motion under AS 22.10.040, a trial and any hearings in an action shall be conducted in a venue district within the judicial district at a location which would best serve the convenience of the parties and witnesses.

(e) Actions in cases not otherwise covered under this rule may be commenced in any judicial district of the state.

(f) Failure to make timely objection to improper venue waives the venue requirements of this rule.

(g) Venue districts as used in this rule refer to the districts referenced in the venue map described in Criminal Rule 18.

(h) A petition or request for a protective order on domestic violence under AS 18.66 or a protective order on stalking or sexual assault under AS 18.65 may be filed in either the judicial district or the court location closest to

(1) where the petitioner currently or temporarily resides;

(2) where the respondent resides; or

(3) where the domestic violence, stalking, or sexual assault occurred.

(Adopted by SCO 5 October 9, 1959; amended by SCO 554 effective April 4, 1983; by SCO 683 effective May 15, 1986; by SCO 697 effective September 15, 1986; by SCO 714 effective September 15, 1986; by SCO 744 effective December 15, 1986; by SCO 760 effective December 15, 1986; by SCO 811 effective August 1, 1987; by SCO 1097 effective January 15, 1993; by SCO 1128 effective July 15, 1993; by SCO 1269 effective July 15, 1997; by SCO 1397 effective October 15, 2000; by SCO 1402 effective October 15, 2000; by SCO 1450 effective October 15, 2001; by SCO 1656 effective April 15, 2008; by SCO 1740 effective nunc pro tunc to September 7, 2010; by SCO 1819 effective April 15, 2014; and by SCO 1865 effective October 15, 2015)

Note to SCO 1269: Civil Rule 3(h) was added by § 68 ch. 64 SLA 1996. Section 8 of this order is adopted for the sole reason that the legislature has mandated the amendment.

Note: In 1996, the legislature enacted AS 37.15.583(b), which requires that certain actions pertaining to Alaska clean water fund revenue bonds be commenced and conducted in the superior court at Juneau. According to § 13 ch. 141 SLA 1996, this statute has the effect of amending Civil Rule 3.

Note: In 2000, the legislature amended AS 37.15.583(a) to allow the owners of Alaska drinking water fund revenue bonds to file suit to enforce their rights. An action brought under AS 37.15.583(a) must be commenced and conducted in the superior court at Juneau. According to § 24 ch. 61 SLA 2000, the amendment to AS 37.15.583(a) has the effect of amending Civil Rule 3.

Note: Ch. 79 SLA 2002 (HB 182), Section 9, adds a new Chapter 25 to Title 45 of the Alaska Statutes, concerning motor vehicle sales and dealers. According to Section 14 of the Act, AS 45.25.020(b) has the effect of amending Civil Rule 3 by establishing a different rule for determining where a legal dispute described in AS 45.25.020(a) may be brought.

Note to Civil Rule 3(g): The venue districts referenced in this rule and in Criminal Rule 18 are shown on the venue map

available on the Alaska Court System website at:
http://www.courts.alaska.gov/rules/venuemapinfo.htm.

Note: Chapter 64, SLA 2010 (SB 60), effective September 7, 2010, enacted changes relating to the Uniform Probate Code. According to section 12(a) of the Act, AS 13.16.055(a), as amended by section 9 of the Act, has the effect of amending Civil Rule 3 by establishing a special venue rule for the first informal or formal testacy or appointment proceedings after a decedent's death when the decedent was not domiciled in this state. According to section 12(b) of the Act, AS 13.12.540, as enacted by section 8 of the Act, has the effect of amending Civil Rule 3 by establishing special venue rules for a petition under AS 13.12.530 or 13.12.535, enacted by section 8 of the Act.

Cross References

CROSS REFERENCE: AS 09.10.010

Rule 4. Process.

(a) **Summons—Issuance.** Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver it to the plaintiff or the plaintiff's attorney, who shall cause the summons and a copy of the complaint to be served in accordance with this rule. Upon request of the plaintiff separate or additional summonses shall issue against any defendants.

(b) **Summons—Form.**

(1) The summons shall be signed by the clerk, bear the seal of the court, identify the court and the parties, be directed to the defendant, and state the name and address of the plaintiff's attorney or the plaintiff's name and address if the plaintiff is unrepresented. It shall also state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in judgment by default against the defendant for the relief demanded in the complaint. The summons must also notify the defendant that the defendant has a duty to inform the court and all other parties, in writing, of the defendant's or defendant's attorney's current mailing address and telephone number, and to inform the court and all other parties of any changes, as set out in Civil Rule 5(i).

(2) The summons must be on the current version of the summons form developed by the administrative director or a duplicate of the court form. A party or attorney who lodges a duplicate certifies by lodging the duplicate that it conforms to the current version of the court form.

(c) **Methods of Service—Appointments to Serve Process—Definition of Peace Officer.**

(1) Service of all process shall be made by a peace officer, by a person specially appointed by the Commissioner of Public Safety for that purpose or, where a rule so provides, by registered or certified mail.

(2) A subpoena may be served as provided in Rule 45 without special appointment.

(3) Special appointments for the service of all process relating to remedies for the seizure of persons or property pursuant to Rule 64 or for the service of process to enforce a judgment by writ of execution shall only be made by the Commissioner of Public Safety after a thorough investigation of each applicant, and such appointment may be made subject to such conditions as appear proper in the discretion of the Commissioner for the protection of the public. A person so appointed must secure the assistance of a peace officer for the completion of process in each case in which the person may encounter physical resistance or obstruction to the service of process.

(4) Special appointments for the service of all process other than the process as provided under paragraph (3) of this subdivision shall be made freely when substantial savings in travel fees and costs will result.

(5) The term "peace officer" as used in these rules shall include any officer of the state police, members of the police force of any incorporated city, village or borough, United States Marshals and their deputies, other officers whose duty is to enforce and preserve the public peace, and within the authority conferred upon them, persons specially appointed pursuant to paragraph (3) of this subdivision.

(d) **Summons—Personal Service.** The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) *Individuals.* Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to the individual personally, or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(2) *Infants.* Upon an infant, by delivering a copy of the summons and complaint to such infant personally, and also to the infant's father, mother or guardian, or if there be none within the state, then to any person having the care or control of such infant, or with whom the infant resides, or in whose service the infant is employed; or if any service cannot be made upon any of them, then as provided by order of the court.

(3) *Incompetent Persons.* Upon an incompetent person, by delivering a copy of the summons and complaint personally—

(A) To the guardian of the person or a competent adult member of the person's family with whom the person resides, or if the person is living in an institution, then to the director or chief executive officer of the institution, or if service cannot be made upon any of them, then as provided by order of the court; and

(B) Unless the court otherwise orders, also to the incompetent person.

(4) *Corporations or Limited Liability Companies.* Upon a domestic or foreign corporation or limited liability company, by delivering a copy of the summons and of the complaint to a managing member, an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process.

(5) *Partnerships.* Upon a partnership, by delivering a copy of the summons and of the complaint personally to a general partner of such partnership, or to a managing or general agent of the partnership, or to any other agent authorized by appointment or by law to receive service of process, or to a person having control of the business of the partnership; or if service cannot be made upon any of them, then as provided by order of the court.

(6) *Unincorporated Associations.* Upon an unincorporated association, by delivering a copy of the summons and the complaint personally to an officer, a managing or general agent, or to any other person authorized by appointment or by law to receive service of process; or if service cannot be made upon any of them, then as provided by order of the court.

(7) *State of Alaska.* Upon the state, by sending a copy of the summons and the complaint by registered or certified mail to the Attorney General of Alaska, Juneau, Alaska, and

(A) to the chief of the attorney general's office in Anchorage, Alaska, when the matter is filed in the Third Judicial District; or

(B) to the chief of the attorney general's office in Fairbanks, Alaska, when the matter is filed in the Fourth Judicial District.

(8) *Officer or Agency of State.* Upon an officer or agency of the state, by serving the State of Alaska as provided in the preceding paragraph of this rule, and by delivering a copy of the summons and of the complaint to such officer or agency. If the agency is a corporation, the copies shall be delivered as provided in paragraph (4) of this subdivision of this rule.

(9) *Public Corporations.* Upon a borough or incorporated city, town, school district, public utility district, or other public corporation in the state, by delivering a copy of the summons and of the complaint to the chief executive officer or chief clerk or secretary thereof.

(10) *Unknown Parties.* Upon unknown persons who may be made parties in accordance with statute and these rules, by publication as provided in subdivision (e) of this rule.

(11) *Officer or Agency of State as Agent for Non-governmental Defendant.* Whenever, pursuant to statute, an officer or an agency of the State of Alaska has been appointed as agent to receive service for a non-governmental defendant, or whenever, pursuant to statute, an officer or agency of the State of Alaska, has been deemed, considered or construed to be appointed as agent for a non-governmental defendant by virtue of some act, conduct or transaction of such defendant, service of process shall be made in the manner provided by statute.

(12) *Personal Service Outside State.* Upon a party outside the state in the same manner as if service were made within the state, except that service shall be made by a sheriff, constable, bailiff, peace officer or other officer having like authority in the jurisdiction where service is made, or by a person specifically appointed by the court to make service, or by service as provided in subsection (h) of this rule. In an action to enforce any lien upon or claim to, or to remove any encumbrance or lien or cloud upon the title to, real or personal property within the state, such service shall also be made upon the person or persons in possession or in charge of such property, if any. Proof of service shall be in accordance with (f) of this rule.

(13) *Personal Service in a Foreign Country.* Upon an individual in a foreign country—

(A) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(B) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(i) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(ii) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(iii) unless prohibited by the law of the foreign country, by delivery to the individual personally of a copy of the summons and the complaint, or by any form of mail requiring a signed receipt by the party to be served, so long as the return receipt is filed with the court; or

(C) by other means not prohibited by international agreement as may be directed by the court.

Regardless of which method of service is followed for personal service in a foreign country, before entry of judgment, the court must be satisfied that the method used was a method reasonably likely to effect actual notice.

(e) **Other Service.** When it shall appear by affidavit of a person having knowledge of the facts filed with the clerk that after diligent inquiry a party cannot be served with process under subsections (d) or (h) of this rule, service shall be made by posting on the Alaska Court System's legal notice website and as otherwise directed by the court as provided in this subsection. The party who seeks to have service made under this subsection shall include in the affidavit of diligent inquiry a discussion of whether other methods of service listed in paragraph (e)(3) may be more likely to give the absent party actual notice. In adoption cases, service by posting on the Alaska Court System's legal notice website or by publication will be allowed only if ordered by the court for compelling reasons.

(1) *Diligent Inquiry.* Inquiry as to the absent party's whereabouts shall be made by the party who seeks to have service made, or by the party's attorney actually entrusted with the conduct of the action, or by the agent of the attorney. It shall be made of any person who the inquirer has reason to believe possesses knowledge or information as to the absent party's residence or address or the matter inquired of. Unless otherwise ordered by the court, diligent inquiry shall include a reasonable effort to search the internet for the whereabouts of the absent party. The inquiry shall also be undertaken in person or by letter, and the inquirer shall state that an action has been or is about to be commenced against the party inquired for, that the object of the inquiry is to give such party notice of the action in order that such party may appear and defend it. When the inquiry is made by letter, postage shall be enclosed sufficient for the return of an answer. The affidavit of inquiry shall be made by the inquirer. It shall fully specify the inquiry made, of what persons and in what manner it was made, and a description of any efforts that were made to search the internet, so that by the facts stated therein it may appear that diligent inquiry has been made for the purpose of effecting actual notice.

(2) *Service by Posting on the Alaska Court System's Legal Notice Website.* A notice shall be continuously posted for four consecutive weeks on the Alaska Court System's legal notice website. Prior to the last week of posting, the party who seeks to have service made must send the absent party a copy of the notice and the complaint or the pleading (A) by registered or certified mail, with return receipt requested, with postage prepaid, and (B) by regular first class mail. The notice must be addressed in care of the absent party's residence or the place where the party usually receives mail, unless it shall appear by affidavit that the absent party's residence or place is unknown or cannot be determined after inquiry.

(3) *Additional Service by Other Methods.* In addition to the service required under paragraph (2), the court, in its discretion, may require service of process to be made upon an absent party in any other manner that is reasonably calculated to give the party actual notice of the proceedings and an opportunity to be heard. The method of service could include publication of the notice in a print or online newspaper or other publication at least once a week for four consecutive weeks; service of the notice to the absent party's e-mail account; posting of the notice to the absent party's social networking account; physically posting a copy of the notice and complaint on a public bulletin board or on the front door of the absent party's place of residence; or any method the court determines to be reasonable and appropriate.

(4) *Mailing Required.* If service is allowed by any method listed in paragraph (3), the party who seeks to have service made must also send the absent party a copy of the notice and the complaint by mail as required in paragraph (2). Proof of mailing shall be made by affidavit of a deposit in a post office of the copies of the notice and the complaint or other pleadings.

(5) *Form and Contents of Notice—Time.* The notice referred to in paragraphs (2), (3) and (6) shall be in the form of a summons. It shall state briefly the nature of the action, the relief demanded, and why the party to whom it is addressed is made a party to the action. Where the action concerns real property or where real property of a party has been attached, the notice shall set forth a legal description of the property, shall state the municipality or district in which it is located, and the street or road on which the property is situated, and if the property is improved, it shall state the street number of the same. Where personal property of a party has been attached, the notice shall generally describe the property. If a mortgage is to be foreclosed, the notice shall state the names of all parties thereto and the dates that the mortgage was executed. The notice shall specify the time within which the absent party has to appear or answer or plead, which shall not be less than 20 days after personal service or, if service is made by publication, not less than 30 days after the last date of publication, and shall state the effect of a failure to appear or answer or plead. If the absent party does not appear or answer or plead within the time specified within the notice, the court may proceed as if such party had been served with process within the state.

(6) *Proof of Service.*

(A) *Service by Posting on the Alaska Court System's Legal Notice Website*. If service is made by posting to the Alaska Court System's Legal Notice Website, proof of posting shall be made by certification of the court clerk. A printed copy of the posted notice and the dates of posting shall be attached to the clerk's certificate.

(B) *Service by Publication in a Printed Newspaper*. If service is made by publication in a printed newspaper, proof of publication shall be made by the affidavit of the newspaper's publisher, printer, manager, foreman, or principal clerk, or by the certificate of the attorney for the party at whose instance the service was made. A printed copy of the published notice with the name of the newspaper and dates of publication marked therein shall be attached to the affidavit or certificate.

(C) *Service by Posting to an Online Publication Website*. If service is made by posting to an online publication website, proof of posting shall be made by affidavit of the online publication's publisher, printer, manager, foreman, or principal clerk, or by the certificate of the attorney for the party at whose instance the service was made. A printed copy of the posted notice with the name of the online publication and dates of posting marked therein shall be attached to the affidavit or certificate.

(D) *Service by E-mail or Posting to a Social Networking Account.* If service is made by e-mail or posting to a social networking account, proof of e-mail transmission or electronic posting shall be made by affidavit. If service is made by e-mail, a copy of the sent e-mail transmission shall be attached to the affidavit. If service is made by posting a notice on the absent party's social networking account, a screen print of the posting shall be attached to the affidavit.

(E) *Service by Posting to a Public Bulletin Board or on the Front Door of the Absent Party's Place of Residence.* If service is made by posting to a public bulletin board or on the front door of the absent party's place of residence, proof of

posting shall be made by affidavit of posting of the notice and the complaint or other pleadings.

(F) *Other Service by Court Order.* If the court has allowed service of process to be made upon an absent party in any other manner calculated to give actual notice, proof of service shall be made as directed by the court.

(f) **Return.** The person serving the process shall give proof of service thereof to the party requesting issuance of the process or to the party's attorney promptly and in any event within the time during which the person served must respond to the process. Within 120 days after filing of the complaint, the party shall file and serve an affidavit identifying the parties who have been served, the date service was made and the parties who remain unserved. If service is made by a person other than a peace officer, the person shall make affidavit thereof, proof of service shall be in writing and shall set forth the manner, place, date of service, and all pleadings or other papers served with the process. Failure to make proof of service does not affect the validity of the service.

(g) **Amendment.** At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the parties against whom the process issued.

(h) **Service of Process by Mail.** In addition to other methods of service provided for by this rule, process may also be served within this state or the United States or any of its possessions by registered or certified mail, with return receipt requested, upon an individual other than an infant or an incompetent person and upon a corporation, partnership, unincorporated association, or public corporation. In such case, copies of the summons and complaint or other process shall be mailed for restricted delivery only to the party to whom the summons or other process is directed or to the person authorized under federal regulation to receive the party's restricted delivery mail. All receipts shall be so addressed that they are returned to the party serving the summons or process or the party's attorney. Service of process by mail under this paragraph is complete when the return receipt is signed.

(i) RESERVED

(j) **Summons—Time Limit for Service.** The clerk shall review each pending case 120 days after filing of the complaint to determine whether all defendants have been served. If any defendant has not been served, the clerk shall send notice to the plaintiff to show good cause in writing why service on that defendant is not complete. If good cause is not shown within 30 days after distribution of the notice, the court shall dismiss without prejudice the action as to that defendant. The clerk may enter the dismissal if the plaintiff has not opposed dismissal. If the court finds good cause why service has not been made, the court shall establish a new deadline by which plaintiff must file proof of service or proof that plaintiff has made diligent efforts to serve.

(Adopted by SCO 5 October 9, 1959; amended by SCO 49 effective January 1, 1963; by SCO 66 effective July 1, 1964; by SCO 90 effective July 24, 1967; by SCO 168 dated June 25, 1973; by SCO 215 effective May 23, 1975; by SCO 266 effective March 31, 1977; by SCO 282 effective November 15, 1977; by SCO 306 effective April 11, 1978; by SCO 357 effective June 30, 1978; by SCO 373 effective August 15, 1979; by SCO 465 effective June 1, 1981; by SCO 591 effective July 1, 1984; by SCO 679 effective June 15, 1986; by SCO 697 effective September 15, 1986; by SCO 714 effective September 15, 1986; by SCO 788 effective March 15, 1987; by SCO 815 effective August 1, 1987; by SCO 836 effective August 1, 1987; by SCO 1025 effective July 15, 1990; by SCO 1128 effective July 15, 1993; by SCO 1153 effective July 15, 1994; by SCO 1269 effective July 15, 1997; by SCO 1295 effective January 15, 1998; by SCO 1445 effective October 15, 2001; by SCO 1482 effective October 15, 2002; by SCO 1522 effective October 15, 2003; by SCO 1525 effective October 15, 2003; by SCO 1581 effective October 15, 2005; by SCO 1570 effective October 15, 2005; by SCO 1607 effective October 15, 2006; by SCO 1713 effective May 16, 2009; by SCO 1716 effective July 1, 2009; by SCO 1769 effective April 16, 2012; by SCO 1788 effective June 15, 2012; and by SCO 1834 effective October 15, 2014)

Note: In, 1996, the legislature enacted AS 18.66.160, which relates to service of process in a proceeding to obtain a domestic violence protective order. According to § 77 ch. 64 SLA 1996, this statute has the effect of amending Civil Rule 4.

Note: AS 10.06.580(b), as enacted by ch. 166, § 1, SLA 1988, amended Civil Rule 4 by allowing a corporation in an action brought under AS 10.06.580 to serve non-resident dissenting shareholders by certified mail and publication without satisfying the conditions under which certified mail and publication can be used under Civil Rule 4. AS 10.06.638, as enacted by ch. 166, § 1, SLA 1988, amended Civil Rule 4 by changing (1) the requirements for service by publication, and (2) how long a corporation has to respond to a complaint in an involuntary dissolution proceeding before the Commissioner of Commerce and Economic Development may take a default judgment against the corporation.

Note: Section 132 of ch. 87 SLA 1997 adds AS 25.27.265(c) which authorizes the court to allow CSED to serve a party by mailing documents to the last known address on file with the agency. This is permitted only if the court finds that CSED has made diligent efforts to serve documents in the appropriate manner. According to § 153 of the Act, § 132 has the effect of amending Civil Rules 4 and 5 by allowing service at the opposing party's last known address on file with the child support enforcement agency in certain circumstances.

Note: Ch. 61 SLA 2002 (HB 52), Section 2, repeals and reenacts AS 33.36.110 to authorize the governor to execute the Interstate Compact for Adult Offender Supervision. According to Section 6 of the Act, Article VIII(a)(2) of the Compact, contained in the new AS 33.36.110, would have the effect of amending Civil Rule 4 by entitling the Interstate Commission for Adult Offender Supervision to receive service of process of a judicial proceeding in this state that pertains to the Interstate Compact for Adult Offender Supervision and that may affect the powers, responsibilities or actions of that commission.

Note: Ch. 128 SLA 2002 (HB 393), Section 3, adds a new Chapter 66 to Title 45 of the Alaska Statutes, concerning the sale of business opportunities. According to Section 4 of the Act, AS 45.66.120(b) has the effect of amending Civil Rule 4 by requiring that the clerk of the court mail a copy of the complaint to the attorney general when an action is filed under AS 45.66.120.

Note: Chapter 87 SLA 03 (HB 1) enacted AS 18.65.865, which addresses service of process of protective orders issued under AS 18.65.850-860 for persons who are victims of stalking not involving domestic violence. According to Section 8(a) of the Act, the new AS 18.65.865 has the effect of amending Civil Rule 4 relating to service of process by requiring that service be made in accordance with AS 18.66.160, which governs service of domestic violence protective orders.

Note to SCO 1570: Civil Rule 4(d)(13), concerning service on individuals in a foreign country, parallels the language in Federal Rule of Civil Procedure 4(f).The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, referred to in Civil Rule 4(d)(13), generally provides for service of process by a central authority (usually the Ministry of Justice) in the Convention countries pursuant to a request submitted on a form USM-94 available at the office of any United States Marshall or at http:www.usmarshals.gov/ forms/usm94.pdf. The Convention also permits service of process by international registered mail subject to the option of individual countries to object to such service. Many countries have objected, including Argentina, China, the Czech Republic, Egypt, Germany, Greece, the Republic of South Korea, Latvia, Lithuania, Luxembourg, Norway, Poland, the Slovak Republic, Sri Lanka, Switzerland, Turkey, Ukraine, and Venezuela; service by registered mail is therefore not appropriate in those countries. The full text of the Convention may by found at http://hcch.e-vision.nl/index_en.php?act= conventions.text&cid=17. Current information on the Convention may be found in the United States Department of State's Circular on Service of Process Abroad, available at http://travel.state.gov/content/travel/english/legal-considerations/judicial/service-of-process.html.

Note: Chapter 54 SLA 2005 (HB 95) enacted extensive amendments and new provisions related to public health, including public health emergencies and disasters. According to Section 13(a) of the Act, AS 18.15.375(c)(3), (d), and (e), and 18.15.385(d) –(k), enacted in Section 8, have the effect of amending Civil Rule 4 by adding special proceedings, timing, and pleading requirements for matters involving public health.

Note (effective nunc pro tunc to May 16, 2009): Chapter 10 SLA 2009 (HB 137), effective May 16, 2009, enacted changes relating to an Interstate Compact on Educational Opportunity for Military Children. According to section 2 of the Act, AS 14.34.010-.090 have the effect of changing Civil Rule 4 by entitling the Interstate Commission on Educational Opportunity for Military Children to receive service of process of a judicial proceeding in this state that pertains to the Interstate Compact on Educational Opportunity for Military Children, and in which the validity of a compact provision or rule is an issue for which a judicial determination has been sought.

Note (effective nunc pro tunc to July 1, 2009): Chapter 37 SLA 2009 (HB 141), effective July 1, 2009, enacted changes relating to the Interstate Compact for Juveniles. According to section 11 of the Act the changes made to AS 47.15.010 have the effect of changing Civil Rule 4 by entitling the Interstate Commission for Juveniles to receive service of process of a judicial proceeding in this state that pertains to the Interstate Compact for Juveniles, and in which the validity of a compact provision or rule is an issue for which a judicial determination has been sought.

Note (effective nunc pro tunc to June 15, 2012): Chapter 65, SLA 2012 (HB 296) added a new subsection (c) to AS 09.05.050 relating to service of process on prisoners, effective June 15, 2012. According to section 5 of the Act, AS 09.05.050, including the amendment made by section 1, has the effect of amending Alaska Rule of Civil Procedure 4, relating to service of process on prisoners committed to the custody of the commissioner of corrections.

Note: The Alaska Court System's legal notice website, referenced in paragraph (e)(2), is found on the Alaska Court System Website at: http://www.courts.alaska.gov/.

Cross References

(d) **CROSS REFERENCE:** AS 09.05.010

(e)(5) **CROSS REFERENCE:** AS 09.25.070

Rule 5. Service and Filing of Pleadings and Other Papers.

(a) **Service—When Required.** Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

In an action begun by seizure of property, whether through arrest, attachment, garnishment or similar process, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) **Service—How Made.** Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party, by mailing it to the attorney's or party's last known address, by transmitting it to

the attorney's or party's facsimile machine telephone number or electric mail address as provided in Civil Rule 5.1(b), or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the attorney's or party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Mailing of a copy means mailing it by first class United States mail. Service by mail is complete upon mailing. Service by a commercial delivery company constitutes service by delivery and is complete upon delivery.

(c) **Service—Numerous Defendants.** In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) **Filing.**

(1) Except as provided in (2) of this paragraph, all papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter.

(2) Unless filing is ordered by the court on motion of a party or on its own motion, the following may not be filed unless and until they are used in the proceedings:

(i) disclosures under Rule 26(a);

(ii) notices of taking depositions and transcripts of depositions;

(iii) interrogatories and requests for admissions and answers thereto;

(iv) requests for production and responses thereto;

(v) subpoenas, including subpoenas duces tecum;

(vi) offers of judgment;

(vii) proof of service of any of the above;

(viii) copies of correspondence between counsel;

(ix) exhibits.

(e) **Filing With the Court Defined.** The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court at the court location where the case is filed unless otherwise directed by the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Papers may be filed by facsimile transmission or electronic mail only as permitted by Civil Rule 5.1(a).

(f) **Proof of Service.** Proof of service of all papers required or permitted to be served, other than those for which a particular method of proof is prescribed in these rules, must state the name of each person who has been served, must show the day and manner of service and may be by written acknowledgment of service, by certificate of an attorney, an authorized agent of the attorney, or a pro se litigant, by affidavit of the person who served the papers, or by any other proof satisfactory to the court. Proof of service must be made promptly and in any event before action is to be taken on the paper served by the court or the parties. Failure to make the proof of service required by this subdivision does not affect the validity of service; and the court may at any time allow the proof of service to be amended or supplied unless it clearly appears that to do so would result in material prejudice to the substantial rights of any party.

(g) **Service After Final Judgment.**

(1) Notwithstanding the provisions of paragraph (b) of this rule requiring service upon an attorney, a party who has been represented by an attorney in an action or proceeding shall be served rather than the attorney in accordance with the provisions of paragraph (b) with a motion or other request for relief filed in the action or proceeding where a period of one year has elapsed since the filing of any paper or the issuance of any process in the action or proceeding, and

(i) The final judgment or decree has been entered and the time for filing an appeal has expired, or

(ii) If an appeal has been taken, the final judgment or decree upon remand has been entered or the mandate has been issued affirming the judgment or decree, and

(iii) The party's attorney has not filed a notice of continued representation under Rule 81(e)(2).

(2) If a party is served under circumstances described in Section (1) of this paragraph, or if a party appeared in his or her own behalf in the prior action or proceeding, the paper served shall include notice to the party of the party's right to file written opposition or response, the time within which such opposition or response must be filed, and the place where it must be filed.

(h) **Service on Custody Investigator and Guardian Ad Litem.** In all cases involving the custody or visitation of a minor in which a custody investigator or a guardian ad litem has been appointed, the parties shall serve the custody investigator and the guardian ad litem with all pleadings involving the care, custody, or control of the minor.

(i) **Changes in Mailing Address and Telephone Number.** While a case is pending, the parties must

immediately inform the court and all other parties, in writing, of any changes in their mailing addresses and telephone numbers, except as provided in Civil Rule 65.1.

(Adopted by SCO 5 October 9, 1959; amended by SCO 258 effective November 15, 1976; by SCO 354 effective April 1, 1979; by SCO 372 effective August 15, 1979; by SCO 375 effective August 15, 1979; by SCO 410 effective May 15, 1980; by SCO 471 effective June 1, 1981; by SCO 522 effective October 1, 1982; by SCO 695 effective September 15, 1986; by SCO 731 effective December 15, 1986; by SCO 817 effective August 1, 1987; by SCO 1153 effective July 15, 1994; by SCO 1172 effective July 15, 1995; by SCO 1295 effective January 15, 1998; by SCO 1307 effective January 15, 1998; by SCO 1414 effective October 15, 2000; by SCO 1424 effective April 15, 2001; by SCO 1482 effective October 15, 2002; by SCO 1570 effective October 15, 2005; and by SCO 1786 effective October 15, 2012)

Note: Section 132 of ch. 87 SLA 1997 adds AS 25.27.265(c) which authorizes the court to allow CSED to serve a party by mailing documents to the last known address on file with the agency. This is permitted only if the court finds that CSED has made diligent efforts to serve documents in the appropriate manner. According to § 153 of the Act, § 132 has the effect of amending Civil Rules 4 and 5 by allowing service at the opposing party's last known address on file with the child support enforcement agency in certain circumstances.

Rule 5.1. Filing and Service by Facsimile Transmission and Electronic Mail.

(a) Filing by Facsimile Transmission and Electronic Mail.

(1) A party may file documents by fax or electronic mail as permitted by administrative order of the presiding judge or with prior written consent of the judge assigned to the case. Unless the court orders that the original document be filed, a party filing a document by fax or electronic mail shall retain the original and shall produce it for inspection upon request of another party to the action or as ordered by the court.

(2) An administrative order permitting documents to be filed by fax or electronic mail may set limits on the size of electronic documents that can be accepted, the format of the documents, the frequency with which a party may file documents, and may establish other particular requirements and limitations.

(3) Documents filed by fax or electronic mail that are received by the court before 4:30 p.m. on a day that the court is open for regular business are deemed to have been filed on that business day; documents filed by fax or electronic mail that are received by the court after 4:30 p.m. are deemed to have been filed on the next day that is not a Saturday, Sunday, or a judicial holiday listed in Administrative Rule 16.

(b) **Filing Foreign Domestic Violence Protective Orders by Facsimile Transmission.** Notwithstanding any general administrative orders concerning fax filings issued under (a) of this rule, a court shall accept faxed certified copies of domestic violence protective orders issued by other states, tribes, or territories if (1) the order is faxed by the issuing court, and (2) the facsimile contains a certification that the faxed order is a true and correct copy of the original order on file with the issuing court.

(c) **Service by Facsimile Transmission and Electronic Mail.**

(1) *Application of this Rule.* This rule governs the service of documents by fax or electronic mail. It applies only to documents that may be served under Civil Rule 5(b). It does not apply to documents that must be served under Civil Rule 4. It applies to service by parties and by the court.

(2) *Method of Service.* Service by fax is made by successfully transmitting the document to the facsimile machine telephone number of a person who has consented to be served in this manner. Service by electronic mail is made by successfully sending an electronic file to an electronic mail address of a person who has consented to be served in this manner. Additional service by mail is not required; however, a copy of the document must be mailed to the person upon request.

(3) *Consent to Service*. A person who is willing to accept service by fax or electronic mail in an action shall so indicate beneath the signature in the person's initial filing or by serving and filing a separate notice of consent. A party may revoke consent by serving and filing a separate notice that consent has been revoked.

(4) *Page Limit.* A person may serve by fax a total of 25 pages per recipient per day unless the parties have agreed to a different page limit. Cover sheets and separators do not count toward the page limit.

(5) *When Service is Complete*. Service by electronic mail is complete upon receipt in the party's electronic mail account. Service by fax is complete upon receipt of the entire document by the receiving party's facsimile machine. Service that occurs in whole or in part after 4:30 p.m. shall be deemed to have occurred at the opening of business on the next day that is not a Saturday, a Sunday, or a judicial holiday listed in Administrative Rule 16.

(6) *Proof of Service*. If service is made by fax or electronic mail, proof of service must be made by affidavit of the person making service, or by certificate of an attorney, an authorized agent of the attorney, or a pro se litigant. The affidavit or certificate must include the following information:

(A) the date and time of the transmission;

(B) the telephone number of the transmitting facsimile machine if service is made by fax, or the electronic mail address from which the electronic mail was sent, if the service was made by electronic mail;

(C) the recipient's name and facsimile machine telephone number, or electronic mail address;

(D) the number of pages transmitted; and

(E) a statement that the document was transmitted by facsimile transmission or electronic mail and the person signing the affidavit or certificate believes the transmission to have been complete and without error.

In lieu of including this information, the person signing the affidavit or certificate may attach a copy of the transmission report issued by the transmitting facsimile machine if the report is an accurate record of the tramission.

(Adopted by SCO 1307 effective January 15, 1998; amended by SCO 1695 effective March 1, 2009; and by SCO 1766 effective October 14, 2011)

Note: Presiding judges' fax filing orders are available on the court system's website at: http://www. courts.alaska.gov /jord/index.htm#trial. Copies may also be obtained from the office of the court rules attorney, 820 W. 4th Ave., Anchorage, AK 99501, (907) 264-8231.

Rule 5.2. Foreign Orders and Judgments.

(a) **Notice of Registration of Support and Child Custody Orders.**

(1) When the court is required by the Uniform Interstate Family Support Act (AS 25.25.101 – .903) or the Uniform Child Custody Jurisdiction and Enforcement Act (AS 25.30.300 – .910) to give notice of registration of a support order, income withholding order, or child custody determination of another state, the court must give the required notice by first class mail, certified mail, or by any means of personal service authorized by Civil Rule 4. If the registering party does not request a method of service, the court will use first class mail.

(2) If the registering party requests that the court use a method of notice that provides proof of service, the party shall file proof of service with the court.

(3) The time period within which the non-registering party may request a hearing begins on the date the notice is mailed or personally served.

(b) **Notice of Filing Foreign Judgments.** When the court is required by the Uniform Enforcement of Foreign Judgments Act (AS 09.30.200 – .270) to give notice of the filing of a foreign judgment, the court must promptly give that notice by first class mail. As provided in AS 09.30.210(b), a judgment creditor may mail an additional notice by first class or certified mail.

(c) **Confidentiality of Social Security Numbers.** Social security numbers shall not become part of the public record.

(1) When a judgment or order to be registered contains social security numbers, the filing party shall submit an unredacted certified copy of the judgment or order and a duplicate with the social security numbers redacted. The filing party must omit or redact social security numbers from all other documents filed in the case unless otherwise ordered by the court.

(2) If the filing party is required by law to provide the obligor's social security number to the court, the filing party shall provide the information, if known, on a confidential information sheet. The clerk of court shall provide a copy of the confidential information sheet to the Child Support Services Division upon request or whenever the court provides a child support order to a child support agency as required by state law. Further disclosure shall be authorized by court order only upon a showing of good cause.

(d) **Service of Motions, Petitions, and Complaints to Enforce or Modify Registered Support and Child Custody Orders.**

(1) *Support Orders*. A party may serve a motion or complaint to enforce or modify a registered out-of-state support order by first class mail under Civil Rule 5.

(2) *Child Custody Determinations*.

(A) *Enforcement*. A party may serve a motion or petition to enforce a registered out-of-state custody determination by first class mail under Civil Rule 5. A petition for expedited enforcement under AS 25.30.460 must be served to provide timely notice. If the motion to enforce the registered out-of-state child custody determination includes an application for a warrant to take physical custody of a child, the documents may be served before, but must be served no later than immediately after the child is taken into physical custody according to AS 25.30.490.

(B) *Modification*. A party may serve a motion or petition to modify a registered out-of-state child custody determination by any means of service authorized by Civil Rule 4.

(Adopted by SCO 1714 effective October 15, 2009; amended by SCO 1855 effective October 15, 2015)

Note: The statutes requiring the clerk to give notice are AS 25.25.605 and .609 (support orders), AS 25.30.430 (custody determinations) and AS 09.30.210 (foreign judgments).

Rule 6. Time.

(a) **Computation.** In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period is to be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, not counting any period for mailing added under subsection (c) of this rule, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

(b) **Enlargement.** When by these rules or by a notice given thereunder or by order of the court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), and (e) and (f), and 60(b), except to the extent and under the conditions stated in them.

(c) **Additional Time After Service or Distribution by Non-Electronic Mail.** Whenever a party has the right or is required to act within a prescribed period after the service or distribution of a document, other than documents served under Civil Rule 4(h), and the document is served or distributed by non-electronic mail, three calendar days shall be added to the prescribed period. However, no additional time shall be added if a court order specifies a particular calendar date by which an act must occur.

(Adopted by SCO 5 October 9, 1959; amended by SCO 49 effective January 1, 1963; by SCO 98 effective September 16, 1968; by SCO 258 effective November 15, 1976; by SCO 274 effective June 15, 1977; by SCO 704 effective September 15, 1986; by SCO 836 effective August 1, 1987; by SCO 878 effective July 15, 1988; by SCO 1007 effective January 15, 1990; by SCO 1639 effective October 15, 2007; by SCO 1694 effective October 15, 2009; and by SCO 1766 effective October 14, 2011)

Note: Ch. 77 SLA 2002 (HB 157), Section 2, adds new Chapter 26 to Title 6 of the Alaska Statutes, concerning providers of fiduciary services. According to Section 9 of the Act, AS 06.26.760(b)(2) has the effect of amending Civil Rule 6 by postponing the deadlines for the filing of pleadings and other documents by a trust company in a civil action when the Department of Community and Economic Development has taken possession of the trust company.

PART III. PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed—Form of Motions.

(a) **Pleadings.** There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if leave is given under Rule 14 to summon a person who was not an original party; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

(b) **Motions and Other Papers.**

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) The procedure for the submission and hearing of motions shall be as provided in Rule 77.

(c) **Demurrers, Pleas, etc., Abolished.** Demurrers, pleas and exceptions for insufficiency of a pleading shall not be used.

(Adopted by SCO 5 October 9, 1959; amended by SCO 57 effective November 8, 1963; by SCO 258 effective November 15, 1976)

Note: Chapter 54 SLA 2005 (HB 95) enacted extensive amendments and new provisions related to public health, including public health emergencies and disasters. According to Section 13(a) of the Act, AS 18.15.375(c)(3),(d), and (e), and 18.15.385(d) –(k), enacted in Section 8, have the effect of amending Civil Rule 7 by adding special proceedings, timing, and pleading requirements for matters involving public health.

Rule 8. General Rules of Pleading.

(a) **Claims for Relief.** A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

(b) **Defenses—Form of Denials.** A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denial shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but when the pleader does so intend to controvert all its averments, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

(c) **Affirmative Defenses.** In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other

matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim, or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) **Effect of Failure to Deny.** Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) **Pleading to Be Concise and Direct—Consistency.**

(1) Each averment of a pleading shall be simple, concise and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

(f) **Construction of Pleading.** All pleadings shall be so construed as to do substantial justice.

(Adopted by SCO 5 October 9, 1959; amended by SCO 1153 effective July 15, 1994; by SCO 1269 effective July 15, 1997; and by SCO 1740 effective nunc pro tunc to September 7, 2010)

Note: In 1996, the legislature enacted AS 45.08.114, which establishes special pleading requirements in an action on a certificated security against the issuer. According to § 70 ch. 17 SLA 1996, this statute has the effect of amending Civil Rule 8 by requiring that a denial of a signature on a certificated security be specific or the signature is admitted, and by requiring a denial even if a responsive pleading is not required.

Note: Chapter 54 SLA 2005 (HB 95) enacted extensive amendments and new provisions related to public health, including public health emergencies and disasters. According to Section 13(a) of the Act, AS 18.15.375(c)(3),(d), and (e), and 18.15.385(d)–(k), enacted in Section 8, have the effect of amending Civil Rule 8 by adding special proceedings, timing, and pleading requirements formatters involving public health.

Note: Chapter 64, SLA 2010 (SB 60), effective September 7, 2010, enacted changes relating to the Uniform Probate Code. According to section 12(c) of the Act, AS 13.12.545 and 13.12.550, as enacted by section 8 of the Act, have the effect of amending Civil Rule 8 by establishing special requirements for the contents of petitions under AS 13.12.530 and 13.12.535, enacted by section 8 of the Act.

Cross References

CROSS REFERENCE: AS 09.68.020

LAW REVIEW COMMENTARIES

"Summary Judgment In Alaska," 32 Alaska L. Rev. 181 (2015).

Rule 9. Pleading Special Matters.

(a) **Capacity.** It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of and organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) **Fraud, Mistake, Condition of the Mind.** In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) **Conditions Precedent.** In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) **Official Document or Act.** In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) **Judgment.** In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) **Statutes and Ordinances.** In pleading any statute or ordinance or other enactment of the state or a subdivision thereof, it is sufficient to identify the statute, ordinance or enactment without setting forth the matter contained therein.

(g) **Time and Place.** For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(h) **Special Damage.** When items of special damage are claimed, they shall be specifically stated.

(Adopted by SCO 5 October 9, 1959; amended by SCO 1153 effective July 15, 1994)

Rule 10. Form of Pleadings.

(a) **Caption—Names of Parties.** Every pleading shall contain a caption setting forth the title of the court, the judicial district in which the action is filed, the city in which the court is located, the title of the action (i.e., the names of the parties), the case number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with appropriate indication of other parties. When identifying parties in the complaint, the plaintiff shall include as much of each party's full legal name as is known to the plaintiff.

(b) **Paragraphs—Separate Statements.** All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) **Adoption by Reference—Exhibits.** Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

(d) **Title of Pleading—Citation of Statute.** A party filing a complaint, counterclaim, or cross-claim seeking relief under any specific statute is required to cite the statute relied upon in parentheses following the title of the pleading or in the heading for the section asserting the statutory claim.

(e) **Conformity With Rule 76.** All pleadings shall be prepared and filed in conformity with the provisions of Rule 76 as well as this rule.

(Adopted by SCO 5 October 9, 1959; amended by SCO 1415 effective October 15, 2000)

Note: AS 10.06.915, as enacted by ch. 166, § 1, SLA 1988, amended Civil Rule 10 by requiring that certain documents be attached to a complaint that appeals the disapproval of a writing under AS 10.06.915 by the commissioner of commerce and economic development.

Rule 11. Signing of Pleadings, Motions, and Other Papers; Sanctions.

(a) **Signature.** Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) **Representations to the Court.** By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(Adopted by SCO 5 October 9, 1959; amended by SCO 743 effective December 15, 1986; by SCO 1009 effective January 15, 1990; by SCO 1153 effective July 15, 1994; and by SCO 1728 effective October 15, 2012)

Note: AS 10.06.628, as enacted by ch. 166, § 1, SLA 1988, amended Civil Rule 11 by requiring that a complaint for an involuntary dissolution of a corporation under AS 10.06.628 be verified.

Rule 12. Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on Pleadings.

(a) **When Presented.** A defendant shall serve an answer within 20 days after the service of the summons and complaint upon that defendant, unless otherwise directed when service of process is made pursuant to Rule 4(e). A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after the service upon that party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The state or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within 40 days after the service upon the attorney general of the pleading in which the claim is asserted. A non-governmental party shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim within 40 days after service upon an officer or agency of the state appointed, authorized, or designated as agent to receive service for such party pursuant to statute. An individual in a foreign country who is served with a summons and complaint under subsection (d)(13) of Rule 4 shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within 40 days after service upon that individual. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by

order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) **How Presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. A decision granting a motion to dismiss is not a final judgment under Civil Rule 58. When the decision adjudicates all unresolved claims as to all parties, the judge shall direct the appropriate party to file a proposed final judgment. The proposed judgment must be filed within 20 days of service of the decision, on a separate document distinct from any opinion, memorandum or order that the court may issue.

(c) **Motion for Judgment on the Pleadings.** After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. A decision granting a motion for judgment on the pleadings is not a final judgment under Civil Rule 58. When the decision adjudicates all unresolved claims as to all parties, the judge shall direct the appropriate party to file a proposed final judgment. The proposed judgment must be filed within 20 days of service of the decision, on a separate document distinct from any opinion, memorandum or order that the court may issue.

(d) **Preliminary Hearings.** The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) **Motion for More Definite Statement.** If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other times as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) **Motion to Strike.** Upon motion made by a party before responding to a pleading, or, if no responsive pleading is permitted by these rules, upon motion by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) **Consolidation of Defenses in Motion.** A party who makes a motion under the rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule, but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except as provided in subdivision (h) (2) hereof on any of the grounds there stated.

(h) **Waiver or Preservation of Certain Defenses.**

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15 (a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter the court shall dismiss the action.

(Adopted by SCO 5 October 9, 1959; amended by SCO 258 effective November 15, 1976; by SCO 1153 effective July 15, 1994; by SCO 1430 effective April 15, 2002; and by SCO 1570 effective October 15, 2005)

Note: Ch. 77 SLA 2002 (HB 157), Section 2, adds new Chapter 26 to Title 6 of the Alaska Statutes, concerning providers of fiduciary services. According to Section 9 of the Act, AS 06.26.760(b)(2) has the effect of amending Civil Rule

12 by postponing the deadlines for serving an answer to a complaint, a third-party answer, a reply to a counterclaim, a cross-claim, and an answer to a cross-claim by a trust company in a civil action when the Department of Community and Economic Development has taken possession of the trust company.

Rule 13. Counterclaim and Cross—Claim.

(a) **Compulsory Counterclaims.** A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

(b) **Permissive Counterclaims.** A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) **Counterclaim Exceeding Opposing Claim.** A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) **Counterclaim Against the State.** These rules shall not be construed to enlarge beyond the limits now fixed by law the right to counterclaims or to claim credits against the state or an officer or agency thereof.

(e) **Counterclaim Maturing or Acquired After Pleading.** A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(f) **Omitted Counterclaim.** When a pleader fails to set up a counterclaim through oversight, inadvertence or excusable neglect or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.

(g) **Cross—Claim Against Co-Party.** A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is aimed is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) **Joinder of Additional Parties.** Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

(i) **Separate Trials—Separate Judgment.** If the court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

(Adopted by SCO 5 October 9, 1959; amended by SCO 258 effective November 15, 1976; and by SCO 1153 effective July 15, 1994)

Cross References

(d) **CROSS REFERENCE:** AS 09.60.050; AS 09.50.250

(e) **CROSS REFERENCE:** AS 09.68.020

Rule 14. Third-Party Practice.

(a) **When Defendant May Bring in Third Party.** At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than 10 days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

(b) **When Plaintiff May Bring in Third Party.** When a counterclaim is asserted against the plaintiff, the plaintiff may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

(c) **Equitable Apportionment.** For purposes of apportioning damages under AS 09.17.080, a defendant, as a third-party plaintiff, may follow the procedure of paragraph (a)

to add as a third-party defendant any person whose fault may have been a cause of the damages claimed by the plaintiff. Judgment may be entered against a third-party defendant in favor of the plaintiff in accordance with the third-party defendant's respective percentage of fault, regardless of whether the plaintiff has asserted a direct claim against the third-party defendant.

(Adopted by SCO 5 October 9, 1959; amended by SCO 258 effective November 15, 1976; by SCO 1153 effective July 15, 1994; and by SCO 1200 effective July 15, 1995)

Rule 15. Amended and Supplemental Pleadings.

(a) **Amendments.** A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) **Amendments to Conform to the Evidence.** When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) **Relation Back of Amendments.** Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by Rule 4(j) for service of the summons and complaint, that party (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

(d) **Supplemental Pleadings.** Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

(e) **Form.** Unless otherwise permitted by the court, every pleading to which an amendment is permitted as a matter of right or has been allowed by order of the court, must be retyped or reprinted and filed so that it will be complete in itself, including the exhibits, without reference to the superseded pleading. No pleading will be deemed to be amended until this subdivision of this rule has been complied with. All amended pleadings shall contain copies of all exhibits referred to in such amended pleadings. Permission may be obtained from the court, if desired, for the removal of any exhibit or exhibits attached to prior pleadings, in order that the same may be attached to the amended pleading.

(Adopted by SCO 5 October 9, 1959; amended by SCO 258 effective November 15, 1976; by SCO 1153 effective July 15, 1994; and by SCO 1571 effective October 15, 2005)

Rule 16. Pretrial Conferences; Scheduling; Management.

(a) **Pretrial Conferences; Objectives.** In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as:

(1) expediting the disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation; and

(5) facilitating the settlement of the case, including use of alternative dispute resolution procedures such as mediation, early neutral evaluation, arbitration, and settlement conferences.

(b) **Scheduling Order.**

(1) Except in categories of actions exempted under Rule 16(g), the judge shall enter a scheduling order that limits or establishes the time:

(A) to join other parties and to amend the pleadings;

(B) under AS 09.17.080,

(i) to specifically identify potentially responsible persons;

(ii) to move to join specifically identified potentially responsible persons; and

(iii) to move to determine whether a sufficient opportunity to join a potentially responsible person is lacking;

(C) to file motions;

(D) to disclose expert witnesses and reports required under Rule 26(a)(2);

(E) to supplement disclosures required under Rule 26(a);

(F) to identify witnesses and exhibits;

(G) to complete discovery; and

(H) for trial or the trial setting conference.

The scheduling order may also address:

(I) modification of the discovery limitations contained in these rules, including the length of depositions in light of the factors listed in Rule 30(d)(2), and the extent of discovery to be permitted;

(J) the date or dates for conferences before trial;

(K) the use and timing of an alternative dispute resolution procedure;

(L) the time to file any challenges to the reliability of scientific evidence;

(M) any issues related to proceedings to determine the amount of punitive damages;

(N) disclosure or discovery of electronically stored information; and

(O) any other matters appropriate in the circumstances of the case.

The order shall issue as soon as practicable but in any event within 90 days after the appearance of the defendants or pursuant to a local uniform pretrial order issued and adopted according to the provisions of Administrative Rule 46. A schedule shall not be modified except upon a showing of good cause and by leave of court.

(2) The judge shall meet with the attorneys for the parties and any unrepresented parties prior to entering the scheduling order unless the judge determines that a conference is unnecessary or a local uniform pretrial order issued and adopted under Administrative Rule 46 establishes a different procedure. The court shall distribute notice of the conference date as soon as practicable after the appearance of the defendants. The conference may be held on or off the record.

(c) **Subjects for Consideration at Pretrial Conferences.** At any conference under this rule consideration may be given, and the court may take appropriate action, with respect to:

(1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(4) the avoidance of unnecessary proof and of cumulative evidence, and limitations or restrictions on the use of testimony under Evidence Rule 702;

(5) the appropriateness and timing of summary adjudication under Rule 56;

(6) the control and scheduling of discovery, including orders affecting disclosures and discovery pursuant to Rule 26 and Rules 29 through 37;

(7) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

(8) the advisability of referring matters to a master;

(9) settlement and the use of special procedures to assist in resolving the dispute when authorized by statute or local rule;

(10) the form and substance of the pretrial order;

(11) the disposition of pending motions;

(12) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(13) an order for a separate trial pursuant to Rule 42(b) with respect to a claim, counterclaim, cross-claim, or third-party claim, or with respect to any particular issue in the case;

(14) an order directing a party or parties to present evidence early in the trial with respect to a manageable issue that could, on the evidence, be the basis for a judgment as a matter of law under Rule 50(a);

(15) an order establishing a reasonable limit on the time allowed for presenting evidence; and

(16) such other matters as may facilitate the just, speedy, and inexpensive disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed. If appropriate, the court may require that a party or its representative be present or reasonably available by telephone in order to consider possible settlement of the dispute.

(d) **Final Pretrial Conference.** Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

(e) **Pretrial Orders.** After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

(f) **Sanctions.** If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

(g) **Actions Exempted from Rule 16(b).** The following categories of cases are exempted from the requirement of scheduling conferences and scheduling orders under Rule 16(b):

(1) special proceedings listed in Part XII of these rules, including habeas corpus petitions, forcible entry and detainer claims, and dissolution of marriage and divorce actions;

(2) paternity cases;

(3) custody cases;

(4) small claims cases;

(5) actions to enforce out-of-state judgments;

(6) eminent domain cases;

(7) proceedings for post-conviction relief under Criminal Rule 35.1; and

(8) proceedings to obtain a domestic violence protective order under AS 18.66.100 and AS 18.66.110 or a stalking protective order under AS 18.65.850 and AS 18.65.855.

(Adopted by SCO 5 October 9, 1959; amended by SCO 29 effective December 27, 1960; by SCO 49 effective January 1, 1963; by SCO 413 effective August 1, 1980; by SCO 865 effective July 15, 1988; by SCO 1153 effective July 15, 1994; by SCO 1172 effective July 15, 1995; by SCO 1266 effective July 15, 1997; by SCO 1318 effective July 15, 1998; by SCO 1403 effective October 15, 2000; by SCO 1425 effective April 15, 2001; by SCO 1437 effective October 15, 2001; by SCO 1529 effective November 5, 2003; by SCO 1569 effective October 15, 2005; by SCO 1647 effective October 15, 2007; and by SCO 1682 effective April 15, 2009)

Note: Civil Rule 16(b)(1)(K) is intended specifically to govern challenges to scientific evidence brought under the standard set forth in *State v. Coon,* 974 P.2d 386 (Alaska 1999) *(discussing Daubert v. Merrell Dow Pharmaceuticals, Inc.,* 509 U.S. 579 (1993))

Note to SCO 1647: The supreme court has approved pretrial procedures for Anchorage cases that vary from those specified in this rule. Civil Rule 16(b)(1) sets out the normal timing for issuance of a scheduling order and allows a validly-adopted local uniform pretrial order to set a different time. Civil Rule 16(b)(2) provides that a validly-adopted local uniform pretrial order may set a different procedure. As permitted under Civil Rule 16(b)(1), the superior court in Anchorage issues its scheduling order, Administrative Order 3AO-03-04 (Amended) at a different time. That Order also sets a different procedure under Civil Rule 16(b)(2). Administrative Order 3AO-03-04 (Amended), commonly referred to as the Anchorage Uniform Pretrial order, was issued and adopted according to the provisions of Administrative Rule 46, and is available on the court system's website at:
http://www. courts.alaska.gov /orders-cr16-26.htm.

Rule 16.1. Special Procedures for Reducing Litigation Delay. (Rescinded)

(SCO 669 effective February 24, 1986; amended by SCO 709 effective September 15, 1986; by SCO 742 effective December 15, 1986; by SCO 879 effective July 15, 1988; by SCO 954 effective July 15, 1989; by SCO 1032 effective nunc pro tunc January 15, 1990; and by SCO 1172 effective July 15, 1995; and rescinded by SCO 1266 effective July 15, 1997)

Rule 16.2. Informal Trials in Domestic Relations Cases.

(a) Scope. Informal trials may be held to resolve some or all issues in actions for divorce, property division, child custody, and child support, including motions to modify. This rule applies to trial proceedings and does not modify other Civil Rules.

(b) General. An informal trial is an alternative trial procedure to which the parties, their attorneys, and the court voluntarily agree. Under this model, 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, and the traditional format used to question witnesses at trial does not apply. In most cases, the only witnesses will be the parties. In the discretion of the court, other relevant witnesses may be called.

(c) Election. In a case that is proceeding to trial, the court may at any time offer the parties the option of electing the informal trial process. If the parties make that election, the

court will explain the process and obtain their consent. The election of a formal or informal trial process does not diminish the court's authority to question witnesses or otherwise manage the proceedings in the interests of justice.

(d) Withdrawal. The court may allow a party to withdraw an informal trial election as long as the other party would not be prejudiced by the withdrawal. The court will not allow a withdrawal of an election that has the effect of postponing the trial date absent a showing of good cause. The court may at any time direct that a case proceed under the formal process, even if the trial or hearing has already commenced using informal procedures.

(e) Trial Procedures. An informal trial will proceed as follows:

(1) The court will ask each party or the party's attorney for a summary of the issues to be decided.

(2) Each party will be allowed to speak to the court under oath concerning all issues in dispute. Only the court may question the party to develop evidence required by law. The court will ask each party or the party's attorney whether the party wishes the court to ask follow up questions or inquire about other issues. The court will offer each party the opportunity to respond to the factual information provided by the other party.

(3) Each party may offer any relevant documents or other evidence that the party wishes the court to consider. The court will determine whether to accept the items into evidence and what weight, if any, to give each item. Letters or other submissions by the parties' children that suggest custody or parenting preferences are discouraged. The court may require additional documents or testimony from other witnesses to supplement the record.

(4) Expert reports may be admitted into evidence without supporting testimony. If the expert is called as a witness, the expert may be questioned by the parties, their attorneys, or the court.

(5) The court will offer each party or the party's attorney the opportunity to make a closing statement.

(SCO 1826 effective April 15, 2015)

Note to SCO 1826: At the end of three years, the Administrative Director will report to the Supreme Court on the efficacy of informal trials in domestic relations cases under Civil Rule 16.2 and make recommendations.

PART IV. PARTIES

Rule 17. Parties Plaintiff and Defendant—Capacity.

(a) **Real Party in Interest.** Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute of the state so provides, an action for the use or benefit of another shall be brought in the name of the state. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) **Capacity to Sue or be Sued.** The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of the individual's domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. A partnership or other unincorporated association may sue or be sued in its common name.

(c) **Infants or Incompetent Persons.** Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

(d) **Unknown Parties.** All persons who are or may be interested in the subject matter of an action relating to real property in the state whose names cannot be ascertained after diligent inquiry may be made parties by being named and described as unknown claimants or unknown owners, or as unknown heirs, devisees, legatees, or assigns of any deceased person who may have been interested in the subject matter of the action. If it cannot be ascertained after diligent inquiry whether a person who is or may be interested in the subject matter of the action is alive or dead, or what disposition may have been made of the person's interests, or where the person resides if alive, the person and everyone claiming under the person may be made a party by naming the person and adding to such name "or the unknown heirs, devisees, legatees, or assigns of [the person's name]."

(Adopted by SCO 5 October 9, 1959; amended by SCO 49 effective January 1, 1963, by SCO 258 effective November 15, 1976; by SCO 465 effective June 1, 1981; and by SCO 1277 effective July 15, 1997)

Editor's Note: Ch. 63, § 30, SLA 1977 provides that "Section 3 of this Act has the effect of limiting the discretionary authority of the court to appoint a guardian ad litem under Rule 17(b), Alaska Rules of Civil Procedure, and Rules 11(a) and 15, Alaska Rules of Children's Procedure, by requiring as a condition of appointment that the court find that the best interests of the child need articulation. Further, this Act requires limitation of the duration of the appointment, limits the scope of the guardian ad litem's authority, and

establishes the geographical area from which the guardian ad litem may be selected."

Section 3 added a subsection (c) to AS 09.65.130.

Note: Chapter 84 SLA 04 (HB 427) enacted extensive changes to the guardianship and conservatorship statutes. According to Section 32 of the Act, AS 08.26.100, enacted in Section 2, has the effect of changing Civil Rule 17(c) by restricting the persons that can be appointed as guardians or conservators and thereby limiting the orders the court is authorized to make with regard to the protection of infants and incompetent persons.

Cross References

CROSS REFERENCE: AS 09.15.010; AS 09.15.020.

Rule 18. Joinder of Claims and Remedies.

(a) **Joinder of Claims.** A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims either legal or equitable or both as the party has against an opposing party.

(b) **Joinder of Remedies—Fraudulent Conveyances.** Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to that plaintiff, without first having obtained a judgment establishing the claim for money.

(Adopted by SCO 5 October 9, 1959; amended by SCO 258 effective November 15, 1976; and by SCO 1153 effective July 15, 1994)

Rule 19. Joinder of Persons Needed for Just Adjudication.

(a) **Persons to Be Joined if Feasible.** A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

(b) **Determination by Court Whenever Joinder Not Feasible.** If a person as described in subsection (a)(1)–(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) **Pleading Reasons for Nonjoinder.** A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a) (1)–(2) hereof who are not joined, and the reasons why they are not joined.

(d) **Exception of Class Actions.** This rule is subject to the provisions of Rule 23.

(Adopted by SCO 5 October 9, 1959; rescinded and promulgated by SCO 258 effective November 15, 1976; amended by SCO 1153 effective July 15, 1994)

Note: AS 10.06.015(a)(1), as enacted by ch. 166, § 1, SLA 1988, amended Civil Rule 19 by making parties to a contract covered by AS 10.06.015(a)(1), indispensable parties to an action under AS 10.06.015(a)(1). AS 10.06.378(c) as enacted by ch. 166, § 1, SLA 1988, amended Civil Rule 19 by allowing a shareholder sued under the section to join certain parties in a lawsuit against the shareholder without using the criteria of Civil Rule 19. AS 10.06.463, as enacted by ch. 166, § 1, SLA 1988, amended Civil Rule 19 by requiring that a corporation be made a party to an action to remove a director of the corporation. AS 10.06.580(b), as enacted by ch. 166, § 1, SLA 1988, amended Civil Rule 19 by making qualified dissenting shareholders indispensable parties to an action covered by AS 10.06.580.

Rule 20. Permissive Joinder of Parties.

(a) **Permissive Joinder.** All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) **Separate Trials.** The court may make such orders as will prevent a party from being embarrassed, delayed or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

(Adopted by SCO 5 October 9, 1959; amended by SCO 258 effective November 15, 1976; and by SCO 1153 effective July 15, 1994)

Note: AS 10.06.675, as enacted by ch. 166, § 1, SLA 1988, amended Civil Rule 20 by allowing a corporation to join a member who received an improper distribution in an action under AS 10.06.675 without regard to the criteria for joinder in Civil Rule 20.

Rule 21. Misjoinder and Non-Joinder of Parties.

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

(Adopted by SCO 5 October 9, 1959)

Rule 22. Interpleader.

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

(Adopted by SCO 5 October 9, 1959; amended by SCO 1153 effective July 15, 1994)

Rule 23. Class Actions.

(a) **Prerequisites to a Class Action.** One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) **Class Actions Maintainable.** An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) The prosecution of separate actions by or against individual members of the class would create a risk of

(A) Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) The party opposing the class has acted or refuses to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the finding include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

(c) **Determination by Order Whether Class Action to Be Maintained—Notice—Judgment—Actions Conducted Partially as Class Actions.**

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b) (3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under subdivision (b) (1) or (b) (2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in the action maintained as a class action under subdivision (b) (3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c) (2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) **Orders in Conduct of Actions.** In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) **Dismissal or Compromise.** A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

(Adopted by SCO 5 October 9, 1959; rescinded and promulgated by SCO 258 effective November 15, 1976; amended by SCO 1153 effective July 15, 1994; by SCO 1163 effective July 15, 1994; and by SCO 1361 effective October 15, 1999)

Note: Chapter 79 § 2 SLA 1999 enacts AS 09.65.260(c), which relates to class actions for damages arising from the year 2000 date change and caused directly or indirectly by a failure of an electronic computing device. According to § 4 of the act, the enactment of AS 09.65.260(c) has the effect of amending Civil Rule 23, by requiring, in a class action relating to the year 2000 date change, that the aggregate claim of all members of the class for economic loss exceeds $150,000.

Rule 23.1. Derivative Actions By Shareholders.

(a) An action may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor by a holder of shares of the corporation of voting trust certificates of the corporation, or of a beneficial interest in shares or certificates of the corporation.

(b) In a derivative action, the complaint shall be verified and shall allege that the plaintiff was a shareholder, of record or beneficially, or the holder of voting trust certificates at the time or during any part of the transaction of which the plaintiff complains or that the plaintiff's shares or voting trust certificates devolved upon the plaintiff by operation of law from a holder who was a holder at the time or during any part of the transaction complained of. A shareholder who does not meet the requirements of this section may be allowed in the discretion of the court to maintain the action on a preliminary showing to and determination by the court, by motion and after a hearing at which the court considers evidence, by affidavit or testimony, as it considers material, that

(1) there is a strong prima facie case in favor of the claim asserted on behalf of the corporation;

(2) no other similar action has been or is likely to be instituted;

(3) the plaintiff acquired the shares before there was disclosure to the public or to the plaintiff of the wrongdoing of which the plaintiff complains;

(4) unless the action can be maintained the defendant may retain a gain derived from the defendant's willful breach of a fiduciary duty; and

(5) the requested relief will not result in unjust enrichment of the corporation or a shareholder of the corporation.

(c) Unless excused on grounds that a majority of the directors is implicated in or under the direct or indirect control of a person who is implicated in the injury to the corporation, before an action in the right of a domestic or foreign corporation is instituted a plaintiff who has standing under (b) of this section shall make a formal demand upon the board to secure the action the plaintiff desires.

(d) If a shareholder fails to make a formal demand under (c) of this section the complaint shall state with particularity the facts establishing excuse under (c) of this section. In a motion to dismiss for failure to make demand on the board the shareholder shall have the burden to establish excuse.

(e) In a case in which demand on the board is made under (c) of this section, a decision by the board that, in its business judgment, the litigation would not be in the best interest of the corporation terminates the right created by (a) of this section.

(f) In a case in which demand on the board is excused under (c) of this section or the decision of the board under (e) of this section is rejected by the court as inconsistent with the directors' duties of care and loyalty to the corporation, a plaintiff who has standing under (b) of this section shall have the right to commence or continue the action created by (a) of this section. Notwithstanding (c) or (e) of this section, disinterested, noninvolved directors acting as the board or a duly charged board committee may petition the court to dismiss the plaintiff's action on grounds that in their independent, informed business judgment the action is not in the best interests of the corporation. The petitioners shall have the burden of establishing to the satisfaction of the court their disinterest, independence from any direct or indirect control of defendants in the action, and the informed basis on which they have exercised their asserted business judgment. If the court is satisfied that the petitions are disinterested, independent, and informed it shall then exercise an independent appraisal of the plaintiff's action to determine whether, considering the welfare

of the corporation and relevant issues of public policy, it should dismiss the action.

(g) A shareholder action otherwise in conformity with this section shall not be dismissed because the alleged injury or wrong to the corporation has been ratified by the outstanding shares. A court may consider the fact of ratification in framing any order for relief to which it considers the corporation entitled.

(h) In an action instituted or maintained in the right of a corporation by the holder or holders of record of less than five percent of the outstanding shares of any class of the corporation or of voting trust certificates for these shares, the corporation in whose right the action is brought or the defendants may at any time before final judgment move the court to require the plaintiff to give security for the reasonable expense, including attorney fees, that may be incurred by the moving party. The amount of the security may be increased or decreased from time to time in this discretion of the court upon a showing that the security has become inadequate or excessive. The corporation or other defendants may have recourse to the security in an amount as the court may determine upon the termination of the derivative action, whether or not the court finds the action was brought without reasonable cause.

(i) A derivative action may not be discontinued, abandoned, compromised or settled without the approval of the court having jurisdiction of the action. If the court determines that the interests of the shareholders or any class or classes of shareholders will be substantially affected by a discontinuance, abandonment, compromise, or settlement, the court in its discretion may direct that notice, by publication or otherwise, shall be given to the shareholders or class or classes of shareholders whose interests will be affected. If the court directs notice to be given, it shall determine which of the parties to the action shall bear the expense of giving the notice in an amount the court determines to be reasonable in the circumstances. The amount shall be awarded as special costs of the action.

(j) If the derivative action is successful, in whole or in part, or if anything is received as a result of the judgment, compromise, or settlement of that action, the court may award to the plaintiff or plaintiffs reasonable expenses, including reasonable attorney fees, and shall direct an accounting to the corporation for the remainder of the proceeds. This subsection does not apply to a judgment rendered only for the benefit of injured shareholders and limited to a recovery of the loss or damage sustained by them.

(Added by SCO 258 effective November 15, 1976; amended by Chief Justice Special Order No. 2052a effective July 1, 1989)

Note: Civil Rule 23.1 in its entirety was adopted by the Alaska Legislature in ch. 166, §§ 1, 17, SLA 1988, rather than by the Alaska Supreme Court.

Rule 23.2. Actions Relating to Unincorporated Associations.

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interest of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23 (d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e).

(Added by SCO 258 effective November 15, 1976)

Rule 24. Intervention.

(a) **Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) **Permissive Intervention.** Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) **Procedure.** A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the ground therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. When the constitutionality of a state statute affecting the public interest is drawn in question in any action to which the state or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of Alaska of such fact, and the state shall be permitted to intervene in the action.

(Adopted by SCO 5 October 9, 1959; amended by SCO 258 effective November 15, 1976; corrected January, 1993; amended by SCO 1153 effective July 15, 1994; by SCO 1342 effective September 15 1998; by SCO 1713 effective May 16, 2009; and by SCO 1716 effective July 1, 2009)

Note: AS 10.06.628, as enacted by ch. 166, § 1, SLA 1988, amended Civil Rule 24 by allowing a shareholder or creditor of a corporation to intervene in an action for involuntary dissolution of the corporation under AS 10.06.628.

Note: Chapter 105 SLA 1998 adopts AS 13.36.175 pertaining to contract actions against a trustee. According to section 23 of the act, subsection (c) of this statute amends Civil Rule 24 by allowing a beneficiary, or the attorney general and

certain corporations under certain circumstances, to intervene in a contract action against a trustee without satisfying the criteria in the court rule. The act also adopts AS 13.36.185 pertaining to the tort liability of a trust. According to section 23 of the act, subsection (d) of this statute also amends Civil Rule 24 by allowing a beneficiary to intervene in a tort action against a trust without satisfying the criteria in the court rule.

Note: Ch. 61 SLA 2002 (HB 52), Section 2, repeals and reenacts AS 33.36.110 to authorize the governor to execute the Interstate Compact for Adult Offender Supervision. According to Section 7 of the Act, Article VIII(a)(2) of the Compact, contained in the new AS 33.36.110, would have the effect of amending Civil Rule 24 by entitling the Interstate Commission for Adult Offender Supervision to have standing to intervene in a judicial proceeding in this state that pertains to the Interstate Compact for Adult Offender Supervision and that may affect the powers, responsibilities, or actions of that commission.

Note (effective nunc pro tunc to May 16, 2009): Chapter 10 SLA 2009 (HB 137), effective May 16, 2009, enacted changes relating to an Interstate Compact on Educational Opportunity for Military Children. According to section 2 of the Act, AS 14.34.010-.090 have the effect of changing Civil Rule 24(b) by entitling the Interstate Commission on Educational Opportunity for Military Children to have standing to intervene in a judicial proceeding in this state that pertains to the Interstate Compact on Educational Opportunity for Military Children, and in which the validity of a compact provision or rule is at issue for which judicial determination has been sought.

Note (effective nunc pro tunc to July 1, 2009): Chapter 37 SLA 2009 (HB 141), effective July 1, 2009, enacted changes relating to the Interstate Compact for Juveniles. According to section 11 of the Act, the changes made to AS 47.15.010 have the effect of changing Civil Rule 24(b) by entitling the Interstate Commission for Juveniles to have standing to intervene in a judicial proceeding in this state that pertains to the Interstate Compact for Juveniles, and in which the validity of a compact provision or rule is an issue for which judicial determination is sought.

Rule 25. Substitution of Parties.

(a) **Death.**

If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party, and shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(b) **Incompetency.** If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against the party's representative.

(c) **Transfer of Interest.** In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

(d) **Public Officers—Death or Separation From Office.**

(1) When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer sues or is sued in an official capacity, the officer may be described as a party by official title rather than by name; but the court may require the officer's name to be added.

(Adopted by SCO 5 October 9, 1959; amended by SCO 258 effective November 15, 1976; by SCO 633 effective September 15, 1985; by SCO 1153 effective July 15, 1994; by SCO 1396 effective October 15, 2000; and by SCO 1770, effective April 16, 2012)

Note: Chapter 115 SLA 00 adopts AS 32.06.906 relating to the merger of partnerships. This section is effective January 1, 2001. Under AS 32.06.906(a)(4), an action or proceeding pending against a partnership or limited partnership that is a party to a merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding. According to section 9 of the act, this provision has the effect of amending Civil Rule 25(c) by allowing certain substitutions of parties as a matter of right.

PART V. DEPOSITIONS AND DISCOVERY

Rule 26. General Provisions Governing Discovery; Duty of Disclosure.

(a) **Required Disclosures; Methods to Discover Additional Matter.** Disclosure under subparagraphs (a)(1), (2), and (3) of this rule is required in all civil actions, except those categories of cases exempted from the requirement of scheduling conferences and scheduling orders under Civil Rule 16(g), adoption proceedings, and prisoner litigation against the state under AS 09.19.

(1) *Initial Disclosures.* Except to the extent otherwise directed by order or rule, a party shall, without awaiting a discovery request, provide to other parties:

(A) the factual basis of each of its claims or defenses;

(B) the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information and whether the attorney-client privilege applies;

(C) the name and, if known, the address and telephone number of each individual who has made a written or recorded statement and, unless the statement is privileged or otherwise protected from disclosure, either a copy of the statement or the name and, if known, the address and telephone number of the custodian;

(D) subject to the provisions of Civil Rule 26(b)(3), a copy of, or a description by category and location of, all documents, electronically stored information, data compilations, and tangible things that are relevant to disputed facts alleged with particularity in the pleadings;

(E) subject to the provisions of Civil Rule 26(b)(3), all photographs, diagrams, and videotapes of persons, objects, scenes and occurrences that are relevant to disputed facts alleged with particularity in the pleadings;

(F) each insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment;

(G) all categories of damages claimed by the disclosing party, and a computation of each category of special damages, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such claims are based, including materials bearing on the nature and extent of injuries suffered; and

(H) the identity, with as much specificity as may be known at the time, of all potentially responsible persons within the meaning of AS 09.17.080, and whether the party will choose to seek to allocate fault against each identified potentially responsible person.

Unless otherwise directed by the court, these disclosures shall be made at or within 10 days after the meeting of the parties under subsection (f). A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) *Disclosure of Expert Testimony.*

(A) In addition to the disclosures required by subparagraph (a)(1), a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under Evidence Rules 702, 703, or 705.

(B) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(C) These disclosures shall be made at the times and in the sequence directed by the court. The parties shall supplement these disclosures when required under subparagraph (e)(1).

(D) No more than three independent expert witness may testify for each side as to the same issue in any given case. For purposes of this rule, an independent expert is an expert from whom a report is required under section (a)(2)(B). The court, upon the showing of good cause, may increase or decrease the number of independent experts to be called.

(3) *Pretrial Disclosures.* In addition to the disclosures required in the preceding paragraphs, a party shall provide to other parties the following information regarding the evidence that it may present at trial other than solely for impeachment purposes:

(A) the name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

(B) the designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(C) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

These disclosures shall be made at the times and in the sequence directed by the court. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and file a list disclosing (i) any objections to the use under Rule 32(a) of a deposition designated by another party under subparagraph (B), and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under subparagraph (C). Objections not so disclosed, other than objections under Rules 402 and 403 of the Rules of Evidence, shall be deemed waived unless excused by the court for good cause shown.

(4) *Form of Disclosures.* Unless otherwise directed by the court, all disclosures under subparagraphs (a)(1) and (2) shall be made in writing, signed, and served in accordance with Rule 5.

(5) *Methods to Discover Additional Matter.* Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) **Discovery Scope and Limits.** Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) *In General.* Parties may obtain discovery regarding any matter, not privileged which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Limitations.*

(A) The court may alter the limits in these rules on the number of depositions and interrogatories, the length of depositions under Rule 30, and the number of requests under Rule 36. The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under paragraph (c).

(B) A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26 (b)(2)(C). The court may specify conditions for the discovery.

(3) *Trial Preparation: Materials.* Subject to the provisions of subparagraph (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subparagraph (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a) (4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) *Trial Preparation: Experts.*

(A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If a report from the expert is required under section (a)(2)(B), the deposition shall not be conducted until after the report is provided.

(B) A party may, through interrogatories or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subparagraph; and (ii) with respect to discovery obtained under section (b)(4)(B) of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) *Claims of Privilege or Protection of Trial Preparation Materials.* When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the

nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(c) **Protective Orders.** Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the judicial district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the disclosure or discovery not be had; (2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition, after being sealed, be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way; and (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or other person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) **Timing and Sequence of Discovery.**

(1) *Timing of Discovery—Non-Exempted Actions.* In an action in which disclosure is required under Rule 26(a), a party may serve up to ten of the thirty interrogatories allowed under Rule 33(a) at the times allowed by section (d)(2)(C) of this rule. Otherwise, except by order of the court or agreement of the parties, a party may not seek discovery from any source before the parties have met and conferred as required by paragraph (f).

(2) *Timing of Discovery—Exempted Actions.* In actions exempted from disclosure under Rule 26(a), discovery may take place as follows:

(A) For depositions upon oral examination under Civil Rule 30, a defendant may take depositions at any time after commencement of the action. The plaintiff must obtain leave of court if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service under Rule 4(e) if authorized, except that leave is not required (i) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (ii) the plaintiff seeks to take the deposition under Civil Rule 30(a)(2)(C).

(B) For depositions upon written questions under Civil Rule 31, a party may serve questions at any time after commencement of the action.

(C) For interrogatories, requests for production, and requests for admission under Civil Rules 33, 34, and 36, discovery requests may be served upon the plaintiff at any time after the commencement of the action, and upon any other party with or after service of the summons and complaint upon that party.

(3) *Sequence of Discovery.* Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) **Supplementation of Disclosures and Responses.** A party who has made a disclosure under paragraph (a) or Civil Rule 26.1(b) or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired if ordered by the court or in the following circumstances:

(1) A party is under a duty to supplement at appropriate intervals its disclosures under paragraph (a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required under subdivision (a)(2)(B) the duty extends both to information contained in the report and to information provided through a deposition of the expert.

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(f) **Meeting of Parties; Planning for Discovery and Alternative Dispute Resolution.** Except when otherwise ordered and except in actions exempted from disclosure under Rule 26(a), the parties shall, as soon as practicable and in any event at least 14 days before a scheduling conference is held or a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, including whether an alternative dispute resolution procedure is appropriate, to make or arrange for the disclosures required by subparagraph (a)(1), and to develop a proposed discovery plan and a proposed alternative dispute resolution plan. The plan shall indicate the parties' views and proposals concerning:

(1) what changes should be made in the timing or form of disclosures under paragraph (a), including a statement as to when the disclosures under subparagraph (a)(1) were made or will be made and what are appropriate intervals for supplementation of disclosure under Rule 26(e)(1);

(2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(3) disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

(4) what changes should be made in the limitations on discovery imposed under these rules and what other limitations should be imposed;

(5) the plan for alternative dispute resolution, including its timing, the method of selecting a mediator, early neutral evaluator, or arbitrator, or an explanation of why alternative dispute resolution is inappropriate;

(6) whether a scheduling conference is unnecessary; and

(7) any other orders that should be entered by the court under paragraph (c) or under Rule 16(b) and (c).

The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging and being present or represented at the meeting, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 10 days after the meeting a written report outlining the plan.

(g) **[Applicable to cases filed on or after August 7, 1997.] Limited Discovery; Expedited Calendaring.** In a civil action for personal injury or property damage involving less than $100,000 in claims, the parties shall limit discovery to that allowed under District Court Civil Rule 1(a)(1) and shall avail themselves of the expedited calendaring procedures allowed under District Court Civil Rule 4.

(Adopted by SCO 5 October 9, 1959; amended by SCO 49 effective January 1, 1963; by SCO 149 dated December 27, 1971; by SCO 158 effective February 15, 1973; by Amendment No. 2 to SCO 158 dated July 30, 1973; by SCO 336 effective January 1, 1979; by SCO 1026 effective July 15, 1990; by SCO 1153 effective July 15, 1994; by SCO 1172 effective July 15, 1995; by SCO 1266 effective July 15, 1997; by SCO 1281 effective August 7, 1997; by SCO 1318 effective July 15, 1998; by SCO 1325 effective July 15, 1998; by SCO 1341 effective September 10, 1998; by SCO 1569 effective October 15, 2005; by SCO 1682 effective April 15, 2009; and by SCO 1834 effective October 15, 2014)

Note to SCO 1281: Paragraph (g) of this rule was added by ch. 26, sec. 40, SLA 1997. According to sec. 55 of the Act, the amendment to Civil Rule 26 applies "to all causes of action accruing on or after the effective date of this Act." The amendment to Rule 26 adopted by paragraph 1 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: Ch. 26, sec. 10, SLA 1997 repeals and reenacts AS 09.17.020 concerning punitive damages. New AS 09.17.020(e) prohibits parties from conducting discovery relevant to the amount of punitive damages until after the fact finder has determined that an award of punitive damages is allowed. This provision applies to causes of action accruing on or after August 7, 1997. See ch. 26, sec. 55, SLA 1997. According to sec. 48 of the Act, new AS 09.17.020(e) has the effect of amending Civil Rule 26 by limiting discovery in certain actions.

Note: Section 2 of chapter 95 SLA 1998 amends AS 09.19.050 to state that the automatic disclosure provisions of Civil Rule 26 do not apply in prisoner litigation against the state. According to section 13 of the act, this amendment has the effect of changing Civil Rule 26 "by providing that the automatic disclosure provisions of the rule do not apply to litigation against the state brought by prisoners."

Note to SCO 1647: The supreme court has approved certain procedures for Anchorage cases that vary from those specified in this rule. Civil Rule 26(a)(1) sets out a procedure to be used "[e]xcept to the extent otherwise directed by order or rule," and sets a timeline for disclosures "[u]nless otherwise directed by the court." Civil Rule 26(f) also sets out a procedure to be sued "except when otherwise ordered." In Anchorage, Administrative Order 3AO-03-04 (Amended) applies to modify the procedures set out in subdivisions (a)(1) and (f). That Order, commonly referred to as the Anchorage Uniform Pretrial Order, was issued and adopted according to the provisions of Administrative Rule 46, and is available on the court system's website at:
http://www. courts.alaska.gov /orders-cr16-26.htm.

Rule 26.1. Discovery and Disclosure in Divorce and Legal Separation Actions.

(a) **Generally.** This rule governs the information that must be disclosed by the parties in a divorce or legal separation case and the time when other discovery methods may be used. Discovery and disclosure in divorce and legal separation actions are otherwise governed by Civil Rule 26(a)(4) through (e), Civil Rules 27 through 37, and Civil Rule 90.1.

(b) **Initial Disclosures.**

(1) In all divorce and legal separation actions, a party shall, without awaiting a discovery request, provide to the other party:

(A) the legal description and street address of all real property, wherever located, in which either party has an interest, together with all appraisals, tax assessments, and broker's opinions regarding each such property obtained within the last two years;

(B) a signed and dated release, valid for six months from the date of signature, authorizing the other party to obtain all

earnings and employee benefit information (including but not limited to health insurance, cashable leave, stock options, and perquisites or in-kind compensation such as employer provided housing or transportation benefits) from the party's current employer;

(C) a signed and dated release, valid for six months from the date of signature, authorizing the other party to obtain all pension, retirement, deferred compensation, and profit sharing information from any plan in which the party is a participant or has accrued benefits;

(D) a listing of all accounts in banks, credit unions, brokerages, and other financial institutions on which the party has been a signatory within the past two years and in which the party has a personal or business interest, together with a signed and dated release, valid for six months from the date of signature, authorizing the other party to obtain all information regarding such accounts;

(E) copies of account statements for the past three months for all accounts listed in subparagraph (D);

(F) a listing of all outstanding debts together with written documentation or an account statement from each creditor indicating the principal balance currently owed and the payment terms;

(G) a listing by description and location of all personal property with a current fair market value over $100 in which either party has an interest, together with all appraisals, tax assessments, and broker's opinions regarding each such property obtained within the last two years;

(H) the most recent statements and reports from financial institutions or other sources pertaining to investments in which the party has an interest (including but not limited to stocks, bonds, certificates of deposit, IRAs, life insurance, and annuities);

(I) federal tax returns filed by the party or on the party's behalf, including all schedules and attachments (W-2 forms, 1099 forms, etc.) for the past three years, together with all year-end tax documentation (W-2 forms, 1098 forms, 1099 forms, extension requests, etc.) for the most recent tax year in the event that return has not yet been filed;

(J) pay stubs, vouchers, or other similar proof of income from all sources for the past two months, including but not limited to salaries and wages, overtime and tips, commissions, interest and dividends, income derived from self-employment and from businesses and partnerships, social security, veterans benefits, worker's compensation, unemployment compensation, Alaska Temporary Assistance Program (ATAP), Supplemental Security Income (SSI), disability benefits, Veteran Administration benefits, income from trusts or from an interest in an estate (direct or through a trust), and net rental income;

(K) an itemized list by description and location of all assets and debts listed above in (A) through (H) which the party considers non-marital and the basis for the non-marital designation;

(L) a description of the party's current medical coverage, including but not limited to the name of the provider, the policy or group number, the monthly cost of the policy, the names of family members currently covered by the policy, and whether any family members are eligible for other medical coverage, such as Medicare, Medicaid, Indian Health Service, or military medical benefits; and

(M) any other information or documentation required by local order.

(2) Unless otherwise permitted by the court, these disclosures shall be made within forty-five days after the filing of the answer. A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(c) **Scope and Timing of Discovery.**

(1) *Scope.* The disclosures mandated by subsection (b) are intended to provide minimum base information. Subsection (b) does not limit the scope or amount of discovery parties may properly request in a divorce or legal separation action.

(2) *Timing.* Discovery in a divorce or legal separation case may take place at the times allowed by Civil Rule 26(d)(2).

(Adopted by SCO 1325 effective July 15, 1998 and amended by SCO 1596 effective October 15, 2006)

Rule 27. Depositions Before Action or Pending Appeal.

(a) **Before Action.**

(1) *Petition.* A person who desires to perpetuate testimony regarding any matter that may properly be the subject of an action or proceeding in any court of the state, may file a verified petition in the superior court. The petition shall be entitled in the name of the petitioner and shall show: (1) that the petitioner expects to be a party to an action in a court of the state but is presently unable to bring it or cause it to be brought, (2) the subject matter of the expected action and the petitioner's interest therein, (3) the facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it, (4) the names or description of the persons the petitioner expects will be adverse parties and their addresses so far as known, and (5) the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) *Notice and Service.* The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition

stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served either within or without the state in the manner provided in Rule 4(d) for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4(d), an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. The compensation of the attorney may be fixed by the court and charged to the petitioner. If any expected adverse party is a minor or incompetent the provisions of Rule 17(c) apply. Upon a person other than an infant or an incompetent person, the notice may also be served in the manner provided by Civil Rule 4(h).

(3) *Order and Examination.* If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the deposition shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules; and the court may make orders of the character provided for by Rules 34 and 35. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such decision was filed.

(4) *Use of Deposition.* If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the United States or of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in a court of this state, in accordance with the provisions of Rule 32(a).

(b) **Pending Appeal and Review.** The court in which a judgment, order or decision has been rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the court, as follows:

(1) If an appeal has been taken from a judgment.

(2) If a petition for review of an order or decision of the court has been filed with the supreme court.

(3) If before the taking of an appeal or filing a petition for review, the time therefor has not expired.

In any case the party who desires to perpetuate the testimony may make a motion in the court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the court. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which the party expects to elicit from each; (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the court.

(Adopted by SCO 5 October 9, 1959; amended by SCO 90 effective July 24, 1967, by SCO 158 effective February 15, 1973; by SCO 888 effective July 15, 1988; by SCO 1153 effective July 15, 1994; and by SCO 1610 effective April 16, 2007)

Rule 28. Persons Before Whom Depositions May be Taken; Foreign Commissions and Letters Rogatory.

(a) **Within the State.** Within the state, depositions shall be taken before an officer authorized by the laws of this state to administer oaths, or before a person appointed by the court in which the action is pending. A person appointed has power to administer oaths and take testimony.

(b) **In Foreign Jurisdictions.** In all jurisdictions outside Alaska, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [here name the jurisdiction]." Evidence obtained in a foreign country in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

(c) **Disqualification for Interest.** No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action, except that in the case of an audio or audio-visual deposition, an attorney involved in the case may also operate or direct the operation of the recording machinery.

(Adopted by SCO 5 October 9, 1959; amended by SCO 158 effective February 15, 1973; by SCO 733 effective December 15, 1986; by SCO 1153 effective July 15, 1994; by SCO 1610 effective April 16, 2007; and by SCO 1853 effective October 15, 2015)

Rule 29. Stipulations Regarding Discovery Practice.

Unless otherwise directed by the court, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and that when so taken may be used like other depositions, and (2) modify other procedures governing or limitations placed upon discovery, except that stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may, if they would interfere with any time set for filing of motions, for hearing of a motion, or for trial, be made only with the approval of the court.

(Adopted by SCO 5 October 9, 1959; amended by SCO 158 effective February 15, 1973; by SCO 411 effective June 15, 1980; and by SCO 1172 effective July 15, 1995)

Rule 30. Depositions Upon Oral Examination.

(a) **When Depositions May Be Taken; When Leave is Required.**

(1) A party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties,

(A) a proposed deposition would result in more than three depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by third-party defendants, of witnesses other than:

(i) parties, which means any individual identified as a party in the pleadings and any individual whom a party claims in its disclosure statements is covered by the attorney-client privilege;

(ii) independent expert witnesses expected to be called at trial;

(iii) treating physicians; and

(iv) document custodians whose depositions are necessary to secure the production of documents or to establish an evidentiary foundation for the admissibility of documents;

(B) the person to be examined already has been deposed in the case; or

(C) a party seeks to take a deposition before the time specified in Rule 26(d) unless the notice contains a certification, with supporting facts, that the person to be examined is expected to leave Alaska and be unavailable for examination in this state unless deposed before that time.

(b) **Notice of Examination: General Requirements; Method of Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone.**

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to, or included in, the notice.

(2) *Reserved.*

(3) *Reserved.*

(4) *Reserved.*

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subparagraph (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or other remote electronic means. For purposes of this rule and Rules 28(a), 37(a)(1), and 37(b)(1), a deposition taken by such means is taken in the judicial district and at the place where the deponent is to answer questions.

(c) **Examination and Cross-Examination; Record of Examination; Oath; Objections.** Examination and cross-examination of witnesses may proceed as permitted at the trial under provisions of the Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. For an audio or audio-visual deposition, any officer authorized by the laws of this state to administer oaths shall swear the witness. The recording machinery may be operated by such officer, or someone acting under the officer's direction and in the officer's presence, even where such officer is also an attorney in the case. The testimony shall be taken stenographically or recorded by audio or audiovisual means. A party may arrange at the party's own expense to have any portion of the record typewritten.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings, shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) **Schedule and Duration; Motion to Terminate or Limit Examination.**

(1) Any objection to evidence during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. No specification of the defect in the form of the question or the answer shall be stated unless requested by the party propounding the question. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under paragraph (3). Continual and unwarranted off the record conferences between the deponent and counsel following the propounding of questions and prior to the answer or at any time during the deposition are prohibited.

(2) Depositions shall be of reasonable length. Oral depositions shall not, except pursuant to stipulation of the parties or order of the court, exceed six hours in length for parties, independent expert witnesses, and treating physicians and three hours in length for other deponents. The court shall allow additional time consistent with Rule 26(b)(2) if needed for a fair examination of the deponent or if the deponent or another party impedes or delays the examination. In deciding whether to allow additional time for fair examination of a deponent or class of deponents, the court may take into account, among other factors, the complexity of the case, the number of parties likely to examine a deponent, and the extent of relevant information possessed by the deponent. If the court finds that there has been an impediment, delay, or other conduct that has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

(3) At any time during a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the judicial district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) **Review by Witness; Changes; Signing.** If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days in which to review the transcript or recording after being notified by the officer that the transcript or recording is available and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subparagraph (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

(f) **Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.**

(1) The officer shall certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate shall be in writing and accompany the record of the deposition. The officer shall securely seal the deposition in an envelope or package indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly send it to the attorney who arranged for the transcript or recording, who shall store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to the deposition, and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(4) A party dismissed from an action shall deliver original depositions in the party's possession to the plaintiff or another party remaining in the action and shall promptly certify to the court that all depositions have been delivered and identify the party now responsible for their safekeeping. Unless otherwise ordered by the court or agreed to by the

parties, a party who has custody of an original deposition at the conclusion of a case must retain the deposition for one year after expiration of the time for filing an appeal, or, if an appeal is filed, for one year after conclusion of the appeal and any proceedings after remand. The deposition must be stored under conditions that will protect it against loss, destruction, tampering, or deterioration.

(g) **Failure to Attend or to Serve Subpoena; Expenses.**

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(Adopted by SCO 5 October 9, 1959; amended by SCO 158 effective February 15, 1973; by SCO 634 effective September 15, 1985: by SCO 731 effective December 15, 1986; by SCO 732 effective December 15, 1986; by SCO 773 effective December 15, 1986; by SCO 1085 effective January 15, 1992; by SCO 1124 effective July 15, 1993; by SCO 1153 effective July 15, 1994; by SCO 1172 effective July 15, 1995; and by SCO 1446 effective October 15, 2001)

Note to Rule 30(a)(2)(A): Evidence Rule 702(b) limits the number of expert witness who may be called to testify at trial.

Rule 30.1. Audio and Audio-Visual Depositions.

(a) **Authorization of Audio-Visual Depositions.**

(1) Any deposition upon oral examination may be recorded by audio or audio-visual means without a stenographic record. Any party may make at the party's own expense a simultaneous stenographic or audio record of the deposition. Upon request and at the expense of the requesting party, any party is entitled to an audio or audio-visual copy of the audio-visual recording.

(2) The audio or audio-visual recording is an official record of the deposition. A transcript prepared in accordance with Rule 30(c) is also an official record of the deposition.

(3) On motion for good cause the court may order the party taking, or who took, a deposition by audio or audio-visual recording to furnish at that party's expense a transcript of the deposition.

(b) **Use.** An audio or audio-visual deposition may be used for any purpose and under any circumstances in which a stenographic deposition may be used.

(c) **Notice.** The notice for taking an audio or audio-visual deposition and the subpoena for attendance at that deposition must state that the deposition will be recorded by audio or audio-visual means. If a court reporter will not be used to record the deposition, the notice must also state this fact.

(d) **Procedure.** The following procedure must be observed in recording an audio or audio-visual deposition:

(1) The deposition must begin with an oral statement which includes:

(A) the operator's name and business address;

(B) the name and business address of the operator's employer;

(C) the date, time, and place of the deposition;

(D) the caption of the case;

(E) the name of the witness;

(F) the party on whose behalf the deposition is being taken; and

(G) any stipulations by the parties.

(2) Counsel shall identify themselves on the recording.

(3) The oath must be administered to a witness on the recording.

(4) The videotaped deposition shall depict the witness in a waist-up shot, seated at a table. The camera and lens shall not be varied except as may be necessary to follow natural body movements of the witness or to present exhibits or describe evidence that is being used during the deposition.

(5) If the length of the deposition requires the use of more than one recording unit, the end of each unit and the beginning of each succeeding unit must be announced on the recording.

(6) At the conclusion of the deposition, a statement must be made on the recording that the deposition is concluded. A statement may be made on the recording setting forth any stipulations made by counsel concerning the custody of the recording and exhibits or other pertinent matters.

(7) Audio depositions must be indexed by a brief written log notation of the recorder counter number at the beginning of each examination whether direct, cross, redirect, etc. The log must be attached to the tape.

(8) Audio-visual depositions may be indexed by a time generator or similar method.

(9) An objection must be made as in the case of stenographic depositions.

(10) Unless otherwise stipulated by the parties, the original audio or audio-visual recording of a deposition shall be held by the party noticing the deposition.

(11) If the court issues an editing order, the original audio or audio-visual recording must not be altered.

(e) **Costs.** The reasonable expense of recording, editing, and using an audio or audio-visual deposition may be taxed as costs.

(f) **Standards.** The Administrative Director may establish standards for audio or audio-visual equipment and guidelines for taking and using audio or audio-visual depositions. Incompatible audio or audio-visual recordings must be conformed to the standards at the expense of the proponent. Conformed recordings may be used as originals.

(SCO 734 effective December 15, 1986; amended by SCO 990 effective January 15, 1990; and by SCO 1153 effective July 15, 1994)

Note to Civil Rule 30.1(f): The Administrative Director has not established standards for audio or audio-visual equipment or guidelines for taking and using audio or audio-visual depositions.

Rule 31. Depositions Upon Written Questions.

(a) **Serving Questions; Notice.**

(1) A party may take the testimony of any person, including a party, by deposition upon written questions without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties,

(A) a proposed deposition would result in more than three depositions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by third-party defendants, of witnesses other than:

(i) parties, which means any individual identified as a party in the pleadings and any individual whom a party claims in its disclosure statements is covered by the attorney-client privilege;

(ii) independent expert witnesses expected to be called at trial;

(iii) treating physicians; and

(iv) document custodians whose depositions are necessary to secure the production of documents or to establish an evidentiary foundation for the admissibility of documents;

(B) the person to be examined already has been deposed in the case; or

(C) a party seeks to take a deposition before the time specified in Rule 26(d).

(3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

(4) Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) **Officer to Take Responses and Prepare Record.** A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.

(c) **Notice of Filing.** When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

(Adopted by SCO 5 October 9, 1959; amended by SCO 158 effective February 15, 1973; by SCO 888 effective July 15, 1988; by SCO 1153 effective July 15, 1994; and by SCO 1172 effective July 15, 1995)

Rule 32. Use of Depositions in Court Proceedings.

(a) **Use of Depositions.** At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by the Alaska Rules of Evidence.

(2) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(A) that the witness is dead; or

(B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; or

(F) that the witness' testimony has been recorded on video tape.

A deposition taken without leave of court pursuant to a notice under Rule 30(a)(2)(C) shall not be used against a party who demonstrates that, when served with the notice, the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition; nor shall a deposition be used against a party who, having received less than 11 days notice of a deposition, has promptly upon receiving such notice filed a motion for a protective order under Rule 26(c)(2) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the United States or of any State and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Alaska Rules of Evidence.

(b) **Objections to Admissibility.** Subject to the provisions of Rule 28(c) and subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) **Effect of Taking or Using Depositions.** A party does not make a person the party's witness for any purpose by taking the person's deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under subdivision (a)(2) of this rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by that party or by any other party.

(d) **Effect of Errors and Irregularities in Depositions.**

(1) *As to Notice.* All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) *As to Disqualification of Officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) *As to Taking of Deposition.*

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five days after service of the last questions authorized.

(4) *As to Completion and Return of Deposition.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(Adopted by SCO 5 October 9, 1959; amended by SCO 158 effective February 15, 1973 and by Amendment No. 1 to SCO 158 effective February 15, 1973; by SCO 888 effective July 15, 1988; by SCO 1026 effective July 15, 1990; by SCO 1153 effective July 15, 1994; by SCO 1172 effective July 15, 1995; by SCO 1203 effective July 15, 1995; and by SCO 1482 effective October 15, 2002)

Rule 33. Interrogatories to Parties.

(a) **Availability.** Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation, a partnership, an association, or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Without leave of court or written stipulation, a party may serve only thirty interrogatories upon another party, including all discrete subparts. This limit includes interrogatories served under Rule 26(d)(1). Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of Rule 26(b)(2). Without leave of court or written stipulation, interrogatories may not be served before the time specified in Rule 26(d). There shall be sufficient space provided so that answers to the interrogatories propounded may be inserted thereon.

(b) **Answers and Objections.**

(1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.

(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29.

(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown.

(5) The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(c) **Scope; Use at Trial.** Interrogatories may relate to any matters which can be inquired into under Rule 26(b)(1), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(d) **Option to Produce Business Records.** Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer can be ascertained.

(Adopted by SCO 5 October 9, 1959; amended by SCO 158 effective February 15, 1973; amended by SCO 337 effective January 1, 1979; by SCO 465 effective June 1, 1981; by SCO 1172 effective July 15, 1995; by SCO 1266 effective July 15, 1997; by SCO 1305 effective January 15, 1998; and by SCO 1682 effective April 15, 2009)

Rule 34. Production of Documents, Electronically Stored Information, and Things, and Entry Upon Land for Inspection and Other Purposes.

(a) **Scope.** Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect, copy, test, or sample any designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained) translated, if necessary, by the respondent into reasonably usable form, or to inspect, copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) **Procedure.** The request shall set forth, either by individual item or by category, the items to be inspected, and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced. Without leave of court or written stipulation, a request may not be served before the time specified in Rule 26(d).

The party upon whom the request is served shall serve a written response within 30 days after the service of the request. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties, subject to Rule 29. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, including an objection to the requested form or forms for producing electronically stored information, stating the reasons

for the objection. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. If objection is made to the requested form or forms for producing electronically stored information – or if no form was specified in the request – the responding party must state the form or forms it intends to use. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

Unless the parties otherwise agree or the court otherwise orders:

(1) a party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request;

(2) if a request does not specify the form or forms for producing electronically stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained, or, if that form is not reasonably usable, it must be produced in a form or forms that are reasonably usable; and

(3) a party need not produce the same electronically stored information in more than one reasonably usable form.

(c) **Persons Not Parties.** This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

(Adopted by SCO 5 October 9, 1959; amended by SCO 158 effective February 15, 1973; by SCO 1026 effective July 15, 1990; by SCO 1153 effective July 15, 1994; by SCO 1172 effective July 15, 1995; and by SCO 1682 effective April 15, 2009)

Rule 35. Physical and Mental Examination of Persons.

(a) **Order for Examination.** When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) **Report of Examiner.**

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the requesting party a copy of a detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that the party is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report the court may exclude the examiner's testimony if offered at trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other rule.

(Adopted by SCO 5 October 9, 1959; amended by SCO 158 effective February 15, 1973; by SCO 1122 effective July 15, 1993; and by SCO 1295 effective January 15, 1998)

Note: Ch. 69, § 3, SLA 1989 provided that AS 25.20.050(e), enacted by ch. 69, § 1, SLA 1989, amended Civil Rule 35 by requiring the court, in action in which paternity is contested and to which the state is a party, to order certain genetic tests on the request of a party.

Note: Sections 38 and 41 of ch. 87 SLA 1997 amend AS 25.20.050 relating to paternity actions. According to § 149 of the Act, §§ 38 and 41 have the effect of amending Civil Rule 35 by requiring the court to order genetic testing in contested paternity actions in certain circumstances and preventing the court from ordering such testing if good cause is shown.

Rule 36. Requests for Admission.

(a) **Request for Admission.** A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b)(1) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Without leave of court or written stipulation, requests for admission may not be served before the time specified in Rule 26(d).

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as the parties may agree to in writing, subject to Rule 29, the party to whom the request

is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) **Effect of Admission.** Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

(Adopted by SCO 5 October 9, 1959; amended by SCO 98 effective September 16, 1968; amended by SCO 158 effective February 15, 1973; by SCO 1153 effective July 15, 1994; and by SCO 1172 effective July 15, 1995)

Rule 37. Failure to Make Disclosure or Cooperate in Discovery: Sanctions.

(a) **Motion for Order Compelling Disclosure or Discovery.** A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as follows:

(1) *Appropriate Court.* An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, to the court in the judicial district where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the judicial district where the deposition is being taken.

(2) *Motion.*

(A) If a party fails to make a disclosure required by Rule 26(a) or Rule 26.1(b), any other party may move to compel disclosure and for appropriate sanctions. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

(B) If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(3) *Evasive or Incomplete Disclosure, Answer, or Response.* For purposes of this subdivision an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.

(4) *Expenses and Sanctions.*

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response or objection was substantially justified, or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the court may enter any protective order authorized under Rule 26(c) and shall, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was

substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) **Failure to Comply With Order.**

(1) *Sanctions by Court in Judicial District Where Deposition is Taken.* If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the judicial district in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) *Sanctions By Court in Which Action is Pending.* If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 16(e) or 26(b), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring that party to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(3) *Standard for Imposition of Sanctions.* Prior to making an order under sections (A), (B), or (C) of subparagraph (b)(2) the court shall consider

(A) the nature of the violation, including the willfulness of the conduct and the materiality of the information that the party failed to disclose;

(B) the prejudice to the opposing party;

(C) the relationship between the information the party failed to disclose and the proposed sanction;

(D) whether a lesser sanction would adequately protect the opposing party and deter other discovery violations; and

(E) other factors deemed appropriate by the court or required by law.

The court shall not make an order that has the effect of establishing or dismissing a claim or defense or determining a central issue in the litigation unless the court finds that the party acted willfully.

(c) **Failure to Disclose; False or Misleading Disclosure; Refusal to Admit.**

(1) A party that without substantial justification fails to disclose information required by Rules 26(a), 26(e)(1), or 26.1(b) shall not, unless such failure is harmless, be permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorney's fees, caused by the failure, these sanctions may include any of the actions authorized under sections (A), (B), and (C) of subparagraph (b)(2) of this rule and may include informing the jury of the failure to make the disclosure.

(2) If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (A) the request was held objectionable pursuant to Rule 36(a), or (B) the admission sought was of no substantial importance, or (C) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (D) there was other good reason for the failure to admit.

(d) **Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection.** If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of

the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under sections (A), (B), and (C) of subparagraph (b)(2) of this rule. Any motion specifying a failure under clause (2) or (3) of this subdivision shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this paragraph may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has a pending motion for a protective order as provided by Rule 26(c).

(e) **Reserved.**

(f) **Electronically Stored Information.** Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

(g) **Failure to Cooperate in Discovery or to Participate in the Framing of a Discovery Plan.** If a party or a party's attorney engages in unreasonable, groundless, abusive, or obstructionist conduct during the course of discovery or fails to participate in good faith in the development and submission of a proposed discovery plan as required by Rule 26(f), the court may, after opportunity for hearing, require such party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the conduct.

(Adopted by SCO 5 October 9, 1959; amended by SCO 158 effective February 15, 1973; by SCO 888 effective July 15, 1988; by SCO 1026 effective July 15, 1990; by SCO 1153 effective July 15, 1994; by SCO 1172 effective July 15, 1995; by SCO 1325 effective July 15, 1998; and by SCO 1682 effective April 15, 2009)

Cross References

(b)(1) **CROSS REFERNCE:** AS 09.50.010

PART VI. TRIAL

Rule 38. Jury Trial.

(a) **Right Preserved.** The right of trial by jury as declared by section 16 of article I of the constitution, or as given by a statute of the state, shall be preserved to the parties inviolate.

(b) **Demand.** Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand shall be made in a separate written document signed by the party making the demand or by the party's attorney.

(c) **Demand—Specification of Issues.** In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) **Waiver.** The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by the party of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties. A party's consent to withdraw the jury trial demand may be implied by a failure to appear at trial.

(Adopted by SCO 5 October 9, 1959; amended by SCO 66 effective July 1, 1964; by SCO 74 effective January 25, 1965; by SCO 465 effective June 1, 1981; by SCO 620 effective June 15, 1985; and by SCO 1153 effective July 15, 1994)

Note: Chapter 54 SLA 2005 (HB 95) enacted extensive amendments and new provisions related to public health, including public health emergencies and disasters. According to Section 13(b) of the Act, AS 18.15.375(c)(3), (d), and (e), and 18.15.385(d)–(k), enacted in Section 8, have the effect of amending Civil Rule 38 by requiring a court trial in matters involving public health.

Rule 39. Trial by Jury or by the Court.

(a) **By Jury.** When trial by jury has been demanded and not waived as provided in Rule 38, the trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court, consent to trial by the court sitting without a jury or (2) the court upon motion by a party or upon its own motion finds that a right of trial by jury of some or all of those issues does not exist under the state constitution or statutes of the state.

(b) **By the Court.** Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court; but notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues.

(c) **Advisory Jury and Trial by Consent.** In all actions not triable of right by a jury the court upon motion by a party or upon its own motion may try an issue with an advisory jury or, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

(Adopted by SCO 5 October 9, 1959; amended by SCO 554 effective April 4, 1983; and by SCO 621 effective June 15, 1985)

Rule 40. Assignment and Hearing of Cases—Calendars—Continuances.

(a) **Master Calendar.** At the commencement of each regular or special term of the court, or at such other time as the presiding judge shall direct, the clerk shall prepare a calendar of all cases on the docket which are not on the trial calendar or motion calendar or in which neither party has requested setting for trial. The clerk shall list the cases in numerical order and show the number, title and names of counsel of record in each case, together with such information as will enable the court to readily determine the type and status of the case. At such times as the court shall direct, the calendar shall be called, at which time the court (1) may order cases placed on the trial calendar if desired, or (2) may order that cases be dismissed for want of prosecution under the provisions of Rule 41, or (3) may make such other disposition of cases as the court may consider appropriate.

(b) **Trial Calendar—Memorandum to Set Civil Case for Trial.**

(1) Unless otherwise ordered, a civil case shall be set for a pretrial conference, a trial setting conference, or a trial when it is at issue and when a party thereto has served and filed therein a memorandum to set civil case for trial, stating:

(a) The title and number of the case;

(b) The nature of the case;

(c) That all essential parties have been served with process or appeared herein and that the case is at issue as to all such parties;

(d) Whether the case is entitled to legal preference and, if so, the citation of the section number of the statute or other authority granting such preference;

(e) Whether or not a jury trial has been demanded;

(f) The time estimated for trial;

(g) The names, addresses and telephone numbers of the attorneys for the parties or of the parties appearing in person.

(2) Any party not in agreement with the information or estimates given in the memorandum to set civil case for trial shall within ten days after the service thereof serve and file a memorandum on his behalf.

(c) **Visiting Judges.** Whenever a visiting judge may be present, assisting the judge of any judicial district, the presiding judge of that district shall be solely responsible for the assignment of cases and proceedings to the visiting judge. The judge to whom any particular action or proceeding is assigned will thereupon have charge of such action or proceeding so long as such assignment continues.

(d) **Application for Orders.** Except as provided in Rule 63, application for any order in an action or proceeding, including appellate proceedings, shall be made to, and ruled upon, by the judge to whom the action or proceeding is assigned. However, application may be made to and signed by another judge if the judge who is assigned the case is not available and the application concerns a stipulation or uncontested motion; a petition for emergency domestic violence injunction; a motion for temporary restraining order or other emergency motion; findings, judgments and orders based upon decisions previously announced by the judge assigned to the case; or other matters when the application is presented to the presiding judge, or in the presiding judge's absence, to any other available judge within the state, upon good cause shown.

(e) **Continuances. ***

(1) All cases set for trial shall be heard on the date set unless the same are continued by order of the court for cause shown. The presiding judge of a judicial district may require that a visiting or pro tem judge obtain approval from the presiding judge before granting any continuance of trial.

(2) Unless otherwise permitted by the court, application for the continuance of the trial of the case shall be made to the court at least five days before the date set for trial. The application must be supported by the affidavit of the applicant setting forth all reasons for the continuance. If such case is not tried upon the day set, the court in its discretion may impose such terms as it sees fit, and in addition may require the payment of jury fees and other costs by the party at whose request the continuance has been made.

(3) When parties are present in court and ready for trial on the day set for trial, but their case is not reached on that day, they will retain their relative position on the calendar and on the next open trial day they will be entitled to precedence over cases set for trial on the last-mentioned day.

(Adopted by SCO 5 October 9, 1959; amended by SCO 36 effective May 8, 1961; by SCO 44 effective February 26, 1962; by SCO 193 effective November 1, 1974; by SCO 229 effective January 1, 1976; by SCO 393 effective January 2, 1980; by SCO 710 effective September 15, 1986; by SCO 717 effective September 15, 1986; by SCO 766 effective March 15, 1987; by SCO 894 effective July 15, 1988; by SCO 1153 effective July 15, 1994; by SCO 1172 effective July 15, 1995; and by SCO 1279 effective July 31, 1997)

***EDITOR'S NOTE:** Subsection (e)(3) of Alaska Civil Rule 40 is hereby suspended for the Anchorage trial courts until further notice. The presiding judge shall determine appropriate alternative calendaring procedures.

Note: In 1997 the legislature enacted AS 18.16.030(c), which required the court to hold a hearing in a proceeding to bypass parental consent to an abortion within five days after the petition is filed. According to ch. 14, sec. 7 SLA 1997, this provision has the effect of amending Civil Rule 40 by setting a specific timetable for hearing certain cases. Instead of amending individual rules to implement AS 18.16.030, the

supreme court has adopted a separate rule on judicial bypass proceedings. See Probate Rule 20.

Note: Chapter 54 SLA 2005 (HB 95) enacted extensive amendments and new provisions related to public health, including public health emergencies and disasters. According to Section 13(c) of the Act, AS 18.15.375(c)(3), (d), and (e), and 18.15.385(d) –(k), enacted in Section 8, have the effect of amending Civil Rule 40 by requiring expedited hearings and specific standards for and timing of granting of continuances in matters involving public health.

Rule 41. Dismissal of Actions.

(a) **Voluntary Dismissal—Effect Thereof.**

(1) *By Plaintiff—By Stipulation.* Subject to the provisions of Rule 23(e), of Rule 66 and of any statute of the state, an action may be dismissed by the plaintiff without an order of the court: [a] by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs; or [b] by filing a stipulation of dismissal signed by all parties who have appeared in the action. A notice of dismissal must include a certification signed by or on behalf of the plaintiff that the plaintiff has submitted the information required under AS 09.68.130 and (a)(3) of this rule to the Alaska Judicial Council or that the case is exempt from this requirement. A stipulation of dismissal must include a certification signed by or on behalf of all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of this state, or of any other state, or in any court of the United States, an action based on or including the same claim.

(2) *By Order of Court.* Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(3) *Information about the Resolution of Civil Cases.* If an action is voluntarily dismissed under paragraph (a) of this rule, each party or, if a party is represented by an attorney, the party's attorney must submit the information described in AS 09.68.130(a) to the Alaska Judicial Council. The information must be submitted within 30 days after the case is finally resolved as to that party and on a form specified by the Alaska Judicial Council. The following types of cases are exempt from this requirement:

(A) divorce and dissolution;

(B) adoption, custody, support, visitation, and emancipation of children;

(C) children-in-need-of-aid cases under AS 47.10 or delinquent minors cases under 47.12;

(D) domestic violence protective orders under AS 18.66.100–18.66.180;

(E) estate, guardianship, and trust cases filed under AS 13;

(F) small claims under AS 22.15.040;

(G) forcible entry and detainer cases;

(H) administrative appeals; and

(I) motor vehicle impound or forfeiture actions under municipal ordinance.

(b) **Involuntary Dismissal—Effect Thereof.** For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of the plaintiff's evidence, the defendant, without waiving the right to offer evidence in the event that a motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then weigh the evidence, evaluate the credibility of witnesses and render judgment against the plaintiff even if the plaintiff has made out a prima facie case. Alternately, the court may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

(c) **Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim.** The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) **Costs of Previously Dismissed Action.** If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

(e) **Dismissal for Want of Prosecution.**

(1) The court on its own motion or on motion of a party to the action may dismiss a case for want of prosecution if

(A) the case has been pending for more than one year without any proceedings having been taken, or

(B) the case has been pending for more than one year, and no trial or mandatory pretrial scheduling conference has been scheduled or held.

(2) The clerk shall review all pending cases semi-annually and in all cases that are subject to dismissal under (e)(1), the court shall hold a call of the calendar or the clerk shall send notice to the parties to show cause in writing why the action should not be dismissed.

(3) If good cause to the contrary is not shown at a call of the calendar or within sixty days after 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.

(4) A dismissal for want of prosecution is without prejudice unless the court states in the order that the case is dismissed with prejudice.

(5) If a case dismissed under this paragraph is filed again, the court may make such order for the payment of costs of the case previously dismissed as it may deem proper, and may stay the proceedings in the case until the party has complied with the order.

(Adopted by SCO 5 October 9, 1959; amended by SCO 239 effective March 1, 1976; by SCO 258 effective November 15, 1976; by SCO 465 effective June 1, 1981; by SCO 798 effective March 15, 1987; by SCO 834 effective August 1, 1987; by SCO 1153 effective July 15, 1994; by SCO 1266 effective July 15, 1997; by SCO 1283 effective September 2, 1997; and by SCO 1361 effective October 15, 1999)

Rule 42. Consolidation—Separate Trials—Change of Judge.

(a) **Consolidation.** When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

A motion requesting consolidation shall be filed in the court where the case is sought to be consolidated. The motion shall contain the name of every case sought to be consolidated. A notice of filing together with a copy of the motion shall be filed in all courts and served on all parties who would be affected by consolidation.

(b) **Separate Trials.** The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Alaska Constitution and Statutes of Alaska.

(c) **Change of Judge as a Matter of Right.** In all courts of the state, a judge or master may be peremptorily challenged as follows:

(1) *Nature of Proceedings.* In an action pending in the Superior or District Courts, each side is entitled as a matter of right to a change of one judge and of one master. Two or more parties aligned on the same side of an action, whether or not consolidated, shall be treated as one side for purposes of the right to a change of judge, but the presiding judge may allow an additional change of judge to a party whose interests in the action are hostile or adverse to the interests of another party on the same side. A party wishing to exercise the right to change of judge shall file a pleading entitled "Notice of Change of Judge." The notice may be signed by an attorney, it shall state the name of the judge to be changed, and it shall neither specify grounds nor be accompanied by an affidavit.

(2) *Filing and Service.* The notice of change of judge shall be filed and copies served on the parties in accordance with Rule 5, Alaska Rules of Civil Procedure.

(3) *Timeliness.* Failure to file a timely notice precludes change of judge as a matter of right. Notice of change of judge is timely if filed before the commencement of trial and within five days after notice that the case has been assigned to a specific judge. Where a party has been served or enters an action after the case has been assigned to a specific judge, a notice of change of judge shall also be timely if filed by the party before the commencement of trial and within five days after a party appears or files a pleading in the action. If a party has moved to disqualify a judge for cause within the time permitted for filing a notice of change of judge, such time is tolled for all parties and, if the motion to disqualify for cause is denied, a new five-day period runs from notice of the denial of the motion.

(4) *Waiver.* A party waives the right to change as a matter of right a judge who has been permanently assigned to the case by knowingly participating before that judge in:

(i) Any judicial proceeding which concerns the merits of the action and involves the consideration of evidence or of affidavits; or

(ii) A pretrial conference; or

(iii) The commencement of trial; or

(iv) If the parties agree upon a judge to whom the case is to be assigned. Such waiver is to apply only to the agreed upon judge.

(5) *Assignment of Action.* After a notice of change of judge is timely filed, the presiding judge shall immediately assign the matter to a new judge within that judicial district. Should that judge be challenged, the presiding judge shall continue to assign the case to new judges within the judicial district until all parties have exercised or waived their right to change of judge or until all superior court judges, or all district court judges, within the judicial district have been challenged peremptorily or for cause. Should all such judges in the district be disqualified, the presiding judge shall immediately notify the administrative director in writing and request that the administrative director obtain from the Chief Justice an order assigning the case to another judge.

If a judge to whom an action has been assigned later becomes unavailable because of death, illness, or other physical or legal incapacity, the parties shall be restored to their several positions and rights under this rule as they existed immediately before the assignment of the action to such judge.

(Adopted by SCO 5 October 9, 1959; amended by SCO 186 effective July 1, 1974; by SCO 258 effective November 15, 1976; by SCO 262 effective December 31, 1976; by SCO 465 effective June 1, 1981; by SCO 705 effective September 15, 1986; by SCO 716 effective September 15, 1986; by SCO 741 effective December 15, 1986; by SCO 877 effective July 15, 1988; by SCO 1153 effective July 15, 1994; by SCO 1196 effective July 15, 1995 and by SCO 1698 effective October 15, 2009)

Note: Ch. 80 SLA 2002 (HB 196), Section 1, adds new sections to AS 25.24 concerning the right of action for legal separation. According to Section 3 of the Act, AS 25.24.430 has the effect of amending Civil Rule 42(a) by requiring consolidation of subsequent divorce and annulment actions with legal separation actions filed by the same parties.

PART VII. EVIDENCE AND CONDUCT OF TRIAL

Rule 43. Evidence.

(Rescinded by Supreme Court Order 366 effective August 1, 1979)

Rule 43.1. Exhibits.

(a) **Parties Mark Exhibits.** All intended exhibits shall be marked by the parties for identification prior to trial. At the beginning of trial an original and one copy of an exhibit list shall be filed with the in-court clerk.

(b) **Procedure.** Exhibits shall be marked for identification in the manner prescribed by the administrative director in the bulletin required by paragraph (h) of this rule. All exhibits marked for identification shall be listed on an exhibit list provided by the court. The form of the exhibit list shall be prescribed by the administrative director.

(c) **Admission.** Exhibits properly marked for identification may be admitted into evidence upon the motion of any party or upon the court's own motion. After an identified exhibit is admitted by the court, the clerk shall mark the exhibit "admitted" in a manner prescribed by the administrative director. When an exhibit is admitted into evidence, the fact of its admission shall be noted immediately on the exhibit list.

(d) **Custody of Exhibits.** At the time an exhibit is offered into evidence, the exhibit shall be placed in and remain in the clerk's custody until released as provided in paragraph (g) of this rule or as set forth in the administrative bulletin required by paragraph (h) of this rule. Exhibits which have not been offered into evidence shall not be placed in the custody of the clerk unless otherwise ordered by the court.

(e) **Final Check.** Prior to submission of the case to the jury or to the court sitting without a jury, the court shall require counsel and those parties not represented by counsel to (1) examine all intended, identified, offered, or admitted exhibits and the in-court clerk's exhibit list, (2) confirm to the court that the list accurately reflects the status of the exhibits, and (3) confirm that any modifications to the exhibits ordered by the court have been made. Upon proper motion or the court's own motion, the court may order additional exhibits marked for identification and/or admitted into evidence. At the time of the final check, identified exhibits which have not been offered for admission but which the court has previously ordered placed in the clerk's custody shall be returned to the appropriate party, unless otherwise ordered by the court.

(f) **Submission to the Jury.** Unless otherwise ordered by the court, all exhibits admitted into evidence shall be given to the jury for deliberation, except the following exhibits will not be given to the jury without a specific court order:

(1) live ammunition;

(2) firearms;

(3) drugs and alcoholic beverages;

(4) perishable, flammable or hazardous materials; and

(5) money, jewelry or other valuable items.

The court may allow a photograph to be submitted to the jury in place of the physical exhibit.

(g) **Return of Some Exhibits After Hearing or Trial.** At the conclusion of a hearing or trial, the court shall inquire whether counsel stipulate to the return of any exhibits to counsel for safekeeping pending appeal and to the substitution of photographs for any of the physical (i.e., nondocumentary) exhibits. Whether or not counsel stipulate, the court may also order counsel to take custody of the following exhibits, store said exhibits in a safe location and maintain the chain of custody pending appeal:

(1) live ammunition;

(2) firearms;

(3) drugs and alcoholic beverages;

(4) perishable, flammable or hazardous materials;

(5) money, jewelry or other valuable items; and

(6) items which are unwieldy due to bulk and/or weight.

Whenever exhibits are returned to counsel for safekeeping pending appeal, the court may require counsel to submit an affidavit setting forth the specific measures taken to ensure safekeeping of the exhibits.

(h) **Administrative Bulletin.** The administrative director shall establish standards and procedures by appropriate bulletin consistent with these rules governing the marking, handling, storage, safekeeping, and disposal of all exhibits coming into the court's custody. Unless otherwise ordered by the court, such standards and procedures are controlling.

(Added by SCO 598 effective September 1, 1984; amended by SCO 948 effective January 15, 1989)

Informational Note: Administrative Bulletin No. 9, relating to Civil Rule 43.1 can be found on the following page.

ALASKA COURT SYSTEM
OFFICE OF THE ADMINISTRATIVE DIRECTOR
ADMINISTRATIVE BULLETIN NO. 9
AMENDED EFFECTIVE OCTOBER 15, 2005

TO ALL HOLDERS OF ADMINISTRATIVE BULLETIN SETS:

Presiding Judges
Area Court Administrators
Clerk of the Appellate Courts
Rural Training Assistants
Full-Time Clerks of Court
Magistrates at locations with no full-time clerk
Law Libraries at Anchorage, Fairbanks, Juneau, & Ketchikan
Senior Staff
Administrative Associate
Rural Court Analyst
General Services Manager

OTHERS:
In-Court Clerk Supervisors, Anchorage and Fairbanks
Records Division Supervisor, Anchorage

SUBJECT: Exhibit Procedures

This policy is being issued under the authority granted to the administrative director by Civil Rule 43.1 and Criminal Rule 26.1. The procedures described below must be followed in all trials, pretrial hearings and other court hearings in the Alaska trial courts.

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I. DEFINITIONS

A. Marked for Identification: means an exhibit has received an exhibit sticker and exhibit number and has been listed on the exhibit list.

B. Offered into Evidence: means counsel or a party not represented by counsel has asked the court to admit the exhibit into evidence

C. Admitted: means the court has determined that the exhibit should be considered as evidence by the trier-of-fact (i.e., the judge or jury).

D. Withdrawn: means the court has allowed the exhibit to be removed from custody of the court either during or after trial.

II. MARKING EXHIBITS

A. When to Mark

1. Civil Cases

a. Formal Civil Trials

In all trials under the formal rules of civil procedure, the parties shall, prior to trial, mark for identification all intended exhibits in the manner prescribed by this bulletin. Parties must obtain standard exhibit stickers and exhibit list forms (forms TF-200 and TF-201) from the in-court clerk or other designated clerk. The parties must type a brief description of the identified exhibits on the exhibit list and must list the exhibits in the order that the party intends to use them at trial. At the beginning of trial the original and one copy of the exhibit list shall be filed with the in-court clerk. (Civil Rule 43.1) Prior to trial, the parties must serve all other parties with a copy of the exhibit list.

b. Other Civil Hearings and Small Claims Trials

In all other hearings and in all trials under the Small Claims rules, exhibits will be marked for identification by the in-court clerk at the time of trial or hearing unless the judge orders pre-marking of the exhibits.

2. Criminal Cases

The procedure described in paragraph 1.a. above may be required in criminal cases at the discretion of the trial judge. If the procedure described in paragraph 1.a. is not required, the in-court clerk shall mark all exhibits at the time of trial or hearing.

B. Exhibit Numbering

The following examples show how exhibits should be numbered:

Single Parties:

Plaintiff State of Alaska:	Exhibits start with 1
Defendant Tom Johnson:	Exhibits start with A

Multiple Parties:

Plaintiff Tom Jones:	Exhibits start with J-1
Plaintiff John Miller:	Exhibits start with M-1
Defendant Sam Smith:	Exhibits start with S-A
Defendant James Orange:	Exhibits start with JO-A
Defendant Mary Orange:	Exhibits start with MO-A

Plaintiff's exhibits must be marked in numerical order starting with 1. Defendant's exhibits must be marked in alphabetical order starting with A.

If there is more than one plaintiff or more than one defendant, the first letter of the party's last name must precede the number or letter as shown above.

If there is more than one plaintiff or defendant with the same last initial, the initials of both the first and last names must be added to the exhibit number as shown above.

Defendant's exhibits will be marked A through Z in order, then AA, AB, AC, etc., through AZ, then BA, BB, BC, etc. through BZ, and so forth.

In cases with multiple parties and large volumes of exhibits, the court may require alternative exhibit numbering procedures to be used. For example, the court may want to assign each party a block of one thousand numbers.

C. Exhibit Stickers

1. Exhibits must be marked for identification with an exhibit sticker provided by the court before being referred to in court.

2. Exhibit stickers will only be placed on those exhibits intended to be submitted into evidence at a trial or hearing. Exhibit stickers shall not be placed on any other copies of exhibits.

3. Exhibit stickers in all cases must be marked with the full case number and exhibit number or letter and must show whether the exhibit was admitted.

4. Exhibit stickers are color coded as follows:

a. Yellow stickers will be used for plaintiffs or petitioners.
b. Blue stickers will be used for defendants or respondents.
c. Red stickers will be used for grand jury proceedings.
d. Red stickers will be used for coroner proceedings.
e. Green stickers will be used for miscellaneous parties or proceedings.

5. Placement of Exhibit Stickers:

a. Stickers will be placed on the exhibits in a manner which will not interfere with the viewing of the exhibit. If at all possible, exhibit stickers should be placed in the lower right corner of the front side of the first page of documents. If the sticker is placed on the back of a document or photograph, then the sticker should be placed in the lower right corner. Caution: Exhibit stickers will not adhere well to some surfaces, e.g. smooth metal or plastic. In such cases, the sticker must also be securely taped to the exhibit.

b. If an exhibit sticker cannot be attached directly to the exhibit, the sticker will be attached to a wired or stringed tag which will then be attached to the exhibit.

c. To aid in locating exhibits, exhibit stickers should be visible at all times. However, if this is not possible because the exhibit is stored in a non-transparent container, the container must be labeled with a plain white sticker marked with the following information:

Contains: Exhibit No. _____

d. If an exhibit was marked for a prior court hearing, see section VI.

6. When the court orders an exhibit admitted into evidence, the clerk shall note on the exhibit sticker and the exhibit list that the exhibit has been admitted.

D. Marking Photographs Substituted for Exhibits

1. If an exhibit is ordered returned to a party and a photograph of the exhibit substituted in its place, an exhibit sticker will be placed on the photograph showing the same exhibit number assigned to the substituted exhibit. A notation will be made on the exhibit list that the exhibit was returned and a photograph substituted in its place.

2. For marking of photographs when a photograph is sent to the jury in place of a physical exhibit but the physical exhibit remains in court custody, see section V.B.

III. EXHIBIT LIST

A. All exhibits marked for identification must be listed on the standard exhibit list, forms TF-200 and TF-201, provided by the court.

Exception: Small Claims and Forcible Entry and Detainer (FED) Cases

The procedure described below may be used in small claims and FED cases if all exhibits in the case are documentary and can be stored in the case file. This procedure is optional and may be used at the discretion of the clerk of court for each court.

1. List exhibits in the log notes

2. Exhibits need not be listed on an exhibit list.

3. After trial or hearing, place exhibits in an envelope. Note case title, case number and exhibit numbers on outside of envelope.

4. Store envelope of exhibits in the case file.

5. Return of exhibits is governed by Section VIII of this Bulletin.

The above procedure may not be used if any exhibit is stored outside the case file. In that event, all exhibits must be listed on an exhibit list and all exhibits must be stored outside the case file.

B. The case title, case number, attorney's name and a brief description of each exhibit will be noted on the exhibit list. The in-court clerk will indicate on the exhibit list whether exhibits were offered for admission, admitted or the date they were withdrawn.

C. See section VI for additional information the in-court clerk must write on the exhibit list if the exhibit was previously marked for a prior court hearing and if the exhibit is still in the court's custody.

D. At the conclusion of each hearing, the original exhibit lists will be filed in the appropriate case file. If the exhibit lists apply to more than one case, photocopies of the exhibit lists must be placed in each case file to which the exhibit lists apply.

IV. PREPARING EXHIBITS FOR COURT

Trial counsel must comply with the following requirements when submitting exhibits.

A. All ammunition will be submitted in sealable containers.

B. All clothing, shoes, boots, hats, gloves, jackets or other wearing apparel must be dried to prevent molding and submitted in either clear plastic bags or paper sacks.

C. Any firearm will have all ammunition removed prior to submission to the court. When submitted, the firearm must be in a condition that will not allow the trigger to be pulled thereby detonating any live ammunition which may be placed in the weapon. For example: firearms must have bolts removed and taped securely to the side or locked to the rear, cylinders swung out, loading gates open, or slides or breeches locked open.

D. Breakable exhibits must be submitted in protective containers strong enough to prevent breakage and contain spillage.

E. All perishable exhibits (e.g., food) and those emanating odors (e.g., untanned animal hides) must be submitted in transparent plastic bags or other types of transparent airtight containers. During trial, such exhibits will be stored in a manner and in a place approved by the trial judge. The judge may allow a photograph of such an exhibit to be substituted in place of the physical exhibit.

F. All drugs must be submitted in clear heavy-duty plastic bags or other types of transparent nonbreakable containers. The opening of the bag or other container must be completely sealed with exhibit tape.

G. Hazardous substances (such as acid, gasoline, explosives, etc.) must be submitted in containers approved for storage of the hazardous substance strong enough to prevent breakage and contain spillage. The outside of the container must clearly a) identify the contents, b) be marked hazardous and c) be labeled as required by city, state and federal regulations.

H. Multipage documents not securely fastened may be placed in transparent plastic bags to ensure that pages are not lost.

I. In cases in which counsel anticipate that there will be more than 50 documentary exhibits, the documentary exhibits must be submitted in an organized system which will help in handling and locating the exhibits. For example: documentary exhibits may be placed in 3-ring binders with tab dividers or in file folders marked with the exhibit numbers.

V. SUBMISSION OF CERTAIN EXHIBITS TO JURY

A. Unless otherwise ordered by the court, all exhibits admitted into evidence shall be given to the jury for deliberation, except the following exhibits will not be given to the jury without a specific court order:

1. live ammunition;
2. firearms;
3. drugs and alcoholic beverages;
4. perishable, flammable or hazardous materials; and
5. money, jewelry or other valuable items.

B. The court may allow a photograph of an exhibit to be submitted to the jury in place of the physical exhibit. If this is done, an exhibit sticker will be placed on the photograph showing the same exhibit number assigned to the physical exhibit with the words “photo of” noted above the exhibit number. A notation will be made on the exhibit list that a photograph of the exhibit was submitted to the jury. The physical exhibit will remain in court custody, unless otherwise ordered by the court.

VI. EXHIBITS MARKED IN PRIOR HEARINGS OR PRIOR CASES

If counsel wish to use an exhibit which is in court custody because it was offered in a prior court proceeding, the following procedures must be used.

A. Obtaining Exhibit

The in-court clerk, upon request of counsel, shall arrange to have exhibits from prior court hearings available for further hearings in the same case or hearings in a different case.

B. Record of Transfer

1. New Exhibit List

The prior exhibit number and case number must be noted in the exhibit description on the new exhibit list.

2. Prior Exhibit List

The transfer of an exhibit to a new case must also be noted on the exhibit list in the prior case or otherwise documented in the file of the prior case.

C. Exhibit Sticker Placement

A new exhibit sticker will be placed next to the previous sticker. An “X” will be drawn through the previous sticker. The previous exhibit sticker must remain legible. If, however, the court orders the prior exhibit sticker covered or removed, that fact must be noted on the new exhibit list.

VII. SAFEKEEPING EXHIBITS

A. When Clerk Takes Custody of Exhibits

Each exhibit will be placed in the custody of the clerk at the time the exhibit is offered into evidence at a hearing or trial. Counsel/parties will not be allowed to keep exhibits that have been offered into evidence at counsel table during recesses or any other time the exhibits are not in immediate use.

B. Use of Exhibit Tape to Seal Sensitive Exhibits

1. Certain sensitive exhibits as described below must be sealed. Sealing means the in-court clerk must place the exhibit in a transparent plastic bag and completely seal the opening of the bag with exhibit tape in such a manner that the bag cannot be opened without destroying the tape or tearing the bag. The in-court clerk must then write on the tape the date of sealing and the clerk's full signature. Taped bags may not be opened without an order from the court.

2. Drugs

At the time of the final check, the in-court clerk shall place any bag or other container holding drugs inside a new transparent bag and seal it.

3. Rolls of Coins

The in-court clerk does not need to open and count the coins contained in a roll of coins offered as an exhibit. However, when a roll of coins is offered into evidence, the in-court clerk shall place the roll of coins in a transparent plastic bag and seal it.

4. All Other Cash

The in-court clerk, in the presence of the party offering the cash as an exhibit, must, at the first available recess, count the cash, place it in a transparent plastic bag and seal it. Both the in-court clerk and the party offering the cash must date and sign the tape sealing the bag. The in-court clerk must note on the exhibit list that the amount of cash was verified and the date. The in-court clerk and submitting party must then initial this note on the exhibit list.

If the bag is opened during trial, the party who opened it and the in-court clerk must recount the cash, reseal it with exhibit tape, note the reverification on the exhibit list, sign and date the tape and exhibit list.

It is not necessary for the clerk in charge of exhibit storage to open a sealed bag to count money when it is turned over to that clerk. However, cash that comes to the exhibit storage clerk unsealed or in a torn bag must be recounted by the exhibit storage clerk in the presence of a witness. After resealing the cash in a new bag, the reverification must be noted on the exhibit list and both the clerk and witness must sign and date the tape and exhibit list. If any money is missing, the procedures for missing exhibits (section VII. G.) must be followed.

5. Jewelry, Loose Gems, Gold Dust, Gold Nuggets, etc.

When jewelry, loose gems, gold dust, gold nuggets and other such valuable exhibits are offered into evidence, the in-court clerk shall place the exhibit in a transparent plastic bag and seal it.

C. When Accounting of Exhibits Is Required

1. After the court has recessed each day, the in-court clerk must check to be sure that offered or admitted exhibits are in the court's possession. A written inventory is not required.

2. The in-court clerk must complete a final check in accordance with Civil Rule 43.1 and Criminal Rule 26.1 before the case is submitted to the jury or to the court sitting without a jury. The parties are required to participate in the final check. At the time of the final check, identified exhibits which have not been offered for admission but which the court has previously ordered placed in the clerk's custody shall be returned to the appropriate party, unless otherwise ordered by the court.

3. The exhibits must be delivered to the jury room by the in-court clerk or another court employee. The in-court clerk will then date and sign the Exhibit List certifying which exhibits were delivered to the jury.

4. After a verdict has been returned and accepted, the in-court clerk, in the presence of the bailiff and jury foreperson, must complete an inventory of the exhibits being returned by the jury. After the accounting is completed, the in-court clerk will date and sign the Exhibit List certifying which exhibits were returned from the jury. Upon a showing of good cause in specific case, the trial judge may relax this requirement. Such a finding must be on the record.

5. Before placing the exhibits in storage, the clerk responsible for exhibit storage (who may be the in-court clerk or a designated exhibits clerk) is required to complete an inventory of the exhibits being received before placing them in storage. After the accounting is complete the clerk responsible for exhibit storage must date and sign the Exhibit List certifying which exhibits have been placed in storage.

D. Safekeeping of Exhibits During Trial or Hearing

1. During Recesses

During court recesses, sensitive exhibits must be placed in a secure place unless the in-court clerk or another court employee is guarding the exhibits or the courtroom is empty and the exhibits are locked in the courtroom. For the purposes of this paragraph, "sensitive exhibits" includes money, drugs, firearms, jewelry and other valuable items.

2. Overnight

Storage of exhibits overnight during a trial must be in either the designated exhibit storage area (described in section VII. F.) or a locked exhibit cabinet in the courtroom. If there are no lockable exhibit storage cabinets in the courtroom, exhibits may be stored in the courtroom overnight only if authorized by the judge. Overnight storage of sensitive exhibits (drugs, firearms, money, etc.) must be in the designated exhibit storage area described in section VII. F.

E. Safekeeping of Exhibits During Deliberation

1. Jury Deliberation Room

The following requirements apply to any room used as a jury deliberation room, including courtrooms.

a. For any room which may be used as a jury deliberation room, each court must provide a lock system which will allow only the bailiff and clerk of court to have access to the room when exhibits are stored in the room. This separately keyed lock system should be in addition to the lock system ordinarily used to lock such rooms.

b. During jury deliberation, no one may enter the jury deliberating room unless authorized by the trial judge while there are jurors, jurors' notes or exhibits in the jury deliberation room. This prohibition includes entry for such housekeeping purposes as cleaning the room, making coffee, etc.

2. Delivery of Exhibits to Jury

Only court employees may assist in the delivery of exhibits to the jury. During delivery of exhibits to the jury deliberation room, other exhibits left in the courtroom must be placed in a locked exhibit cabinet in the courtroom unless a court employee is guarding the exhibits or the courtroom is emptied and the exhibits are locked in the courtroom. Unless otherwise ordered by the court, exhibits delivered to the jury must remain with the jury until deliberations are concluded.

3. Exhibits Not Given to Jury

Exhibits in the clerk's custody which are not submitted to the jury must be properly secured in either the designated exhibit storage area (described in section F below) or a locked exhibit cabinet. If the courtroom is used as a jury deliberation room, all exhibits which are not to be submitted to the jury must be removed from the courtroom or locked in exhibit storage cabinets in the courtroom.

4. Safekeeping While Jury Is Absent

Whenever the jury leaves the jury deliberation room during deliberations, the bailiff must lock the exhibits in the room with a lock which may be opened only by the bailiff and clerk of court or otherwise secure the exhibits in an area authorized by the court.

F. Required Exhibit Storage

Each court must establish a permanent storage area (cabinet, vault, safe or room) specifically designated for the storage of exhibits. The designated exhibit storage area must have a lock system independent of other locks used in the court. Access to the designated exhibit storage area must be limited to the clerk of court or a small number of court personnel designated by the clerk of court.

1. Except during court proceedings or upon order of the court, all exhibits will be stored in the designated exhibit storage area. Exception: In small claims cases and forcible entry and detainer cases if all exhibits in the case are documentary, exhibits may be stored in an envelope in the case file. The case title, case number, and exhibit numbers must be noted on the outside of the envelope.

2. The designated exhibit storage area will be accessible only to court personnel and will be kept locked at all times except when in use.

3. All exhibits stored in the designated exhibit storage area, except for bulky exhibits, must be stored in envelopes or suitable boxes. The case number and case name shall be noted on the outside of the envelope or box. A list of the exhibit numbers contained in the envelope or box will be noted on or in the envelope or box.

4. Perishable exhibits (e.g. food) or exhibits too large for the court's designated exhibit storage area will be stored in a manner and in a place approved by the trial judge.

5. Before placing in storage, the clerk will insure that exhibits needing special storage containers as required by section IV, are adequately packaged to prevent odor, breakage and spillage.

6. Before a firearm is placed in storage, it must be checked to be sure that there is no ammunition in it.

G. Missing Exhibits

If an exhibit cannot be located after a thorough search, and in no event longer than 24 hours after an exhibit is found to be missing, the Administrative Staff Counsel must be notified of the loss of the exhibit. All courts will establish in writing a procedure for the systematic and immediate notification of supervisors and the Administrative Staff Counsel if an exhibit is lost.

VIII. RETURN OF EXHIBITS (Civil Rule 74(g))

A. When Exhibits May Be Returned

1. An exhibit which is in the clerk's custody because it has been offered into evidence will be released to the party who submitted the exhibit only when one or more of the following circumstances occur:

a. Counsel withdraws the exhibit on the record with the consent of the court.

b. The court orders the exhibit returned either on the record or in writing.

c. Parties stipulate to the return of exhibits either on the record or in writing.

d. Defendant is acquitted in a criminal case. The exhibits will be returned to counsel promptly after the court recesses. Counsel must sign the exhibit list to indicate receipt of the exhibits.

e. Final judgment has been entered and the time for appeal has elapsed or the appeal decided and the time for further appeal has elapsed.

2. Exhibits which have not been offered into evidence but which the judge has directed taken into court custody during trial will be returned to counsel at the time of final check, unless the judge orders otherwise.

3. Any exhibit, whether or not it has been offered into evidence, which is in the possession of the clerk following the conclusion of a trial or hearing will be released only under the circumstances set out in paragraph 1. (a - e) above.

4. Return of Some Exhibits at Conclusion of Hearing/Trial.

At the conclusion of a hearing or trial, the court shall inquire whether counsel stipulate to the return of any exhibits to counsel for safekeeping pending appeal and to the substitution of photographs for any of the physical (i.e., non-documentary) exhibits. Whether or not counsel stipulate, the court may also order counsel to take custody of the following exhibits, store said exhibits in a safe location and maintain the chain of custody pending appeal:

a. live ammunition;
b. firearms;
c. drugs and alcoholic beverages:
d. perishable, flammable or hazardous materials;
e. money, jewelry or other valuable items; and
f. items which are unwieldy due to bulk and/or weight.

Whenever exhibits are returned to counsel for safekeeping pending appeal, the court may require counsel to submit an affidavit setting forth the specific measures taken to insure safekeeping of the exhibits. (Civil Rule 43.1 and Criminal Rule 26.1)

B. To Whom Exhibits May Be Returned

Exhibits may be returned only to the submitting party unless otherwise ordered by the court. State, municipal, city or borough exhibits in criminal cases may be returned to the appropriate police agency if there is no resident prosecuting attorney in the court location or the resident prosecuting attorney has directed that exhibits be returned to the appropriate police agency. The party submitting the exhibit is responsible for returning the exhibit to the rightful owner.

C. Grand Jury Exhibits

All exhibits used at grand jury proceedings will be returned to the District Attorney following the conclusion of the grand jury proceeding in which the exhibits were used unless the exhibit is currently in the custody of the clerk on another matter. The District Attorney shall state on the record that he has received the exhibits from the clerk and/or sign the exhibit list and note that the exhibits have been withdrawn.

D. Procedure for Return of Exhibits

1. After the final verdict has been returned and the time for appeal has elapsed or the appeal has been decided and the time for further appeal has elapsed, exhibits still in the court's custody will be returned by one of the methods described in paragraph 2 below. If an exhibit was used in more than one case, the exhibit can only be returned after the time for appeal has elapsed in all cases in which the exhibit was offered into evidence.

2. The clerk shall return all exhibits by one of the following methods:

a. Delivery: The clerk may return exhibits together with a copy of the "Inventory and Receipt" form, TF-206, by:

(1) Certified mail; or

(2) Personal delivery at the courthouse to the attorney, an employee of the attorney's firm or the attorney's courier service. The person receiving the exhibits must complete and sign the court's copy of the "Inventory and Receipt" form, TF-206.

b. Notice to Pick Up: The clerk may either telephone the attorney or party or send an "Exhibit Notice Card", form TF-205, by first class mail to the attorney or party indicating that the attorney or party must pick up the exhibits within 33 days from the date the "Exhibit Notice Card" is sent.

If the "Exhibit Notice Card" is returned to the court undelivered, the clerk shall make reasonable attempts to locate the attorney or party through such means as telephoning, contacting the Alaska Bar Association, etc. Upon locating a current address for the attorney or party, the clerk shall then send a supplemental "Exhibit Notice Card" to the attorney or party.

c. Judgment Stamp: In lieu of the notice to pick up, the final judgment or order may be stamped or printed with a notice notifying counsel that if no appeal is filed they must pick up the exhibits between 31 and 60 days from the date of distribution of the final judgment or order.

If this judgment/order is returned undelivered, the clerk shall follow the procedures in subparagraph b. above to attempt to locate counsel.

E. Procedures for Destruction of Exhibits

1. Prosecution exhibits in criminal cases will not be destroyed unless specifically ordered by the court. If destruction is ordered, notice will be given to the prosecuting attorney and police prior to the destruction of the prosecution's exhibits.

2. If the notice to counsel to pick up exhibits is returned to the court undelivered, and the clerk has not been able to otherwise locate the attorney or party, and 33 days have elapsed since the notice was sent, the clerk shall complete the "Affidavit and Order for Disposal of Exhibits", form TF-209, and submit it to the presiding or trial judge. Upon order of the court, the clerk shall dispose of the exhibits as set forth in subparagraph 3 below.

3. If the attorney or party does not pick up the exhibits after receiving the notice described in paragraph VIII. D. above, the clerk shall dispose of the items as follows:

a. For items of value, the clerk shall arrange for the sale of such items at public auction. The proceeds will be deposited into the General Fund Revenue Account for the State of Alaska.

b. For items of value that cannot be sold, the clerk shall attempt to locate a charitable institution or other public service organization to which such items can be donated.

c. For all other items, the clerk shall arrange to have the items appropriately destroyed.

d. If exhibits are sold, donated, or destroyed, the clerk must fill out form TF-210, "Affidavit Following Disposal of Exhibits".

IX. EXHIBIT FORMS AND DOCUMENTS

All exhibit forms, certified mail receipts and other documents regarding exhibit control will be filed in the case file.

Dated: _____ _____

Effective Date: _____ Stephanie Cole Administrative Director

This bulletin was originally issued as No. 84-1 Amended, effective September 1, 1984; amended October 18, 988, effective January 15, 1989; amended August 8, 2005, effective October 15, 2005

Rule 44. Proof of Official Record.

(Rescinded by Supreme Court Order 366 effective August 1, 1979)

Rule 44.1. Determination of Foreign Law.

(Rescinded by Supreme Court Order 366 effective August 1, 1979)

Rule 45. Subpoena.

(a) **For Attendance of Witnesses—Form—Issuance.** Every subpoena shall be issued by the clerk under the seal of the court, shall state the name of the court and title of the action, and shall command each person to whom it is directed to attend and give testimony or to produce documents at a time and place therein specified. The clerk shall issue a subpoena for the attendance of a witness, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service. The clerk shall issue a subpoena for the production of documentary evidence signed and sealed and indicating the date, time and place of the deposition or court proceeding at which the documentary evidence is to be produced.

(b) **For Production of Documentary Evidence.** A subpoena may also command the person to whom it is directed to produce the books, papers, documents, electronically stored information, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) void or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents or tangible things. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(c) **Service.** A subpoena may be served by a peace officer, or any other person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to the person the fees for one day's attendance and the mileage prescribed by rule. When the subpoena is issued on behalf of the state, a municipality, a borough, a city, or an officer or agency thereof, fees and mileage need not be tendered. A subpoena may also be served by registered or certified mail. In such case the clerk shall mail the subpoena for delivery only to the person subpoenaed and, unless not required under this rule, shall enclose a warrant or postal money order in the amount of the fees for one day's attendance and of the mileage prescribed by rule. The returned delivery receipt shall be so addressed that it is returned to the party requesting the subpoena or that party's attorney. Proof of service shall be made by affidavit.

(d) **Subpoena for Taking Depositions—Place of Examination.**

(1) Except as provided in paragraph (3), proof of service of a notice to take a deposition as provided in Rules 30(b) and 31(a) constitutes a sufficient authorization for the issuance by the clerk of the court for any judicial district of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26(b), but in that event the subpoena will be subject to the provisions of Rule 26(c) and subparagraph (b) of this rule.

The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the material except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(2) A resident of the judicial district in which the deposition is to be taken may be required to attend an examination at any place within the district, unless otherwise ordered by the court. A nonresident of the judicial district in which the deposition is to be taken, and a nonresident of the state subpoenaed within the state, may be required to attend at any place within the district wherein the nonresident is served with a subpoena, unless otherwise ordered by the court.

(3) Rule 45.1 defines the procedure for the issuance of a subpoena for deposition and discovery in an out-of-state action.

(e) **Subpoena for a Hearing or Trial.** At the request of any party subpoenas for attendance at a hearing or trial shall be issued by the clerk of the court for the judicial district in which the hearing or trial is held. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the state.

(f) **Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued.

(g) **Enforcement of Administrative Subpoenas.** When any officer or agency of the state has the authority to issue subpoenas, enforcement of such subpoenas to compel the giving of testimony or the production of documents may be secured by proceedings brought in the court in the manner provided by the Administrative Procedures Act of the state.

(Adopted by SCO 5 October 9, 1959; amended by SCO 90 effective July 24, 1967; by SCO 167 dated June 25, 1973; by SCO 258 effective November 15, 1976; by SCO 374 effective August 15, 1979; by SCO 465 effective June 1, 1981; by SCO 558 effective May 2, 1983; by SCO 934 effective January 15, 1989; by SCO 1153 effective July 15, 1994; by SCO 1682

effective April 15, 2009; and by SCO 1853 effective October 15, 2015)

Cross References

CROSS REFERENCE: AS 09.20.110; AS 09.20.120; AS 09.20.130; AS 09.20.140; AS 09.20.150; AS 09.20.160; AS 09.50.010

(c) **CROSS REFERENCE:** AS 09.20.110

(f) **CROSS REFERENCE:** AS 09.20.120; AS 09.50.010

Note: Ch. 75 SLA 2002 (HB 106), Section 4, adds a new section to AS 06.01 relating to the confidentiality of depositor and customer records at banking and other financial institutions. According to Section 56 of the Act, AS 06.01.028(b) has the effect of changing Civil Rule 45, Criminal Rules 17 and 37, and Alaska Bar Rule 24 by requiring certain court orders compelling disclosure of records to provide for reimbursement of a financial institution's reasonable costs of complying with the order.

Note: Chapter 10 FSSLA 2005 (SB 130) enacted changes relating to workers' compensation. According to section 76 of the Act, AS 23.30.280(i), as enacted by section 65 of the Act, has the effect of changing Civil Rule 45 by changing the procedure relating to subpoenas.

Rule 45.1. Interstate Depositions and Discovery.

(a) **Definitions.**

(1) "Foreign jurisdiction" means a state other than this state.

(2) "Foreign subpoena" means a subpoena issued under authority of a court of record of a foreign jurisdiction.

(3) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(4) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

(5) "Subpoena" means a document, however denominated, issued under authority of a court of record requiring a person to:

(A) attend and give testimony at a deposition;

(B) produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or

(C) permit inspection of premises under the control of the person.

(b) **Issuance of Subpoena.**

(1) To request issuance of a subpoena under this section, a party must submit a foreign subpoena to the clerk of court for any judicial district to conduct discovery in this state. A request for the issuance of a subpoena under this rule does not constitute an appearance in the courts of this state.

(2) When a party submits a foreign subpoena to a clerk of court in this state, the clerk, in accordance with that court's procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

(3) A subpoena under paragraph (b)(2) must:

(A) incorporate the terms used in the foreign subpoena; and

(B) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(c) **Service of Subpoena.** A subpoena issued by a clerk of court under subsection (b) must be served in compliance with Civil Rule 45(c).

(d) **Deposition, Production, and Inspection.** The Alaska Civil Deposition and Discovery Rules, Civil Rules 26 to 37, apply to subpoenas issued under subsection (b).

(e) **Application to Court.** An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under subsection (b) must comply with the rules or statutes of this state and be submitted to the court location in Alaska from which the subpoena issued.

(Adopted by SCO 1853 effective October 15, 2015)

NOTE: This rule is derived from the Uniform Interstate Depositions and Discovery Act. In applying and construing this rule, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. Reference to the uniform act and its commentary is appropriate when applying and construing this rule.

Rule 46. Conduct of Trials.

(a) **Statement of Case.** Before the introduction of any evidence, the plaintiff shall state briefly the claim for relief and the issues to be tried. The defendant shall then state the defense or counterclaim.

(b) **Introduction of Evidence.** Unless otherwise ordered by the court, which may regulate the order of proof in the exercise of sound discretion, the plaintiff shall then introduce evidence, and when the plaintiff has concluded the defendant shall do the same.

(c) **Rebutting Evidence.** The parties may then respectively introduce rebutting evidence only, unless the court, for good reason and in the furtherance of justice, permits them to introduce other evidence.

(d) **Examination of Witnesses.** Unless otherwise ordered by the court no more than one attorney on each side may examine or cross-examine a witness.

(e) **Attorney as Witness.** If counsel for either party is a witness on behalf of that counsel's client and gives evidence on the merits of the case, that counsel shall not argue the case to the jury unless by permission of the court.

(f) **Exceptions Unnecessary.** Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

(g) **Argument of Counsel.** When the evidence is concluded, and unless the case is submitted to the jury by mutual agreement of both sides without argument, the plaintiff shall open with the plaintiff's argument; the defendant shall follow with the defendant's argument and the plaintiff may conclude the argument. Not more than two counsel shall be allowed to address the jury on behalf of either party, unless otherwise allowed by the court. If the plaintiff waives the opening argument and the defendant then argues the case to the jury, the plaintiff shall not be permitted to reply to the defendant's argument.

(h) **Time for Opening Statements and Argument.** The court may fix the time allowed each party for opening statements and final argument. The parties shall be given adequate time for argument having due regard to the complexity of the case and may make separate time allowances for co-parties whose interests are adverse.

(i) **Regulation of Conduct in the Courtroom.** The taking of photographs in the courtroom during the progress of judicial proceedings, or radio or television broadcasting of judicial proceedings from the courtroom shall not be permitted except in accordance with Administrative Rule 50.

(Adopted by SCO 5 October 9, 1959; amended by SCO 49 effective January 1, 1963; by SCO 321 effective September 15, 1978; by SCO 994 effective January 15, 1990; and by SCO 1153 effective July 15, 1994)

Rule 47. Jurors.

(a) **Examination of Jurors.** The court shall require the jury to be selected in a prompt manner. The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper. The court may also require the parties to question the panel as a whole rather than individually and impose reasonable time limits on the examination of prospective jurors.

(b) **Alternate Jurors.**

(1) *Generally.* A court may impanel alternate jurors using one of the procedures set out in subparagraph (b)(2) below. If alternate jurors are called,

(A) they shall be drawn in the same manner, shall have the same qualification, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities and privileges as the principal jurors; and

(B) each party is entitled to one peremptory challenge in addition to those otherwise allowed by paragraph (d) of this rule.

(2) *Procedures.*

(A) The court may direct that one or two jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. An alternate juror who does not replace a principal juror shall be discharged after the jury retires to consider its verdict.

The additional peremptory challenge allowed by section (b)(1)(B) may be used only against an alternate juror, and the other peremptory challenges allowed by paragraph (d) of this rule, shall not be used against the alternates.

(B) The court may direct that one or two jurors be called and impaneled in addition to the number of jurors required by law to comprise the jury. The court may excuse jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. If more than the required number are left on the jury when the jury is ready to retire, the clerk in open court shall select at random the names of a sufficient number of jurors to reduce the jury to the number required by law. The jurors selected for elimination shall be discharged after the jury retires to consider its verdict.

(c) **Challenges for Cause.** After the examination of prospective jurors is completed and before any juror is sworn, the parties may challenge any juror for cause. A juror challenged for cause may be directed to answer every question pertinent to the inquiry. Every challenge for cause shall be determined by the court. The following are grounds for challenge for cause:

(1) That the person is not qualified by law to be a juror.

(2) That the person is biased for or against a party or attorney.

(3) That the person shows a state of mind which will prevent the person from rendering a just verdict, or has formed a positive opinion on the facts of the case or as to what the

outcome should be, and cannot disregard such opinion and try the issue impartially.

(4) That the person has opinions or conscientious scruples which would improperly influence the person's verdict.

(5) That the person has been subpoenaed as a witness in the case.

(6) That the person has already sat upon a trial of the same issue.

(7) That the person has served as a grand or petit juror in a criminal case based on the same transaction.

(8) That the person was called as a juror and excused either for cause or peremptorily on a previous trial of the same action, or in another action by the same parties for the same cause of action.

(9) That the person is related within the fourth degree (civil law) of consanguinity or affinity to one of the parties or attorneys.

(10) That the person is the guardian, ward, landlord, tenant, employer, employee, partner, client, principal, agent, debtor, creditor, or member of the family of a party or attorney; provided, however, that challenge for cause may not be taken because of the employer-employee relationship when the State of Alaska or a municipal corporation is the employer and the person challenged is not employed by an agency, department, division, commission, or other unit of the State or municipal corporation which is directly involved in the case to be tried.

(11) That the person is or has been a party adverse to the challenging party or attorney in a civil action, or has been a complaining witness against the challenging party or attorney in a criminal prosecution.

(12) That the person has, within the previous two years, been accused by the challenging party or attorney in a criminal prosecution.

(13) That the person has a financial interest, other than that of a taxpayer or a permanent fund dividend recipient in the outcome of the case.

(14) That the person was a member of the grand jury returning an indictment in the case.

(d) **Peremptory Challenges.** A party who waives peremptory challenge as to the jurors in the box does not thereby lose the challenge but may exercise it as to new jurors who may be called. A juror peremptorily challenged is excused without cause. Each party may challenge peremptorily three jurors. Two or more parties on the same side are considered a single party for purposes of peremptory challenge, but where multiple parties having adverse interests are aligned on the same side, three peremptory challenges shall be allowed to each such party represented by a different attorney.

(e) **Procedure for Using Challenges.** The court has discretion to set procedures for the exercise of challenges and for the replacement of challenged jurors, except that the entire trial panel will be asked general questions concerning the for cause challenges listed in Civil Rule 47(c)(5)–(13) before proceeding to other questioning.

(f) **Juries of Less Than Twelve—Majority Verdict.** The parties may stipulate that the jury shall consist of any number less than twelve or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

(g) **Oath of Jurors.** The jury shall be sworn by the clerk substantially as follows:

"Do each of you solemnly swear or affirm that you will well and truly try the issues in the matter now before the court solely on the evidence introduced and in accordance with the instructions of the court?"

(Adopted by SCO 5 October 9, 1959; amended by SCO 49 effective January 1, 1963; by SCO 277 effective June 30, 1977; by SCO 465 effective June 1, 1981; by SCO 808 effective August 1, 1987; by SCO 969 effective July 15, 1989; by SCO 1013 effective January 15, 1990; by SCO 1095 effective January 15, 1993; by SCO 1153 effective July 15, 1994; by SCO 1448 effective October 15, 2001; by SCO 1447 effective October 15, 2002; and by SCO 1593 effective April 15, 2006)

Cross References

CROSS REFERENCE: AS 09.20.010; AS 09.20.100

(c) **CROSS REFERENCE:** AS 09.20.010; AS 09.20.020

Rule 48. Order of Trial Proceedings—Management of Juries.

(a) **Conduct of Trial.** Conduct of a jury trial shall be governed by Rule 46 and this rule.

(b) **Instructions—Argument—Retirement of Jury.** When argument of counsel is concluded or waived, the court shall then charge the jury. Such charge shall be reduced to writing and read to the jury. The jury must take the written charge with it to the jury room.

(c) **View of Premises by Jury.** When the court deems proper, it may order a proper officer to conduct the jury in a body to view the property which is the subject of the litigation or the place where a material fact occurred and to show such property or place to it. While the jury is making its inspection no one shall speak to it on any subject connected with the trial. The court may order the person applying for a jury view to pay the expenses connected therewith.

(d) **Separation of Jury—Admonition—Manner of Keeping Jury Before Submission of Case.** If any juror is permitted to separate from the jury during the trial the juror must be admonished by the court that it is the juror's duty not to converse with any person, including another juror, on any subject connected with the trial, nor to form or express any

opinion thereon until the case is finally submitted to the jury. If any juror is permitted to separate from the jury after the case is submitted the juror must be admonished by the court that it is the juror's duty not to converse with any person on any subject connected with the trial, and that the juror is to discuss the case only with other jurors in the jury room.

(e) **Juror Unable to Continue.** If, prior to the time the jury retires to consider its verdict, a juror is unable or disqualified to perform the juror's duty, the court may order the juror to be discharged. If an alternate juror has not been impaneled as provided in the rules, the trial may proceed with the other jurors with the consent of the parties, or another juror may be sworn and the trial may begin anew; or the jury may be discharged and a new jury then or afterwards formed.

(f) **Jury—Deliberation—Communications.** After hearing the charge the jury shall retire for deliberation. No persons other than the jurors and any interpreter necessary to assist a juror who is hearing or speech impaired shall be present while the jury is deliberating or voting. The jury shall be and remain under the charge of an officer until it agrees upon its verdict or is discharged by the court. Unless otherwise ordered by the court, the officer having charge of the jury must keep the jury together, separate from other persons; and the officer must not suffer any communication to be made to it, nor make any except to ask it if it has agreed upon its verdict, and the officer must not, before the verdict is rendered, communicate to any person the state of its deliberations or the verdict agreed upon. Such officer shall be sworn to act according to the provisions of this section.

(g) **Items Which May Be Taken Into the Jury Room.** Upon retiring for deliberation the jury shall take with it any exhibits, except depositions, that have been introduced into evidence which the court deems proper.

(h) **Discharge of Jury Before Verdict.** Except as may be provided in these rules or as the interest of justice may require, the jury shall not be discharged after the cause is submitted to them until they have agreed upon a verdict and given it in open court, except:

(1) By the consent of all parties entered in the record.

(2) At the expiration of such period as the court deems proper if it appears that there is no probability of an agreement being arrived at among the jurors necessary to return a verdict.

(i) **Retrial in the Event of Discharge Without Verdict.** In all cases where the jury is discharged without having given a verdict, or is prevented from giving a verdict by reason of accident or other cause during the progress of the trial, or after the cause is submitted to it, the action may be again tried immediately, or at a future time, as the court directs.

(j) **Adjournment During Absence of Jury.** While the jury is absent the court may adjourn from time to time, in respect to other business, but it is nevertheless open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury discharged.

(Adopted by SCO 5 October 9, 1959; amended by SCO 49 effective January 1, 1963; by SCO 1153 effective July 15, 1994; and by SCO 1439 effective October 15, 2001)

Cross References

CROSS REFERENCE: AS 09.50.010

Rule 49. Special Verdicts and Interrogatories.

(a) **Returning a Verdict—Polling a Jury—Filing and Entering Verdict.** When the jury, or such a majority of it as may be required by the law or stipulation of the parties, have agreed upon a verdict, they shall be conducted into court, their names called, and the verdict shall be given by the foreperson. The verdict shall be in writing and signed by the foreperson. The court may permit the foreperson of the jury to date, sign and seal in an envelope a verdict reached after the usual business hours. The jury may then separate, but all must be in the jury box to deliver the verdict when the court next convenes or as instructed by the court. When the court authorizes a sealed verdict, it shall admonish the jurors not to make any disclosure concerning it nor speak with other persons concerning the case until the verdict has been returned and the jury discharged. Any party may require the jury to be polled as to any verdict, which is done by asking each juror if it is the juror's verdict. If upon such polling it appears that a verdict has not been agreed upon, the jury shall be sent out for further deliberation. After a verdict has been agreed upon, the jury shall be discharged from the case. The verdict shall be filed and an entry thereof made in the minutes of the court. The word "verdict" shall include, where applicable, answers to questions or interrogatories.

(b) **Special Verdicts.** The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(c) **General Verdict Accompanied by Answer to Interrogatories.** The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the

general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 58. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

(Adopted by SCO 5 October 9, 1959; amended by SCO 258 effective November 15, 1976; by SCO 715 effective September 15, 1976; by SCO 1153 effective July 15, 1994; and by SCO 1281 effective August 7, 1997))

Note: Ch. 139, § 5, SLA 1986, provided that AS 09.17.040 and 09.17.080, enacted by ch. 139, § 1, SLA 1986, amended Civil Rule 49 by requiring the jury to answer special interrogatories listed in AS 09.17.090 regarding the amount of damages and the percentage of fault to be allocated among the parties and to itemize the verdict regarding economic, noneconomic and punitive damages as specified in AS 09.17.040.

Sec. 09.17.040. Award of damages.

(a) In every case where damages for personal injury are awarded by the court or jury, the verdict shall be itemized between economic loss and noneconomic loss, if any, as follows:

(1) past economic loss;

(2) past noneconomic loss;

(3) future economic loss;

(4) future noneconomic loss; and

(5) punitive damages.

(b) The fact finder shall reduce future economic damages to present value. In computing the portion of a lump sum award that is attributable to future economic loss, the fact finder shall determine the present amount that, if invested at long term future interest rates in the best and safest investments, will produce over the life expectancy of the injured party the amount necessary to compensate the injured party for(1)the amount of wages the injured party could have been expected to earn during future years, taking into account future anticipated inflation and reasonably anticipated increases in the injured party's earnings; and

(1) the amount of wages the injured party could have been expected to earn during future years, taking into account future anticipated inflation and reasonably anticipated increases in the injured party's earnings; and

(2) the amount of money necessary during future years to provide for all additional economic losses related to the injury, taking into account future anticipated inflation.

(c) Subsection (b) of this section does not apply to future economic damages if the parties agree that the award of future damages may be computed under the rule adopted in the case of Beaulieu v. Elliott, 434 P.2d 655 (Alaska 1967).

(d) In an action to recover damages, the court shall, at the request of an injured party, enter judgment ordering that amounts awarded a judgment creditor for future damages be paid to the maximum extent feasible by periodic payments rather than by a lump sum payment.

(e) The court may require security be posted, in order to ensure that funds are available as periodic payments become due. The court may not require security to be posted if an authorized insurer, as defined in AS 21.90.900, acknowledges to the court its obligation to discharge the judgment.

(f) A judgment ordering payment of future damages by periodic payment shall specify the recipient, the dollar amount of the payments, the interval between payments, and the number of payments in the period of time over which payments shall be made. Payments may be modified only in the event of the death of the judgment creditor, in which case payments may not be reduced or terminated, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before death. In the event the judgment creditor owed no duty of support to dependents at the time of the judgment creditor's death, the money remaining shall be distributed in accordance with a will of the deceased judgment creditor accepted into probate or under the intestate laws of the state if the deceased had no will.

(g) If the court finds that the judgment debtor has exhibited a continuing pattern of failing to make payments required under (c) of this section, the court shall, in addition to the required periodic payments, order the judgment debtor to pay the judgment creditor any damages caused by the failure to make periodic payments, including costs and attorney fees. (§ 1 ch. 139 SLA 1986)

Sec. 09.17.080. Apportionment of damages.

(a) In all actions involving fault of more than one party to the action, including third party defendants and persons who have been released under AS 09.17.090, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating

(1) the amount of damages each claimant would be entitled to recover if contributory fault is disregarded; and

(2) the percentage of the total fault of all of the parties to each claim that is allocated to each claimant, defendant, third party defendant, and person who has been released from liability under AS 09.17.090.

(b) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party at fault, and the extent of the causal relation between the

conduct and the damages claimed. The trier of fact may determine that two or more persons are to be treated as a single party if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

(c) The court shall determine the award of damages to each claimant in accordance with the findings, subject to a reduction under AS 09.17.090, and enter judgment against each party liable. The court also shall determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance with the respective percentages of fault.

(d) The court shall enter judgment against each party liable on the basis of joint and several liability, except that a party who is allocated less than 50 percent of the total fault allocated to all the parties may not be jointly liable for more than twice the percentage of fault allocated to that party. (§ 1 ch. 139 SLA 1986)

Note: Ch. 26, § 11, SLA 1997 amends AS 09.17.080(a) concerning allocation of fault. This provision applies to causes of action accruing on or after August 7, 1997. See ch. 26, § 55, SLA 1997. According to § 50 of the Act, the amendments to AS 09.17.080(a) have the effect of amending Civil Rule 49 by requiring the jury to answer the special interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated among the claimants, defendants, third-party defendants, persons who have been released from liability, or other persons who are potentially responsible for the damages.

Rule 50. Motion for a Directed Verdict and for Judgment.

(a) **Motion for Directed Verdict—When Made—Effect.** A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

(b) **Motion for Judgment Notwithstanding the Verdict.** Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Not later than 10 days after the date shown in the clerk's certificate of distribution on the judgment, a party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with the party's motion for a directed verdict; or if a verdict was not returned such party, within 10 days after the jury has been discharged, may move for judgment in accordance with the party's motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may set aside the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

(c) **Same—Conditional Rulings on Grant of Motion.**

(1) If the motion for judgment notwithstanding the verdict, provided for in subdivision (b) of this rule, is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may serve a motion for a new trial pursuant to Rule 59 not later than 10 days after entry of the judgment notwithstanding the verdict.

(d) **Same—Denial of Motion.** If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

(Adopted by SCO 5 October 9, 1959; amended by SCO 258 effective November 15, 1976; by SCO 554 effective April 4, 1983; and by SCO 1153 effective July 15, 1994)

LAW REVIEW COMMENTARIES

"Summary Judgment In Alaska," 32 Alaska L. Rev. 181 (2015).

Rule 51. Instructions to Jury.

(a) **Requested Instructions—Objections.** At the close of the evidence or at such earlier time as the court reasonably directs, any party may file written requests that the court give the jury specific instructions. The court shall inform counsel of the final form of jury instructions prior to their arguments to the jury. Following the close of the evidence, before or after the arguments of counsel, the court shall instruct the jury. Additionally, the court may give the jury such instructions as it deems necessary at any stage of the trial. No party may assign as error the giving or the failure to give an instruction unless the party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which the party objects

and the grounds of the objection. Opportunity must be given to make the objection out of the hearing of the jury, by excusing the jury or hearing objections in chambers.

(b) **Instructions to Be Given.** The court shall instruct the jury that they are the exclusive judges of all questions of fact and of the effect and value of evidence presented in the action. The court shall instruct the jury on all matters of law that it considers necessary for their information in giving their verdict.

(Adopted by SCO 5 October 9, 1959; amended by SCO 49 effective January 1, 1963; by SCO 79 effective February 1, 1966; by SCO 920 effective January 15, 1989; by SCO 1153 effective July 15, 1994; and by SCO 1436 effective October 15, 2001)

Rule 52. Findings by the Court.

(a) **Effect.** In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

(b) **Amendment.** Upon motion of a party made not later than 10 days after the date shown in the clerk's certificate of distribution on the judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the court an objection to such findings or has made a motion to amend them or a motion for judgment.

(c) **Preparation and Submission.** The preparation and submission of findings of fact and conclusions of law shall be governed by Rule 78.

(Adopted by SCO 5 October 9, 1959; amended by SCO 258 effective November 15, 1976; by SCO 554 effective April 4, 1983; and by SCO 1295 effective January 15, 1998)

Note: Ch. 139, § 6, SLA 1986, provided that AS 09.17.080, enacted by ch. 139, § 1, SLA 1986, amended Civil Rule 52 by requiring the court to make specific findings regarding the amount of damages and the percentages of fault to be allocated among the parties.

Sec. 09.17.080. Apportionment of damages.

(a) In all actions involving fault of more than one party to the action, including third party defendants and persons who have been released under AS 09.17.090, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating

(1) the amount of damages each claimant would be entitled to recover if contributory fault is disregarded; and

(2) the percentage of the total fault of all of the parties to each claim that is allocated to each claimant, defendant, third party defendant, and person who has been released from liability under AS 09.17.090.

(b) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party at fault, and the extent of the causal relation between the conduct and the damages claimed. The trier of fact may determine that two or more persons are to be treated as a single party if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

(c) The court shall determine the award of damages to each claimant in accordance with the findings, subject to a reduction under AS 09.17.090, and enter judgment against each party liable. The court also shall determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance with the respective percentages of fault.

(d) The court shall enter judgment against each party liable on the basis of joint and several liability, except that a party who is allocated less than 50 percent of the total fault allocated to all the parties may not be jointly liable for more than twice the percentage of fault allocated to that party. (§ 1 ch. 139 SLA 1986)

Note: Sections 41, 43, 45, and 46 of chapter 87 SLA 1997 amend AS 25.20.050(n), AS 25.24.160(d), AS 25.24.210(e), and AS 25.24.230(i), respectively, to require that an order or acknowledgement of paternity, a divorce decree, a petition for dissolution of marriage, and a dissolution decree include the social security number of each party to the action and each child whose rights are being addressed. According to § 151 of the Act, these provisions have the effect of amending Civil Rules 52, 58, 78, and 90.1 by requiring the court to include social security numbers, if ascertainable, of parties and children in certain petitions, pleadings, and judgments.

PART VIII. MASTERS

Rule 53. Masters.

(a) **Appointment and Compensation.** The presiding judge of the superior court for each judicial district with the approval of the chief justice of the Supreme Court may appoint one or more standing masters for such district, and the court in which any action is pending may appoint a special master therein. As used in these rules the word "master" includes a

referee, an auditor and an examiner, and a magistrate judge or a deputy magistrate. The compensation, if any, to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action which is in the custody and control of the court, as the court may direct. The master shall not retain the master's report as security for compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) **Powers.** The order of reference to the master may specify or limit the master's powers and may direct the master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order. The master may require the production of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. The master may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Evidence Rule 103(b) for a court sitting without a jury.

(c) **Proceedings.**

(1) *Meetings.* When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make the report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in the master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) *Witnesses.* The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, the witness may be punished for a contempt and be subjected to the consequences, penalties and remedies provided in Rules 37 and 45.

(3) *Statement of Accounts.* When matters of accounting are in issue before the master, the master may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as the master directs.

(d) **Report.**

(1) *Contents and Filing.* The master shall prepare a report upon the matters submitted to the master by the order of reference and, if required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

(2) *In Non-Jury Actions.* Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for an action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 77. In an action to be tried without a jury,

(A) if no party files objections to the report, the court may accept the master's findings without conducting an independent review of the evidence presented to the master.

(B) if any party files objections to the report, the court shall obtain and review a transcript or electronic recording of the portions of the proceedings that relate to the objections. The court must consider under a de novo standard of review all objections to findings of fact made or recommended in the report, and must rule on each objection. However, the parties may stipulate with the court's consent that the master's findings will be reviewed for clear error or that the master's findings will be final.

The court may adopt the report, may modify it, may reject it in whole or in part, may receive further evidence, or may recommit it with instructions.

(3) *In Jury Actions.* In an action to be tried by a jury the master shall not be directed to report the evidence. The master's findings upon the issues submitted to the master are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(4) *Stipulation as to Findings.* The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) *Draft Report.* Before filing the master's report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

(6) *Report of Magistrate Judge or Deputy Magistrate.* Where a magistrate judge or a deputy magistrate has been appointed a standing or special master for any purpose, the master's report shall include such findings of fact, transcript of evidence or proceedings and recommendations as may have been requested by the superior court in its order of reference.

(Adopted by SCO 5 October 9, 1959; amended by SCO 358 effective March 22, 1979; by SCO 888 effective July 15, 1988, by SCO 1096 effective January 15, 1993; by SCO 1153 effective July 15, 1994; by SCO 1685 effective December 19, 2008; and by SCO 1829 effective October 15, 2014)

Cross References

See CINA Rule 4, Probate Rule 2, Adoption Rule 3, and Delinquency Rule 4 for Appointment and Authority of Masters.

USE NOTE to subsection (d): "Independent review" means de novo review; that standard of review does not require a new or supplementary evidentiary hearing unless the trial court in its discretion determines that such additional proceedings are necessary.

PART IX. JUDGMENT

Rule 54. Judgments—Costs.

(a) **Definition—Form—Preparation and Submission.** "Judgment" as used in these rules includes a decree. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings. Judgments for the payment of money must be in the form required by Civil Rule 58.2. The procedure for the preparation and submission of proposed judgments and orders is governed by Rule 78.

(b) **Judgment Upon Multiple Claims or Involving Multiple Parties.** 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.

(c) **Demand for Judgment.** 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.

(d) **Costs.** Except when express provision therefor is made either in a statute of the state or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs. The procedure for the taxing of costs by the clerk and review of the clerk's action by the court shall be governed by Rule 79.

(Adopted by SCO 5 October 9, 1959; amended by SCO 258 effective November 15, 1976; by SCO 554 effective April 4, 1983; by SCO 1153 effective July 15, 1994; and by SCO 1415 effective October 15, 2000)

Note: AS 25.24.150(f), 25.24.155, and 25.24.160(c), added by ch. 76. §§ 1–3, SLA 1991, amended Civil Rule 54(b) by prohibiting the separation of claims in an action for divorce or an action declaring a marriage void without compliance with AS 25.24.155, as added by ch. 76, § 2, SLA 1991.

Cross References

(d) **CROSS REFERENCE:** AS 09.60.050

Rule 55. Default.

(a) **Entry.**

(1) *Application for Default.* When a party against whom a judgment for affirmative relief is sought has failed to appear and answer or otherwise defend as provided by these rules, and that fact is shown by affidavit or otherwise, the clerk shall enter a default. The party seeking default must serve the application on all parties, including the party against whom the default is sought, in accordance with Civil Rule 5.

(2) *When Entry is Made.* A party who fails to appear or who appears but fails to answer or otherwise defend may be defaulted by the clerk not less than seven days following service of the application for default.

(b) **Judgment by the Clerk.**

(1) *Failure to Appear.* If the defendant has been defaulted for failure to appear and the plaintiff's claim(s) is for a sum certain or for a sum that can by computation be made certain, upon the filing of an application for default judgment including an affidavit of the amount due which also states that the person against whom judgment is sought is: (i) not an infant or an incompetent person; and (ii) 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 clerk shall enter default judgment for the amount due and costs and attorney's fees against the defendant.

(2) *Multiple Parties or Claims.* The clerk may not enter a default judgment in a case involving multiple defendants unless all defendants have been defaulted.

(c) **Judgment by the Court.**

(1) In all other cases the party entitled to a default judgment shall apply to the court therefor; but no default judgment shall be entered against an infant or incompetent person unless represented in the action by a general guardian,

committee, conservator, or other such representative who has appeared therein. If the party against whom default judgment is sought has appeared in the action, that party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least three days prior to a decision on the application. This written notice requirement and the memorandum requirement of (c)(2) do not apply if the party fails to appear for trial in which case the court may proceed ex parte upon any motion for default or default judgment. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper.

(2) When application is made to the court for a default judgment, counsel shall file a memorandum of the default, showing when and against what parties it was entered and the pleadings to which no defense has been made. The party seeking default must also file an affidavit stating whether the person against whom judgment is sought is 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. If any party against whom default judgment is sought is shown by the record to be an infant or incompetent person, or in the military service of the United States, counsel shall also file a memorandum stating whether or not that person is represented in the action by a general guardian, committee, conservator, attorney or such other representative who has appeared therein. If the party against whom default judgment is sought has appeared in the action or proceeding, the memorandum shall also indicate whether or not the record shows that notice has been served as required by paragraph (1) of this subdivision.

(3) If the amount of damages claimed in an application to the court for default judgment is unliquidated, the applicant may submit evidence by affidavit showing the amount of damages and if, under the provisions of paragraph (1) of this subdivision, notice of the application is necessary, the parties against whom judgment is sought may submit affidavits in opposition.

(4) If the case involves multiple defendants and all defendants have not been defaulted, the court may not enter a default judgment unless the nondefaulting defendant's defenses would not be available to the defaulting defendant. A default judgment issued under such circumstances is nevertheless subject to Civil Rule 54(b).

(d) **Response to Pleading.** A party may respond to any pleading at any time before a default is entered.

(e) **Setting Aside Default.** For good cause shown the court may set aside an entry of default and, if a default judgment has been entered, may likewise set it aside in accordance with Rule 60(b).

(f) **Plaintiffs, Counterclaimants, Cross-Claimants.** The provisions of this rule apply whether the party entitled to the default judgment is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a default judgment is subject to the limitations of Rule 54(c).

(g) **Judgment Against the State.** No default judgment shall be entered against the state or an officer or agency thereof unless the claimant establishes the claim or right to relief by evidence satisfactory to the court.

(h) **Costs and Attorney Fees.** To recover costs and attorney fees, a party entitled to entry of default judgment without the need for further hearing under (c)(1) must include in the application for default judgment (1) an itemized statement of costs incurred in the action and allowable under Civil Rule 79(f), and (2) the party's actual attorney's fees. In such case, no cost bill or motion for attorney's fees is required. Civil Rule 82(b)(4) governs the amount of attorney's fees that may be awarded in a default case.

(i) **Proposed Judgment.** An application for default judgment must be accompanied by a proposed judgment in the form required by Civil Rule 58.2.

(Adopted by SCO 5 October 9, 1959; amended by SCO 30 effective February 1, 1961; by SCO 498 effective January 18, 1982; by SCO 554 effective April 4, 1983; by SCO 787 effective March 1, 1987; by SCO 1415 effective October 15, 2000; by SCO 1584 effective October 15, 2005; by SCO 1663 effective April 15, 2009; and by SCO 1771 effective April 16, 2012)

Note: The affidavit described in subsections (b) and (c) incorporates the requirements of the Servicemembers Civil Relief Act (50 App. U.S.C. § 521), as amended, concerning whether a party is in the military service.

Rule 56. Summary Judgment.

(a) **For Claimant.** A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move for a summary judgment in the party's favor upon all or any part thereof.

(b) **For Defending Party.** A party against whom a claim, counterclaim or cross-claim is asserted or a declaratory judgment is sought may, at any time, move for a summary judgment in the party's favor as to all or any part thereof.

(c) **Motion and Proceedings Thereon.** The motion shall be made pursuant to Rule 77, and may be supported by affidavits setting forth concise statements of material facts made upon personal knowledge. There must also be served and filed with each motion a memorandum showing that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The adverse party in accordance with Rule 77 may serve opposing affidavits, a concise "statement of genuine issues" setting forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated, and any other memorandum in

opposition to the motion. Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. Summary judgment, when appropriate, may be rendered against the moving party. A decision granting a motion for summary judgment is not a final judgment under Civil Rule 58. When the decision adjudicates all unresolved claims as to all parties, the judge shall direct the appropriate party to file a proposed final judgment. The proposed judgment must be filed within 20 days of service of the decision, on a separate document distinct from any opinion, memorandum or order that the court may issue.

(d) **Case Not Fully Adjudicated on Motion.** If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) **Form of Affidavits—Further Testimony—Defense Required.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) **When Affidavits Are Unavailable.** Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) **Affidavits Made in Bad Faith.** Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(Adopted by SCO 5 October 9, 1959; amended by SCO 258 effective November 15, 1976; by SCO 1153 effective July 15, 1994; and by SCO 1430 effective April 15, 2002)

LAW REVIEW COMMENTARIES

"Summary Judgment In Alaska," 32 Alaska L. Rev. 181 (2015).

Rule 57. Declaratory Judgments—Judgments by Confession.

(a) **Declaratory Judgments.** The procedure for obtaining a declaratory judgment pursuant to statute shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

(b) **Confession Judgments—After Commencement of Action.**

(1) On the confession of the defendant, with the assent of the plaintiff or the plaintiff's attorney, a judgment may be given against the defendant in any action, for any amount not exceeding or relief different from that demanded in the complaint.

(2) The confession shall be in writing and signed by the defendant. The assent shall be in writing and signed by the parties or their attorneys. The confession and assents shall each be acknowledged before an officer authorized by law to administer oaths unless the parties or their attorneys appear in court when the judgment is given. The confession, assent and acknowledgment, if any, shall be filed with the clerk.

(c) **Confession Judgments—Without Action.**

(1) On the confession of any person capable of being made a defendant to an action, judgment may be given against such person without action, in favor of anyone, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant in such judgment, or both, if it be in favor of the same person.

(2) The confession shall be made, assented to and acknowledged and judgment given in the same manner as a confession in an action pending, but in addition, the confession shall be verified by the oath of the person making it, and shall authorize a judgment to be given for a particular sum. If it be for money due or to become due it shall state plainly and concisely the facts out of which such indebtedness arose, and shall show that the sum confessed therefor is justly due or to become due. If it be for the purpose of securing the plaintiff in the judgment against a contingent liability, it shall state plainly

and concisely the facts constituting such liability and shall show that the sum confessed therefor does not exceed the same. When judgment is given so as to be payable in installments, executions may issue to enforce the payment of such installments as they become due.

(Adopted by SCO 5 October 9, 1959; amended by SCO 49 effective January 1, 1963; and by SCO 1153 effective July 15, 1994)

Cross References

(b)(1) **CROSS REFERENCE:** AS 09.30.050; AS 09.30.060

(b)(2) **CROSS REFERENCE:** AS 09.30.050; AS 09.30.060

(c)(1) **CROSS REFERENCE:** AS 09.30.050; AS 09.30.060

Rule 58. Entry of Judgment.

Subject to the provisions of Rule 54(b): (1) upon a general verdict of a jury, or upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the court or the clerk, upon direction of the court, shall forthwith enter the judgment; (2) upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly enter judgment. Every judgment must be set forth on a separate document distinct from any findings of fact, conclusions of law, opinion, or memorandum. Entry of the judgment shall not be delayed, nor the time for appeal extended, for the taxing of costs or the award of fees. Judgments for the payment of money must be in the form required by Civil Rule 58.2.

(Adopted by SCO 5 October 9, 1959; amended by SCO 258 effective November 15, 1976; by SCO 554 effective April 4, 1983; by SCO 1281 effective August 7, 1997; by SCO 1295 effective January 15, 1998; by SCO 1415 effective October 15, 2000; and by SCO 1482 effective October 15, 2002)

Note: Ch. 139, Sec. 1. SLA 1986, enacted AS 09.17.040 and AS 09.17.080 regarding awards of damages for personal injury and the apportionment of damages. According to Section 7 of the Act, AS 09.17.040 and AS 09.17.080 have the effect of amending Civil Rule 58. AS 09.17.040 requires verdicts to include an itemization between economic and non-economic losses, and allows for periodic payment in certain circumstances. AS 09.17.080, as amended, requires special interrogatories or finding on the amount to damages and percentages of fault, and requires that judgment be entered against each liable party on the basis of several liability.

Note: Ch. 26, sec. 10, SLA 1997 repeals and reenacts AS 09.17.020 concerning punitive damages. New AS 09.17.020(j) requires that 50 percent of an award of punitive damages be deposited in the state general fund. This provision applies to causes of action accruing on or after August 7, 1997. See ch. 26, sec. 55, SLA 1997. According to sec. 49 of the Act, new AS 09.17.020(j) has the effect of amending Civil Rule 58 by requiring the court to order that a certain percentage of an award of punitive damages be deposited into the general fund.

Note: Ch. 26, sec. 19, SLA 1997 amends AS 09.30.070 by adding subsection (c) concerning prejudgment interest on awards of future economic damages, future noneconomic damages, and punitive damages. This provision applies to causes of action accruing on or after August 7, 1997. See ch. 26, sec. 55, SLA 1997. According to sec. 53 of the Act, new AS 09.30.070(c) has the effect of amending Civil Rule 58 by providing that prejudgment interest may not be awarded for future economic or noneconomic damages or punitive damages.

Note: Sections 41, 43, 45, and 46 of chapter 87 SLA 1997 amend AS 25.20.050(n), AS 25.24.160(d), AS 25.24.210(e), and AS 25.24.230(i), respectively, to require that an order or acknowledgement of paternity, a divorce decree, a petition for dissolution of marriage, and a dissolution decree include the social security number of each party to the action and each child whose rights are being addressed. According to § 151 of the Act, these provisions have the effect of amending Civil Rules 52, 58, 78, and 90.1 by requiring the court to include social security numbers, if ascertainable, of parties and children in certain petitions, pleadings, and judgments.

Cross References

CROSS REFERENCE: AS 09.30.010; AS 09.30.020; AS 09.17.020(j)

Rule 58.1. Judgments and Orders— Effective Dates and Commencement of Time for Appeal, Review and Reconsideration.

(a) **Effective Dates of Orders and Judgments.** Orders and judgments become effective the date they are entered.

(1) *Oral Orders.* The date of entry of an oral order is the date the order is put on the official electronic record by the judge unless otherwise specified by the judge. At the time the judge announces an oral order, the judge shall also announce on the record whether the order shall be reduced to writing. If the oral order is reduced to writing, the effective date shall be included in the written order.

(2) *Written Orders Not Preceded by Oral Orders.* The date of entry of a written order not preceded by an oral order is the date the written order is signed unless otherwise specified in the order.

(3) *Judgments.* The date of entry of a civil judgment is the date it is signed unless otherwise specified in the judgment. All judgments shall be reduced to writing.

(b) **Commencement of Time for Appeal, Review and Reconsideration.** The time within which a notice of appeal may be filed and reconsideration or review of orders and judgments may be requested begins running on the date of notice as defined below.

(c) **Date of Notice.**

(1) *Oral Orders.*

(i) As to the parties present when an oral order is announced, the date of notice is the date the judge announces the order on the official electronic record, unless at that time the judge announces that the order will be reduced to writing in

which case the date of notice is the date shown in the clerk's certificate of distribution on the written order.

(ii) As to parties not present at the announcement of an oral order, the date of notice is the date shown in the clerk's certificate of distribution of notice of the order. If, however, at the time the judge announces the oral order the judge announces that the order will be reduced to writing, the date of notice is the date shown in the clerk's certificate of distribution on the written order.

(2) *Written Orders.* The date of notice of a written order is the date shown in the clerk's certificate of distribution on the written order.

(3) *Judgments.* All judgments must be reduced to writing. The date of notice of a judgment is the date shown in the clerk's certificate of distribution on the written judgment.

(4) *Other Service Requirements.* The notice provisions apply to the notice of orders and judgments under Rule 73(d) and do not affect the service requirements of any other rule of civil procedure.

(d) **Clerk's Certificate of Distribution.** Every written notice of an oral order and every written order and judgment shall include a clerk's certificate of distribution showing the date copies of the notice, order or judgment were distributed, the name of each person to whom a copy was distributed, and the name or initials of the court employee who distributed the copies.

(Added by SCO 554 effective April 4, 1983; amended by SCO 900 effective January 15, 1989; by SCO 1153 effective July 15, 1994; and by SCO 1414 effective October 15, 2000)

Cross References

CROSS REFERENCE: App. R. 204

Rule 58.2. Judgments for the Payment of Money.

(a) **Form Generally.** In addition to identifying each judgment creditor and each judgment debtor, a judgment for the payment of money must include the following information, if applicable, in the form shown in the sample judgments published at the end of this rule:

(1) the principal amount of the judgment;

(2) the portion of the principal that accrues prejudgment interest and the prejudgment interest rate, except as provided in (b);

(3) the date from which prejudgment interest should be calculated, except as provided in (b);

(4) a blank space for the court to fill in the amount of prejudgment interest;

(5) the amount of punitive damages, if any;

(6) a blank space for the court to fill in the amount of attorney's fees awarded;

(7) a blank space for the court to fill in the amount of costs awarded;

(8) a blank space for the total judgment amount;

(9) the post-judgment interest rate; and

(10) recognition of any interest by the State of Alaska in a punitive damages verdict.

(b) **Prejudgment Interest.** The total amount of prejudgment interest will be calculated by the court. If more than one interest rate applies or interest is calculated from more than one date, the interest rate and date should not be listed in the judgment as provided in (a). Instead, the party preparing the judgment must submit a separate computation sheet showing the interest calculations, including all applicable interest rates and dates, any payments, and how payments were applied to interest, costs, and principal.

(c) **Identification of Judgment Creditors and Judgment Debtors.** When identifying judgment creditors and judgment debtors, the party preparing the judgment must include as much of each person's full legal name as is known to that party and each person's date of birth, if known to that party.

(d) **Name of Judge.** In a proposed judgment, the name of the judge, if known, must be typed under the judge's signature line.

(e) **Child Support Orders.** This rule does not apply to child support orders. The form of child support orders is governed by Civil Rule 90.3(j).

(f) **Rejection for Noncompliance.** The clerk may reject proposed judgments that do not comply with this rule and Civil Rule 76.

(Adopted by SCO 1415 effective October 15, 2000; and amended by SCO 1699 effective October 15, 2009)

SAMPLE JUDGMENT WITHOUT PUNITIVE DAMAGES
(not to scale)

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

BARBARA A. JONES,	)	
Plaintiff,	)	
vs.	)	
	)	
MARY JANE SMITH and	)	
FRED R. SMITH,	)	Case No. 3AN-00-1234CI
	)	
Defendants.	)	FINAL JUDGMENT
_____	)	

IT IS ORDERED that judgment is entered as follows:

1. Plaintiff Barbara Ann Jones, d.o.b. 1/24/57, shall recover from and have judgment against defendants Mary Jane Smith, d.o.b. 1/26/56, and Frederick Ronald Smith, d.o.b. 3/24/56, jointly and severally, as follows:

a. Principal Amount	$ _____
b. Prejudgment Interest on $ _____ (computed at the annual rate of _____% from _____ to date of judgment)	$ _____
c. Sub-Total:	$ _____
d. Attorney's Fees Date Awarded: _____ Judge: _____	$ _____
e. Costs Date Awarded: _____ Clerk: _____	$ _____
f. TOTAL JUDGMENT:	**$ _____**
g. Post-Judgment Interest Rate:	_____ %

2. (non-monetary provision)

_____ _____
Date George W. Black
Superior Court Judge

<u>DO NOT USE THIS FORM IF PUNITIVE DAMAGES ARE AWARDED.</u>

SAMPLE JUDGMENT WITH PUNITIVE DAMAGES
(not to scale)

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

BARBARA A. JONES,	)	
Plaintiff,	)	
vs.	)	
	)	
MARY JANE SMITH and	)	
FRED R. SMITH,	)	Case No. 3AN-00-1234CI
	)	
Defendants.	)	FINAL JUDGMENT
_____	)	

IT IS ORDERED that judgment is entered as follows:

1. Plaintiff Barbara Ann Jones, d.o.b. 1/24/57, shall recover from and have judgment against defendants Mary Jane Smith, d.o.b. 1/26/56, and Frederick Ronald Smith, d.o.b. 3/24/56, jointly and severally, as follows:

a. Principal Amount	$ _____
b. Prejudgment Interest on $ _____ (computed at the annual rate of _____% from _____ to date of judgment)	$ _____
c. Punitive Damage Award	$ _____
d. Sub-Total:	$ _____
e. Attorney's Fees Date Awarded: _____ Judge: _____	$ _____
f. Costs Date Awarded: _____ Clerk: _____	$ _____
g. SUB-TOTAL JUDGMENT:	$ _____
h. Subtract Judgment in favor of state from line 3.b.	($ _____)
i. **TOTAL JUDGMENT**	$ _____
j. Post-Judgment Interest Rate:	_____%

2. (non-monetary provision)

Punitive Damages to the State of Alaska
(Rule 78(c) requires the party preparing the prosposed judgment to serve notice on the Attorney General in Juneau)

3. 50% of Punitive Damage Award	$ _____
a. Subtract attorney's fees and/or costs apportioned to state	($ _____)
b. Judgment in favor of the State of Alaska: $ _____	
c. Post-Judgment Interest Rate	_____%

_____ _____
Date George W. Black
Superior Court Judge

Rule 59. New Trials—Amendment of Judgments.

(a) **Grounds.** A new trial may be granted to all or any of the parties and on all or part of the issues in an action in which there has been a trial by jury or in an action tried without a jury, if required in the interest of justice. On a motion for a new trial in an action tried without a jury, the court may take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) **Motion: Time for Serving—Statement of Grounds.** A motion for a new trial shall be served not later than 10 days after the date shown in the clerk's certificate of distribution on the judgment. The motion shall state the grounds upon which the moving party relies and shall refer to the papers on which the motion is to be based.

(c) **Time for Serving Affidavits.** When a motion for a new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) **Contents of Affidavit.** If a ground of the motion is newly discovered evidence, the motion shall be supported by the affidavit of the party, or of the party's agent or any officer within whose charge or knowledge the facts are, and also by the affidavit of the party's attorney, showing that the evidence was in fact newly discovered and why it could not with reasonable diligence have been produced at the trial. If the newly discovered evidence consists of oral testimony, the motion shall be supported by the affidavit of the witness or witnesses to the effect that the witness or witnesses would give the testimony proposed. If the newly discovered evidence is documentary, the motion shall be supported by the documents themselves or by duly authenticated copies thereof, or if that is impracticable, by satisfactory evidence of their contents.

(e) **On Initiative of Court.** Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify the grounds therefor.

(f) **Motion to Alter or Amend a Judgment.** A motion to alter or amend the judgment shall be served not later than 10 days after the entry of the judgment.

(Adopted by SCO 5 October 9, 1959; amended by SCO 258 effective November 15, 1976; by SCO 554 effective April 4, 1983; by SCO 1153 effective July 15, 1994; and by SCO 1361 effective October 15, 1999)

Note: Chapter 42 § 2 SLA 1999 enacts AS 09.19.200 which governs the remedies available in civil litigation involving conditions in correctional facilities. According to § 3 of the act, the enactment of AS 09.19.200 has the effect of amending Civil Rules 59(f), 60(b), 62, and 65 by altering the remedies available and the procedure to be used in litigation involving correctional facilities.

Rule 60. Relief From Judgment or Order.

(a) **Clerical Mistakes.** Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal or petition for review to the Supreme Court, such mistakes may be so corrected before the record is filed in the Supreme Court, and thereafter may be so corrected with leave of the Supreme Court. For purposes of this rule, the record includes electronic information maintained about the case.

(b) **Mistakes—Inadvertence—Excusable Neglect—Newly Discovered Evidence—Fraud—Etc.** On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

(6) any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the date of notice of the judgment or orders as defined in Civil Rule 58.1(c). A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to grant relief to a defendant not personally served, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis and audita querela are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(c) **Form of Amended or Corrected Judgments.** A motion to amend or correct a judgment must be accompanied by a proposed amended or corrected judgment and a separate proposed order. The new judgment must include the word "amended" or "corrected" in the title.

(Adopted by SCO 5 October 9, 1959; amended by SCO 554 effective April 4, 1983; by SCO 1153 effective July 15, 1994; by SCO 1361 effective October 15, 1999; by SCO 1415 effective October 15, 2000; by SCO 1622 effective October 15, 2006; and by SCO 1670 effective July 1, 2009)

Note: Chapter 42 § 2 SLA 1999 enacts AS 09.19.200 which governs the remedies available in civil litigation involving conditions in correctional facilities. According to § 3 of the act, the enactment of AS 09.19.200 has the effect of amending Civil Rules 59(f), 60(b), 62, and 65 by altering the remedies available and the procedure to be used in litigation involving correctional facilities.

Note (effective July 1, 2009): Chapter 92 SLA 2008 (HB 65) added a new chapter to AS 45 relating to security of personal information, effective July 1, 2009. According to section 6(a) of the Act, AS 45.48.640, enacted by section 4, has the effect of changing Civil Rule 60(b) by allowing a court to vacate an order on its own motion and at any time and by establishing a specific criterion for vacating the order under AS 45.48.640.

Rule 61. Harmless Error.

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

(Adopted by SCO 5 October 9, 1959)

Rule 62. Stay of Proceedings to Enforce a Judgment.

(a) **Automatic Stay—Exceptions.** Except as to judgments entered on default or by consent or on confession, and except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after the date shown in the clerk's certificate of distribution on the judgment. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal or proceedings for review.

(b) **Stay on Motion for New Trial or for Judgment.** In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

(c) **Injunction Pending Appeal or Review.** When an appeal is taken or review sought from an interlocutory or final judgment or order or decision granting, dissolving or denying an injunction, the court in its discretion may suspend, modify, restore or grant an injunction during the pendency of the appeal or the proceedings for review upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) **Stay Upon Appeal or Proceedings for Review.** When an appeal is taken or review sought the appellant or petitioner by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of filing the petition for review, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

(e) **Stay in Favor of the State or Agency Thereof.** When an appeal is taken or review sought by the state or an officer or agency thereof, and the operation or enforcement of the judgment, order or decision is stayed, no bond, obligation or other security shall be required from the appellant or the petitioner, as the case may be.

(f) **Power of Supreme Court Not Limited.** The provisions in this rule do not limit any power of the supreme court or of a justice thereof to stay proceedings during the pendency of an appeal or proceedings for review, or to suspend, modify, restore or grant an injunction during the pendency of an appeal or proceedings for review, or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(g) **Stay of Judgment Upon Multiple Claims or Multiple Parties.** When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

(Adopted by SCO 5 October 9, 1959; amended by SCO 30 effective February 1, 1961; by SCO 44 effective February 26, 1962; by SCO 258 effective November 15, 1976; by SCO 554 effective April 4, 1983; and by SCO 1361 effective October 15, 1999)

Note: Chapter 42 § 2 SLA 1999 enacts AS 09.19.200 which governs the remedies available in civil litigation involving conditions in correctional facilities. According to § 3 of the act, the enactment of AS 09.19.200 has the effect of amending Civil Rules 59(f), 60(b), 62, and 65 by altering the remedies available and the procedure to be used in litigation involving correctional facilities.

Rule 63. Disability of a Judge

(a) **Before Trial.** If by reason of death, sickness or other disability, a judge before whom an action is pending is unable to perform the duties to be performed by the court under these rules prior to the beginning of the trial or hearing, then any other judge of the court assigned by the presiding judge of the judicial district where the action is pending or by the chief justice of the supreme court may perform those duties.

(b) **During Trial.** If by reason of death, sickness or other disability, a judge before whom an action is pending is unable to perform the duties to be performed by the court under these rules after the trial or hearing of the action has commenced, then any other judge of the court, assigned by the presiding judge of the judicial district where the action is pending or by the chief justice of the supreme court, may perform those duties, as if such other judge had been present and presiding from the commencement of such trial or hearing; provided, however, that from the beginning of the taking of testimony at such trial or hearing a stenographic or electronic recording of the proceedings shall have been made so that the judge so continuing may become familiar with the previous proceedings.

(c) **After Verdict, etc.** If by reason of death, sickness or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge of the court, assigned by the presiding judge of the judicial district where the action has been tried or by the chief justice of the supreme court, may perform those duties; but if that judge is satisfied that that judge cannot perform those duties because the judge did not preside at the trial or for any other reason, that judge may grant a new trial.

(Adopted by SCO 5 October 9, 1959; amended by SCO 1153 effective July 15, 1994)

PART X. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Rule 64. Seizure of Person or Property.

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by law existing at the time the remedy is sought. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether by law the remedy is ancillary to an action or must be obtained by an independent action.

(Adopted by SCO 5 October 9, 1959; and amended by SCO 1806 effective September 9, 2013)

Note: Chapter 45, SLA 2013 (HB 65) enacted various changes, including a new section AS 34.40.113 related to discretionary interests in irrevocable trusts, effective September 9, 2013. According to section 47 of the Act, AS 34.40.113(f), enacted by section 40 of the Act, has the effect of amending Alaska Rule of Civil Procedure 64 by prohibiting a creditor or beneficiary from obtaining an order of attachment or similar relief in certain cases.

Rule 65. Injunctions.

(a) **Preliminary Injunction.**

(1) *Notice.* No preliminary injunction shall be issued without notice to the adverse party.

(2) *Consolidation of Hearing with Trial on Merits.* Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a) (2) shall be so construed and applied as to save the parties any rights they may have to trial by jury.

(b) **Temporary Restraining Order—Notice—Hearing—Duration.** A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) **Security.** No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the

payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the state or a municipality or of an officer or agency thereof, or unless otherwise ordered by the court, in domestic relations actions or proceedings.

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

(d) **Form and Scope of Injunction or Restraining Order.** Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) **Standing Preliminary Injunctions in Domestic Relations Actions.** The presiding judge of each judicial district may issue a standing injunction which restrains the parties in all domestic relations actions, except dissolutions, domestic violence actions and uniform reciprocal enforcement actions, from:

(1) removing any child who is the subject of the action from the State of Alaska without the written consent of the other party;

(2) disposing of, encumbering or transferring any marital property without the written consent of the other party, except reasonably using funds for the parties or the parties' children's personal and necessary expenses; and

(3) threatening, harassing, or harming the other party.

Such a standing injunction shall be effective against a party upon receipt of a copy of the standing injunction by the party or the party's attorney.

(Adopted by SCO 5 October 9, 1959; amended by SCO 30 effective February 1, 1961; by SCO 223 effective January 1, 1976; by SCO 258 effective November 15, 1976; by Section 2, Chapter 82, Session Laws of Alaska 1977 effective September 1, 1977; by SCO 708 effective July 15, 1986; by SCO 1153 effective July 15, 1994; by SCO 1269 effective July 15, 1997; by SCO 1361 effective October 15, 1999; and by SCO 1620 effective August 16, 2006)

Note: AS 10.06.630, as enacted by ch. 166, § 1, SLA 1988, amended Civil Rule 65 by changing the procedure for enjoining dissolution proceedings under AS 10.06.630.

Note: In 1996, the legislature enacted AS 18.66.110–18.66.130 relating to domestic violence protective orders. According to § 78 ch. 64 SLA 1996, these statutes have the effect of amending Civil Rule 65 relating to temporary restraining orders, the method of obtaining those orders, and the timing of those orders.

Note: Chapter 42 § 2 SLA 1999 enacts AS 09.19.200 which governs the remedies available in civil litigation involving conditions in correctional facilities. According to § 3 of the act, the enactment of AS 09.19.200 has the effect of amending Civil Rules 59(f), 60(b), 62, and 65 by altering the remedies available and the procedure to be used in litigation involving correctional facilities.

Note: Chapter 87 SLA 03 (HB 1) enacted AS 18.65.850-860, which addresses protective orders for persons who are victims of stalking not involving domestic violence. According to Section 8(b) of the Act, these provisions have the effect of amending Civil Rule 65 relating to temporary restraining orders, the method of obtaining those orders, and the timing of those orders.

Note: Chapter 54 SLA 2005 (HB 95) enacted extensive amendments and new provisions related to public health, including public health emergencies and disasters. According to Section 13(d) of the Act, AS 18.15.375(c)(3), (d), and (e), and 18.15.385(d) –(k), enacted in Section 8, have the effect of amending Civil Rule 65 by allowing temporary and ex parte injunctions to be issued and by expediting the procedures related to injunctive relief in matters involving public health.

Note: Chapter 36 SLA 2006 (SB 54) enacted changes to the protective order statutes for crimes involving stalking to include crimes involving sexual assault and sexual abuse. According to section 12 of the Act, the amendments to AS 18.65.850 and AS 18.65.855 made in sections 4 through 8 of the Act have the effect of changing Civil Rule 65 by changing the method for obtaining, and the timing of, temporary restraining orders.

Cross References

CROSS REFERENCE: AS 09.40.230

Rule 65.1. Domestic Violence, Stalking, and Sexual Assault Protective Orders —Access to Information.

A petitioner who is appearing pro se in a proceeding to obtain a domestic violence protective order under AS 18.66.100 or 18.66.110 or a stalking or sexual assault protective order under AS 18.65.850 or 18.65.855 may submit the petitioner's mailing address and telephone number on a separate form and omit this information from other pleadings and papers filed with the court. Access to the form containing the petitioner's mailing address and telephone number is limited to the court, authorized court system personnel, and the petitioner. If a child support order is entered in a domestic violence proceeding, court system personnel may also provide a copy of the address information form to the Child Support Services Division. Further disclosure of this form by the Child Support Services Division is prohibited. If the petitioner

submits an information sheet containing the petitioner's address and telephone number for use by law enforcement agencies, the court may retain a copy of this document. Access to the copy is limited to the court, authorized court system personnel, and the petitioner.

(Adopted by SCO 1345 effective August 13, 1998; amended by SCO 1527 effective September 11, 2003; and by SCO 1677 effective August 20, 2008)

Rule 66. Receivers.

An action wherein a receiver has been appointed shall not be dismissed except by order of the court. The practice in the administration of estates by receivers or by the other similar officers appointed by the court shall be in accordance with the practice set forth by statute. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by law and these rules.

(Adopted by SCO 5 October 9, 1959)

Cross References

CROSS REFERENCE: AS 09.40.240; AS 09.40.250

Rule 67. Deposit in Court.

Upon notice to every other party and upon leave of court, a party may deposit with the court all or any part of any sum of money or any other thing capable of physical delivery which is the subject of the action or due under a judgment. Money deposited with the court under this rule shall be managed in accordance with the provisions of Rule 5, Rules Governing the Administration of All Courts. The court shall release the deposit to the party entitled to it when that party becomes entitled to it. No interest shall accrue against a party making a deposit, to the extent of that deposit, after it is made.

(Adopted by SCO 5 October 9, 1959; amended by SCO 251 effective July 1, 1976; by SCO 465 effective June 1, 1981; by SCO 474 effective July 1, 1981; by SCO 1085 effective January 15, 1992; by SCO 1093 effective July 15, 1992; and by SCO 1192 effective July 15, 1995)

Rule 68. [Applicable to cases filed before August 7, 1997.] Offer of Judgment.

(a) At any time more than 10 days before the trial begins, either the party making a claim or the party defending against a claim may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in the offer, with costs then accrued. The offer may not be revoked in the 10 day period following service of the offer. If within 10 days after service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn and evidence of the offer is not admissible except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(b) If the judgment finally rendered by the court is not more favorable to the offeree than the offer, the prejudgment interest accrued up to the date judgment is entered shall be adjusted as follows:

(1) if the offeree is the party making the claim, the interest rate will be reduced by the amount specified in AS 09.30.065 and the offeree must pay the costs and attorney's fees incurred after the making of the offer (as would be calculated under Civil Rules 79 and 82 if the offeror were the prevailing party). The offeree may not be awarded costs or attorney's fees incurred after the making of the offer.

(2) if the offeree is the party defending against the claim, the interest rate will be increased by the amount specified in AS 09.30.065.

(c) When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

(Adopted by SCO 5 October 9, 1959; amended by SCO 818 effective August 1, 1987)

EDITOR'S NOTE: See Note to SCO 1281 following text of Rule 68 applicable after August 7, 1997.

Rule 68. [Applicable to cases filed on or after August 7, 1997.] Offer of Judgment.

(a) At any time more than 10 days before the trial begins, either the party making a claim or the party defending against a claim may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in the offer, with costs then accrued. The offer may not be revoked in the 10 day period following service of the offer. If within 10 days after service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn and evidence of the offer is not admissible except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(b) If the judgment finally rendered by the court is at least 5 percent less favorable to the offeree than the offer, or, if there are multiple defendants, at least 10 percent less favorable to the offeree than the offer, the offeree, whether the party making the claim or defending against the claim, shall pay all costs as allowed under the Civil Rules and shall pay reasonable actual attorney's fees incurred by the offeror from the date the offer was made as follows:

(1) if the offer was served no later than 60 days after the date established in the pretrial order for initial disclosures

required by Civil Rule 26, the offeree shall pay 75 percent of the offeror's reasonable actual attorney's fees;

(2) if the offer was served more than 60 days after the date established in the pretrial order for initial disclosures required by Civil Rule 26 but more than 90 days before the trial began, the offeree shall pay 50 percent of the offeror's reasonable actual attorney's fees;

(3) if the offer was served 90 days or less but more than 10 days before the trial began, the offeree shall pay 30 percent of the offeror's reasonable actual attorney's fees.

(c) If an offeror would be entitled to receive costs and reasonable actual attorney's fees under paragraph (b), that offeror shall be considered the prevailing party for purposes of an award of attorney's fees under Civil Rule 82. Notwithstanding paragraph (b), if the amount awarded an offeror for attorney's fees under Civil Rule 82 is greater than a party would receive under paragraph (b), the offeree shall pay to the offeror attorney's fees specified under Civil Rule 82 and is not required to pay reasonable actual attorney's fees under paragraph (b). A party who receives attorney's fees under this rule may not also receive attorney's fees under Civil Rule 82.

(Adopted by SCO 5 October 9, 1959; amended by SCO 818 effective August 1, 1987; by SCO 1281 effective August 7, 1997; and by SCO 1565 effective April 15, 2005)

Note to SCO 1281: In 1997 the legislature amended AS 09.30.065 concerning offers of judgment. According to ch. 26, sec 52, SLA 1997, the amendment to AS 09.30.065 has the effect of amending Civil Rules 68 and 82 by requiring the offeree to pay costs and reasonable actual attorney fees on a sliding scale of percentages in certain cases, by eliminating provisions relating to interest, and by changing provisions relating to attorney fee awards. According to sec. 55 of the session law, the amendment to AS 09.30.065 applies "to all causes of action accruing on or after the effective date of this Act." However, the amendments to Civil Rule 68 adopted by paragraph 5 of this order are applicable to all cases filed on or after August 7, 1997. See paragraph 17 of this order.

Rule 69. Execution—Examination of Judgment Debtor—Restraining Disposition of Property—Execution After Five Years.

(a) **Execution—Discovery.** Process to enforce a judgment shall be by a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with these rules and applicable statutes. In aid of the judgment or execution, the judgment creditor or a successor in interest, when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules.

(b) **Examination of Judgment Debtor in Court.**

(1) Before or after the issuing of an execution against property, the judgment debtor may be made to appear before the court, or before a master appointed by such court, at a time and place specified by an order, and to answer under oath all questions concerning property the judgment debtor has which may be subject to execution. The court may also order the debtor to bring to the examination documents concerning property that may be subject to execution.

(2) The examination may be reduced to writing and filed with the clerk by whom the execution was issued. Either party may examine witnesses in that party's behalf. If by such examination it appears that the judgment debtor has any property liable to execution the court shall make an order requiring the judgment debtor to apply the same in satisfaction of the judgment, or that such property be levied on by execution, or both, as may seem most likely to effect the object of the proceeding.

(c) **Order Restraining Disposition of Property.** At the time of allowing the order prescribed in subsection (b)(1) of this rule or at any time thereafter pending the proceeding, the court may make an order restraining the judgment debtor from selling, transferring, or in any manner disposing of any property liable to execution pending the proceeding. For disobeying any order or requirement authorized by this rule the judgment debtor may be punished as for a contempt.

(d) **Execution After Five Years.** Whenever any period of five years shall elapse without a writ of execution being outstanding on a judgment, no writ of execution may be issued unless the court finds that there are just and sufficient reasons for the judgment creditor's failure to obtain a writ within that five-year period. The procedure shall be as follows:

(1) The judgment creditor shall file a motion supported by affidavit with the court where the judgment is entered for leave to issue an execution. The motion and affidavit shall state the names of the parties to the judgment, the date of its entry, the reasons for failure to obtain a writ for a period of five years and the amount claimed to be due thereon or the particular property of which possession was adjudged to the judgment creditor remaining undelivered.

(2) Upon filing such motion and affidavit the judgment creditor shall cause a summons to be served on the judgment debtor in accordance with the provisions of Rule 4. The summons shall state the amount claimed or the property sought to be recovered under the judgment.

(3) The judgment debtor may file and serve a response to such motion within 20 days, alleging any defense to such motion that may exist. The judgment creditor may file and serve a reply to such response. The judgment debtor waives all defenses and objections that the judgment debtor does not present in the response as herein provided.

(4) The order shall specify the amount for which execution is to issue, or the particular property possession of which is to be delivered.

(5) At the time of filing the motion for leave to issue execution or at any time thereafter before the final order is entered, the judgment creditor may cause the property of the judgment debtor to be attached and held during the time said

motion is pending and until the final order is entered. Such attachment shall be made in accordance with these rules and applicable statutes, and for the purpose of such attachment the judgment shall be deemed an implied contract for the direct payment of money. In the event that the court shall order that execution be issued, it shall further order that any property of the judgment debtor attached hereunder shall be sold for the satisfaction of such execution and the peace officer shall apply the property attached by the peace officer or the proceeds thereof upon the execution.

(e) **Multiple Executions.**

(1) Only one original general writ of execution and one original writ of execution for garnishment of earnings may be issued and outstanding at any one time except:

(A) an additional writ of execution may be issued while another is outstanding if either of the writs is to be served on the Department of Revenue to seize the debtor's Alaska Permanent Fund Dividend; only one writ can be levied against a debtor's Permanent Fund Divident for each debt; or

(B) additional writs may be issued if the creditor alleges facts by affidavit that show (1) there is property which cannot be served by the process server holding an outstanding writ because the property is outside the community in which the process server is authorized to operate, and (2) there is good cause to believe the debtor may remove or dispose of the property unless immediate action is taken.

(2) A process server to whom a writ of execution is issued may make copies of the writ as necessary. However, no writ or copies may be transferred to another process server except within the same firm. If the creditor discovers property that could be seized under the writ in another community in which the original process server does not serve, the outstanding writ must be returned to the court so that the clerk of court can cancel the first writ and issue a new writ to a process server serving the other community.

(f) **Service of Writ of Execution.**

(1) *Service – By Whom*. The clerk shall deliver the writ of excecution and process server instructions to a peace officer or to a licensed civilian process server specially appointed by the Commissioner of Public Safety for that purpose under Civil Rule 4(c)(3), except that the clerk may serve writs of execution on the Alaska Permanent Fund Dividend by certified mail. Postal delivery receipts for writs of execution served on the Permanent Fund Division of the Department of Revenue shall be made returnable to the judgment creditor.

(2) *Delivery of Money to the Court*. A process server who receives money as a result of a levy must deliver the money and a return of service to the court on the next day of business after receipt. The process server must file the original writ unless the money received by the server will satisfy only part of the judgment and the server expects to seize more money or property with the writ. In this situation, the process server may make a partial return by delivery to the court of all money received and a return of service that identifies the date and the amount of the writ. The original writ must be returned to the court when the judgment has been satisfied, when the process server no longer expects to seize more money or property with the writ, or within 30 days after receiving a notice of termination of the writ from the court.

(3) *Return of Service of the Writ.*

(A) The return of service must be in writing and must state who was served, the date of service, the amount of money or the property received, and the date the process server received the money or property.

(B) The return of service must also list each fee the process server is charging, and the subdivision of Administrative Rule 11 that allows that fee. If the amount charged exceeds the base amount recoverable under Rule 11, the return must also provide justification for the excess amount.

(C) If the writ is served by a licensed civilian process server, the return of service must be by affidavit. If the writ is served by a peace officer, the return of service may be by certificate.

(g) **Service of Notice on Judgment Debtor.**

(1) *Service Methods.* The judgment creditor must serve on the judgment debtor the documents that AS 09.38.065(c), AS 09.38.075(b), AS 09.38.080(c), and AS 09.38.085 require to be served on the judgment debtor. If service is being made under AS 09.38.080, the documents must be served on the debtor before, at the time of, or within three days after levy. The judgment creditor may serve the documents by certified mail as provided in Civil Rule 4(h), or by licensed civilian process server; if no licensed civilian process server is available, then service may be made by a peace officer.

(2) *Forms.* The judgment creditor must use forms authorized by the administrative director for the papers required to be served on the judgment debtor, including the creditor's affidavit, the notices, the claim of exemption form, and the judgment debtor booklet.

(3) *Who May Sign Affidavit.* A creditor's affidavit filed on behalf of a corporation may be signed by any officer or employee authorized in writing to sign on that corporation's behalf, AS 22.20.040 notwithstanding.

(4) *Number of Notices Required if Multiple Seizures.* A creditor is not required to serve any additional notice and accompanying documents on the debtor for a subsequent levy if the creditor's affidavit previously served on the debtor describes the property seized by the subsequent levy and a notice was served on the debtor within the past 45 days.

(5) *Proof of Service on Debtor.*

(A) *Proof of Service*. Within 30 days after the court receives money seized by writ of execution, the creditor must file proof of service of the notice to debtor described in paragraph (g)(1).

(i) *Certified Mail*. If service is by certified mail, the proof of service must be an affidavit stating that service was by certified mail. The affidavit must list the documents served, the person to whom the documents were mailed, and the date of mailing. The postal delivery receipt card must be attached to the affidavit.

(ii) *Personal Service*. If service is by a licensed civilian process server or by peace officer, the proof of service must list the documents served, the person with whom the documents were left, the date and time of service, the place of service, and the method of service. If service is made by a licensed civilian process server, the proof of service must be by affidavit. If service is made by a peace officer, the proof of service may be by certificate.

(B) *Diligent Inquiry*. If the creditor is unable to serve the notice, the creditor may file a request for release of funds and an affidavit of diligent inquiry explaining the efforts the creditor has made to effect service. The efforts must include service by certified mail and a mailing by first-class mail to the debtor's last known address. The affidavit must describe the efforts made to locate the debtor. Seized funds may be released to the creditor if the court is satisfied that the creditor has made diligent inquiry into the whereabouts of the debtor and has made sufficient efforts to give the debtor actual notice of the debtor's rights.

(C) *Return of Seized Funds to Debtor*. If, within 30 days after the court receives money seized by writ of execution, the creditor neither files proof of service as required by subparagraph (A) above nor requests a release of funds under subparagraph (B), the court may release all monies seized to the debtor without further order of the court or notice to the creditor. If money is released to the debtor under this paragraph, the cost of service of the writ of execution shall not be assessed against the debtor.

(h) **Confirmation of Sale of Real Property on Execution—Objections—Disposition of Proceeds.**

(1) *Confirmation.* Where real property has been sold on execution the plaintiff in the writ of execution, on motion, is entitled to have an order confirming the sale, after the expiration of 10 days after the filing of the return of sale, unless the judgment debtor has filed objections to the sale within 10 days after the filing of the return of sale.

(2) *Objections.* If objections are filed the court shall determine at a hearing whether there were substantial irregularities in the proceedings of sale which caused probable loss or injury to the judgment debtor. If not, the order confirming the sale shall be granted. If so, the court shall deny the motion and direct that the property be resold, in whole or in part as upon an execution received of that date.

(3) *Disposition of Proceeds of Sale.* After entry of an order confirming the sale of real property, the clerk shall apply the proceeds of the sale, or so much thereof as may be necessary, in satisfaction of the judgment and costs. Any proceeds remaining shall be paid to the judgment debtor. Such payments shall be made prior to the entry of the order of confirmation if the judgment debtor files with the clerk a waiver of all objections made or to be made to the proceedings concerning the sale.

(i) **Execution on Alaska Permanent Fund Dividends.**

(1) When an Alaska Permanent Fund Dividend is levied upon to satisfy a judgment, the Department of Revenue may deliver the seized funds directly to the court instead of turning them over to the process server who served the writ. The Department of Revenue will notify the process server of the amount seized. Based on this information, the process server shall prepare and file a return of service. The court shall disburse the funds as provided by law.

(2) The administrative director may adopt procedures for executing upon Alaska Permanent Fund dividends by electronic means to satisfy judgments in criminal, minor offense, and alcohol underage cases and judgments in other cases in favor of the state. The procedures shall be established by administrative bulletin and may include procedures for issuance of writs of execution in electronic format, service of writs and notices of levy by electronic means, return of service, deposit of funds seized and other execution procedures.

(3) The automatic stays listed in District Court Civil Rule 20(a), District Court Civil Rule 24(a), and Civil Rule 62(a) do not apply to writs issued to government agencies for execution on the Alaska Permanent Fund Dividend under (i)(2) of this rule.

(j) **Bank Sweeps by Municipal Corporations or the State.** The administrative director may adopt procedures allowing municipal corporations or the state to execute on judgments in criminal, minor offense, and alcohol underage cases by conducting bank sweeps on multiple debtors using a single writ of execution. The procedures shall be established by administrative bulletin and may include a requirement that court-approved forms be used for the writ and notice of levy, a requirement that the municipal corporations or the state agree to follow specific procedures, and limitations on service of process fees.

(k) **Non-Attorney Representation of Municipal Corporations.** In addition to the authority provided under District Court Civil Rule 15(a), a municipal corporation may be represented in proceedings to execute on judgments in criminal, minor offense, and alcohol underage cases by any officer or employee authorized in writing to represent it, AS 22.20.040 notwithstanding.

(Adopted by SCO 5 October 9, 1959; amended by SCO 56 effective November 1, 1963; by SCO 258 effective November 15, 1976; by SCO 465 effective June 1, 1981; by SCO 675 effective June 15, 1986; by SCO 721 effective December 15, 1986; by SCO 1094 effective January 15, 1993; by SCO 1125 effective July 15, 1993; by SCO 1135 effective July 15, 1993; by SCO 1138 effective July 15, 1994; by SCO 1153 effective July 15, 1994; by SCO 1290 effective October 1, 1997; by SCO 1692 effective October 15, 2009; by SCO 1731 effective August 1, 2010; by SCO 1852 effective April 2, 2015; by SCO 1861 effective August 1, 2015; and by SCO 1867 effective August 15, 2015)

Note to Civil Rule 69(i): See Administrative Bulletin 43.

Note: The Alaska Court System charges a fee for issuing writs of execution. *See* Administrative Rule 9(e)(10). The fee is recoverable under Administrative Rule 11.

Cross References

CROSS REFERENCE: AS 09.30.030; AS 09.35.010—AS 09.35.330

(a) **CROSS REFERENCE:** AS 09.35.010

(b)(1) **CROSS REFERENCE:** AS 09.35.070—AS 09.38

(d)(1) **CROSS REFERENCE:** AS 09.35.020

(d)(2) **CROSS REFERENCE:** AS 09.35.060

(e)(1) **CROSS REFERENCE:** AS 09.35.180

(e)(2) **CROSS REFERENCE:** AS 09.35.180

(h) **CROSS REFERENCE:** AS 09.35.180

(i) **CROSS REFERENCE:** AS 43.23.065

Rule 70. Judgment for Specific Acts—Vesting Title.

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the state, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

(Adopted by SCO 5 October 9, 1959)

Rule 71. Process in Behalf of and Against Persons Not Parties.

When an order is made in favor of a person who is not a party to the action, the person may enforce obedience to the order by the same process as a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as a party.

(Adopted by SCO 5 October 9, 1959; amended by SCO 1153 effective July 15, 1994)

Rule 72. Eminent Domain.

(a) **Applicability of Other Rules.** The procedure for the condemnation of property under the power of eminent domain is governed by the Civil Rules, except as otherwise provided in this rule.

(b) **Joinder of Properties.** The plaintiff may join in the same action one or more separate pieces of property, whether in the same or different ownership and whether or not sought for the same use. Severance shall be freely granted in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy.

(c) **Commencement of Action.**

(1) *Complaint.* An action for the condemnation of property under the power of eminent domain is commenced by filing a complaint and, if used, a declaration of taking. The complaint, in order to be accepted for filing, must be accompanied by a completed case description on a form provided by the clerk of court.

(2) *Contents of Complaint.*

(A) The complaint must contain:

(i) a caption naming as defendants the persons described in subsection (c)(2)(A)(vii), commencing with the apparent owners of the fee simple interest in the property to be taken, and the property designated generally by kind, quantity, and location;

(ii) a statement of the authority and necessity for the taking;

(iii) a statement of the use for which the property is to be taken;

(iv) a description of the property to be taken sufficient to identify and locate it;

(v) a statement of the interests to be acquired, including the terms and conditions of any easements;

(vi) a statement of the amount of money the plaintiff estimates to be just compensation for the taking;

(vii) the name and apparent interest of all persons having or claiming an interest in the property who can be ascertained by a reasonably diligent search of the records or otherwise known to the plaintiff to claim an interest in the property.

(B) The statement of just compensation required under subsection (c)(2)(A)(vi) constitutes a judicial admission by the plaintiff. The names and apparent interests required under subsection (c)(2)(A)(vii) do not constitute admissions by the plaintiff.

(3) *Exhibits to Complaint.* The decisional document for the taking and a map or plat of the property to be taken must be attached as exhibits to the complaint.

(d) **Process.**

(1) *Summons.* Upon filing of the complaint, the clerk shall forthwith issue a summons in condemnation and deliver it to the plaintiff, who shall cause the summons and a copy of the complaint to be served in accordance with Civil Rule 4. Upon request of the plaintiff, separate or additional summonses shall issue against any defendants.

(2) *Contents of Summons.* (A) A summons in condemnation must state:

(i) the court where the action was filed;

(ii) the caption of the action;

(iii) the name of the defendant to whom the summons is directed;

(iv) the name, address and telephone number of plaintiff's counsel; and

(v) the name of the judge to whom the case is assigned.

(B) The summons must also state:

(i) that if the defendant disputes the authority and necessity for the taking or objects to the declaration of taking, the defendant must file within twenty days after service of the summons upon the defendant an answer stating all of the defendant's objections and defenses;

(ii) that failure to file an answer within such time constitutes a waiver by the defendant of all objections and defenses to the authority and necessity for the taking and to the validity of the declaration of taking;

(iii) that if the action is not dismissed, the time when plaintiff may take possession, the amount of compensation to be paid for the taking, and the distribution of compensation will be determined by further proceedings in the action;

(iv) that if the defendant disputes the amount of just compensation, or claims any part of the compensation to be paid in the action, or desires notice of further proceedings in the action, the defendant must file within twenty days after service of the summons upon the defendant a notice of appearance, stating the name and address of the person to whom notice should be sent, or the court will proceed to a final determination of just compensation without further notice to the defendant; and

(v) that a defendant who fails to appear within the time specified may file a notice of appearance at any time before a final determination of just compensation is made and may present evidence as to the amount of just compensation to be paid or its distribution; however, the filing of an untimely notice of appearance, absent a showing of good cause that would justify setting aside a default under Civil Rule 55(e), does not relieve a defendant of the effect of prior orders entered by the court or a final determination of just compensation;

(vi) that ten days following a final determination of just compensation the court will enter judgment by default for the relief demanded in the complaint against any defendant who has failed to appear.

(3) *Service.* The summons, a copy of the complaint and, if used, a copy of the declaration of taking must be served on the defendants and return of service made in conformity with Civil Rule 4.

(e) **Answer or Appearance.**

(1) *Answer.* If the defendant objects to the authority and necessity for the taking or to the validity of the declaration of taking, the defendant must file an answer stating all of the defendant's objections and defenses. The answer must be filed within twenty days after service of the summons upon the defendant.

(2) *Notice of Appearance.* If the defendant disputes the amount of just compensation, or claims any part of the compensation to be paid in the action, or desires to receive notice of further proceedings in the action, the defendant must file a notice of appearance, stating the name and address of the person to whom notice should be sent. The notice of appearance must be filed within twenty days after service of the summons upon the defendant. A notice of appearance preserves all claims concerning the amount of compensation to be paid and its distribution. A notice of appearance may be filed with an answer.

(3) *Disclaimer.* If a defendant has no objection to the taking or to loss of possession of the property, or no claim to any part of the compensation deposited or to be paid in the action, the defendant may file a disclaimer of interest in the proceedings. A disclaimer may be filed after an answer or appearance. The parties and the court are not required to provide notice of proceedings to a defendant who has filed a disclaimer.

(4) *Failure to Respond.* Failure to file an answer within the time specified in subparagraph (e)(1) constitutes a waiver by the defendant of all objections and defenses to the authority and necessity for the taking and to the validity of the declaration of taking. The filing of an untimely notice of appearance, absent a showing of good cause that would justify setting aside a default under Civil Rule 55(e), does not relieve a defendant of the effect of prior orders entered by the court or a final determination of just compensation. Ten days following a final determination of just compensation, the court upon motion, may enter judgment by default for the relief demanded in the complaint against a defendant who has not filed a notice of appearance.

(5) *Other Pleadings or Motions.* All objections and defenses to the taking must be set forth in the answer. No counterclaims, cross-claims, or third party claims are allowed, unless the court determines that such claims should be consolidated with the condemnation action under Civil Rule 42(a).

(f) **Amendment of Pleadings.** The plaintiff may amend the complaint without leave of court at any time before trial of the issue of compensation and as many times as desired; however, no amendment may be made which would result in a dismissal prohibited under paragraph (i) of this rule. Service of the amended complaint upon a party who has appeared must be made as provided in Civil Rule 5(b). Service upon a party who has not appeared must be made as provided in paragraph (d) of this rule. A defendant who is served with an amended complaint may file and serve a response within the time allowed by paragraph (e) of this rule.

(g) **Substitution of Parties.** If a defendant dies or becomes incompetent or transfers its interest in the litigation, the court shall order substitution of the proper party upon motion. The provisions of Civil Rule 25(a) do not apply to actions proceeding under this rule. Service of the motion upon a person not already a party to the action must be made as provided in Civil Rule 4.

(h) **Hearing and Trial.**

(1) *Special Discovery Rules.*

(A) *Expedited Discovery on Authority, Necessity and Possession.* Any time after service of the summons, any party may conduct discovery, including depositions, regarding matters to be decided at the hearing provided for under subparagraph (h)(2). Responses to interrogatories, requests for production or inspection, and requests for admissions must be served within fifteen days after service of the interrogatories or requests; however, a defendant need not respond earlier than ten days after the time allowed for filing an answer.

(B) *Appraisals and Expert Reports.* Each party, within forty-five days after filing its complaint, answer, or appearance, must exchange with every other party who has answered or appeared all appraisals of property within the scope of the taking completed within the five years preceding the date of taking. Forty-five days before the master's hearing and again thirty days before the close of discovery, the parties must simultaneously exchange all appraisals of the property and expert reports relating to just compensation completed since the summons was issued.

(2) *Authority/Necessity/Possession.*

(A) *Declaration of Taking.* If no objection to authority and necessity for the taking is contained within the answer, filed within the time period provided by subparagraph (e)(1) of this rule, the court shall enter an order confirming authority and necessity. If timely objection is made, the objecting party must, within thirty days after service of the summons, file a motion to dismiss setting forth the objections with specificity. The plaintiff may file an opposition to the motion within ten days after service of the motion upon the plaintiff. The objecting party may file a reply within three days after service of the opposition upon the objecting party. Either party may request a hearing. The court shall hold a hearing within twenty days after a request for hearing is filed. The hearing will be based on the record unless a request for evidentiary hearing and statement of genuine issues of material fact is filed by the objecting party with the motion or by the plaintiff with the opposition and the court determines that there are genuine issues of material fact. In the event the objections are found to be valid, the court may dismiss the action, remand to the condemning entity for further findings, or order such other relief as allowed by law.

(B) *Motions for Possession under AS 09.55.390 and .400.* Upon the filing of a motion pursuant to AS 09.55.390 or 09.55.400, the court shall schedule and conduct a hearing on the motion. The motion, any opposition to the motion, and any reply by the moving party must be in the form and filed within the time limits prescribed by Civil Rule 77 for dispositive motions, except that no opposition shall be due earlier than thirty days after service of the summons upon that defendant.

(C) *Other Condemnation Actions.* In an action in which neither a declaration of taking nor the procedures set forth in AS 09.55.390–.400 have been utilized, a party may move, no earlier than sixty days after service of the summons upon all defendants, for an order determining whether there is authority and necessity for the taking. The motion, any opposition to the motion, and any reply by the moving party must be in the form and filed within the time limits prescribed by Civil Rule 77 for dispositive motions.

(D) *Possession.* In an action in which a declaration of taking has been filed, a party may move, either contemporaneously with proceedings on authority and necessity or after authority and necessity has been determined, for an order setting the date and terms under which possession of the property will vest in the plaintiff. In an action subject to AS 09.55.380, any party may move to have the questions of possession decided after a final determination of compensation is made or after the plaintiff has deposited sufficient funds or security to satisfy the court that the parties are protected.

(E) *Finality.* An order entered under section (h)(2)(A), (B), or (C) is a final judgment for purposes of appeal under Appellate Rule 202.

(3) *Master's Hearing.*

(A) *Procedure.* A master will be appointed to hear evidence and to ascertain the amount to be paid by the plaintiff to each owner or other person interested in the property, unless the master's hearing is waived under section (h)(3)(B) of this rule. Any interested party may move the court for an order appointing the master. The motion must set forth the name, address and phone number of any individual proposed as master, proposed instructions to the master, a written oath, and a form of report for use by the master. The form of report must incorporate a cover sheet in a form prescribed by the Administrative Director of the Courts. The court may appoint a master from the nominees of the parties or of its own nomination, subject to the provisions of Civil Rule 42(c). The order of reference to the master must set forth the master's duties and powers and must be accompanied by instructions on the law that the master must apply. Civil Rule 53 does not apply to master's proceedings under this rule.

(B) *Waiver.* If all parties agree, the master's hearing may be waived and the matter set for trial. In that event, A Notice of Waiver of Master's Hearing shall be filed, along with proof of service under Civil Rule 5 upon all parties to the action.

(4) *Filing of Master's Report.* The master shall file the master's report with the cover sheet prescribed by the Administrative Director of the Courts. The clerk of court shall promptly serve the report on all parties who have answered or appeared.

(5) *Appeal From Master's Report.*

(A) Appeal in the form of a trial de novo may be taken

from the master's report by filing a memorandum to set trial within the following time limits:

(i) the plaintiff may appeal within ten days after service of the master's report; and

(ii) a defendant may appeal within fifteen days after service of the master's report.

(B) The memorandum to set trial must contain the information required by Rule 40(b)(1)(a)–(d), (f), and (g).

(6) *Demand for Jury Trial.*

(A) If all parties to the action have waived appointment of a master under subparagraph (h)(3), a jury trial may be had if demand is made by any party within twenty days after service of the Notice of Waiver of Master's Hearing upon that party. Otherwise, trial will be by the court.

(B) Upon filing of an appeal under subparagraph (h)(5), a jury trial may be had if demand is made by any party within twenty days after filing of the appeal from the master's report. Otherwise, trial will be by the court.

(i) **Dismissal of Action.**

(1) *As of Right.* If no hearing has commenced to determine the compensation to be paid for the property and the plaintiff has not acquired title or a lesser interest in or taken possession of the property, the plaintiff may dismiss the action as to that property, without an order of the court, by filing a notice of dismissal describing the property as to which the action is dismissed.

(2) *By Stipulation.* Before entry of judgment vesting the plaintiff with title or a lesser interest in or possession of the property, the action may be dismissed in whole or in part, without an order of the court, as to any property by stipulation of the plaintiff and the defendant affected thereby; and, if the parties so stipulate, the court may vacate any judgment that has been entered.

(3) *By Order of the Court.* Any time before compensation for property has been determined and paid, the court may dismiss the action as to that property after motion and hearing, except that the court may not dismiss the action as to any part of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or a lesser interest, but shall award just compensation for the possession, title or lesser interest taken. The court may dismiss at any time a defendant unnecessarily or improperly joined.

(4) *Want of Prosecution.* The court shall not enter an order dismissing a case for want of prosecution. On its own motion or upon motion of a party, the court may schedule a pretrial conference to expedite resolution of a case.

(5) *Effect.* A dismissal under this paragraph is without prejudice except as otherwise provided in the notice, stipulation, or order.

(j) **Deposit and Its Distribution.** The plaintiff shall deposit with the court any money required by law as a condition to the exercise of the power of eminent domain, and may make such deposit even when not required to do so by law. The notice of deposit must disclose the extent to which the deposit represents principal, interest, costs and fees, if any. The court and attorneys shall expedite the proceedings for distribution of the deposit and for ascertainment and payment of just compensation. The court may order distribution of the deposit at any time. Such order is effective only as to parties whose time to appear has expired. Upon entry of an order distributing funds on deposit, the clerk of court shall disburse the funds expeditiously. If the compensation finally awarded to a defendant exceeds the amount that has been paid to the defendant on distribution of the deposit, the court shall enter judgment against the plaintiff and in favor of the defendant for the deficiency. If the compensation finally awarded to a defendant is less than the amount that has been paid to the defendant, the court shall enter judgment against the defendant and in favor of the plaintiff for the overpayment.

(k) **Costs.** Costs and attorney's fees incurred by a defendant must be assessed against the plaintiff if:

(1) the taking of the property is denied;

(2) the plaintiff appeals from the master's award and the defendant does not appeal;

(3) the award of the court was at least ten (10) percent larger than the amount deposited by the condemning authority or the allowance of the master from which an appeal was taken by the defendant;

(4) the action was dismissed under the provisions of paragraph (i) of this rule; or

(5) allowance of costs and attorney's fees appears necessary to achieve a just and adequate compensation of the defendant.

Attorney's fees allowed under this paragraph must be commensurate with the time expended by the attorney throughout the proceedings.

(*l*) **Offer of Judgment.** A party may make an offer of judgment to another party under the provisions of Civil Rule 68, which shall apply to eminent domain actions in all respects except as set forth below.

(1) If the plaintiff makes a successful offer of judgment against a defendant, the defendant may not recover costs and fees incurred after the making of the offer of judgment except as reasonable and necessary to evaluate the offer of judgment. This shall not preclude the award of costs and fees as allowed under Civil Rule 72(k)(1)–(5) incurred prior to the making of the offer of judgment. In no event shall a defendant be required to pay the costs and fees of the plaintiff.

(2) If a defendant makes a successful offer of judgment against the plaintiff, the defendant is entitled to recover full reasonable and necessary costs and attorney's fees without regard to Civil Rule 72(k).

(3) For purposes of applying Civil Rule 68, the defendant is the party making the claim and the plaintiff is the party defending against the claim. Any adjustment in interest rates shall operate only from the date the offer of judgment was made. When two defendants use Civil Rule 68 as against the other, the adjustment in prejudgment interest provisions do not apply.

(m) **Definitions.** For purposes of this rule, a final determination of just compensation is not made until all issues of the amount of just compensation to be paid and its distribution to the parties entitled to just compensation are resolved by the entry of judgment on a jury verdict, the court's confirmation of an award of the master, a final order of the court accepting a settlement agreement of the parties, or the last such order or judgment that resolves any part of these issues.

(Adopted by SCO 5 October 9, 1959; amended by SCO 49 effective January 1, 1963; by SCO 56 effective November 1, 1963; by SCO 57 effective November 8, 1963; by SCO 90 effective July 24, 1967; by SCO 98 effective September 16, 1968; by SCO 414 effective August 1, 1980; by SCO 468 effective June 1, 1981; and by SCO 1153 effective July 15, 1994; rescinded and reenacted by SCO 1216 effective January 1, 1996)

Note to (c)(3): For an explanation of the decisional document requirement in cases under AS 09.55.420–.460, see Ship Creek Hydraulic Syndicate v. State, 685 P.2d 715, 715–20 (Alaska 1984).

Note to (*l*)(1): The limitation on a defendant's right to recover costs and fees incurred after the making of an offer of judgment is subject to any constitutional right the defendant may have to receive compensation for these expenses.

Notes: Chapter 54 SLA 2005 (HB 95) enacted extensive amendments and new provisions related to public health, including public health emergencies and disasters. According to Section 13(e) of the Act, AS 18.15.390, enacted in Section 8, has the effect of amending Civil Rule72 by authorizing the Department of Health and Social Services to take immediate control over certain businesses and property in cases of public health disasters.

Cross References

CROSS REFERENCE: AS 09.55.240—AS 09.55.460

(c) **CROSS REFERENCE:** AS 09.55.240— AS 09.55.270

(e)(3) **CROSS REFERENCE:** AS 09.55.420— AS 09.55.460

(e)(4) **CROSS REFERENCE:** AS 09.55.310

(h)(4) **CROSS REFERENCE:** AS 09.55.310

Rule 72.1. Expert Advisory Panels in Health Care Provider Malpractice Actions.

(a) **Identification of Action.** Either party in a health care malpractice action subject to AS 09.55.536 may request that the court appoint an expert advisory panel to evaluate the claim. The request should identify the specialty of the health care provider named as defendant. Either party may recommend that the court appoint specific professions or specialties to the expert advisory panel.

(b) **Appointment of Panel.**

(1) After the case is at issue and a party has requested the appointment of an expert advisory panel (or the court has raised the issue), the court shall nominate a three person panel and notify the parties of the names, professions and specialties of the persons so nominated. The court may initially nominate alternate panel members if it believes nominees may be disqualified. Within 10 days after service of this notice, either party may move to disqualify a nominee, citing the reasons for the motion. The other party may submit an opposition within five days after service of the motion for disqualification. No reply may be filed.

(2) The nominated panel members must inform the court within 10 days of the notice of appointment of any financial relationship with a party or party's attorney, of any other reason which would cause the nominee to be biased in the case or present an appearance of bias, and of any other reason why the nominee cannot serve on the panel. The court shall disqualify a nominee if the nominee is biased for or against a party or if a conflict of interest raises a substantial appearance of bias.

(3) If additional nominees are required, the parties must be given the opportunity to recommend nominees' professions or specialties and move to disqualify as provided above.

(c) **Submission of Medical Records.**

(1) Within 30 days after service of the court's initial panel nominations, the plaintiff and each health care provider defendant shall serve on other parties one legible copy of all discoverable medical records in such party's possession, custody, or control. Original exhibits which are impractical or impossible to copy must be made available to all parties for review. Medical reports of consultants retained by a party for the advancement or defense of the case and medical literature must also be served on other parties if such literature or reports is to be submitted to the panel.

(2) Each party shall file with the Clerk and serve on each other party a list of all medical records, medical reports and medical literature which the party will transmit or make available to the panel.

(3) Medical records include medical records of hospitals, physicians, or other health care providers, addressing an issue of health relevant to the plaintiffs' complaint, whether generated before or subsequent to the event giving rise to the claim and whether generated by the health care provider named in the complaint or by other health care providers. Medical records also include autopsy reports and exhibits such as x-rays and slides.

(4) Upon agreement of the parties or order of the court, and after a reasonable time for inspection, each party shall submit to each member of the panel one legible copy of such party's medical records, medical reports and medical literature, and notify the panel members of the availability and location

of original exhibits for which submission to the panel is impractical or impossible. If the plaintiff serves the defendant with medical reports of consultants, the defendant has 30 days to serve medical reports of its consultants on the plaintiff. Thereafter, the reports may be submitted to the panel. Any additional reports may be submitted only with leave of the court.

(5) A party may file and serve on each member of the panel a notice advising the panel of further relevant medical records of which the noticing party does not have possession, custody or control.

(6) In the event a party fails or is unable to submit relevant medical records to the panel, and the panel is unable to obtain access to such records by reason thereof, any party or the panel may apply to the court for leave to obtain such records by court order. The court may delay further proceedings until the panel is provided with the additional medical records.

(7) Within 30 days after service of the court's initial panel nominations, each party shall serve upon the panel and all other parties the information and materials required to be disclosed under Rule 26(a)(1)(A), (B), (C), and 26(a)(2).

(d) **Preliminary Findings of Fact and Conclusions of Law.** A party may move the court to resolve issues of fact or law prior to submission of the case to the panel, or to furnish instructions of fact or law to the panel. Submission of the case to the panel will be deferred pending determination of the motion by the court.

(e) **Instructions to Panel.** The court shall provide the panel with a written order which states:

(1) The questions listed in AS 09.55.536, clarified or changed as the court deems appropriate to the case.

(2) That the panel is to prepare and submit to the court a list of all persons interviewed, a list of treatises or medical literature used by the panel in its deliberations, and a list of exhibits it examined (such as X-rays, slides, and other items which are not reproducible on paper).

(3) The general nature of the allegations made against each health care provider and of the answer to those allegations. Alternately, the court may submit a copy of the complaint and the answer and advise the panel that they are to address only the medical issues.

(4) That the panel or the Alaska State Medical Association is to retain copies of medical records submitted to them until further notice from the court. The court may make special provision for the safekeeping or retention by the Clerk of Court of X-rays or other original exhibits.

(5) That the panel must maintain a recording of any testimony or oral statements of witnesses and shall keep copies of all written statements the panel may receive or take, whether from witnesses, consultants, or other sources.

(6) That the panel is to review the case of each health care provider individually and render an individual, separate opinion with regard to the allegations against each health care provider.

(7) The name and location of the court personnel who might assist the panel, and that the panel may communicate with the court concerning any questions it may have, or make any requests for assistance.

(8) Any matters of fact or law on which the court has ruled, and that the panel is to review the matter in light of the court's finding and instructions on the law.

(9) That in the event parties are named as defendants who are not health care providers, the panel's consideration is to be directed to the health care providers only.

(10) That the panel is not to communicate with the parties or their attorneys, except to arrange to obtain or review an original exhibit in the possession of one of the parties, or to arrange an examination of the plaintiff, or to arrange an interview with the plaintiff or health care provider, or to arrange the scheduling of the testimony of a panel member at a deposition or at trial.

(f) **Interviews by the Panel.**

(1) If an attorney desires to be present at an interview of his or her client by the panel, the attorney must give reasonable notice of an intent to do so to the other parties so they may also appear at the interview. If the attorney for the person being interviewed does not appear, no other attorney or party may appear. An attorney appearing before the panel may not question his or her client or any other persons appearing before the panel, nor may an attorney or party cross-examine witnesses or ask questions of the panel. A person being interviewed by the panel may not be accompanied by any representative other than the person's attorney.

(2) Any party may request the panel to interview any person or party.

(g) **[Applicable to cases filed before August 7, 1997] Discovery.** Except by leave of court, no discovery may be conducted until the report of the panel has been filed or until 80 days have elapsed from the date the case is at issue, whichever is first to occur, unless discovery is further stayed for good cause by order of the court.

(g) **[Applicable to cases filed on or after August 7, 1997.] Discovery.** Except by leave of court, no discovery may be conducted until the report of the panel has been filed or until 60 days after selection of the panel, whichever is first to occur, unless discovery is further stayed for good cause by order of the court.

(Added by SCO 837 effective August 1, 1987; amended by SCO 1172 effective July 15, 1995; and by SCO 1281 effective August 7, 1997)

Note to SCO 1281: Paragraph (g) of this rule was amended by ch. 26, sec. 42, SLA 1997. According to sec. 55 of the Act,

the amendment to Civil Rule 72.1 applies "to all causes of action accruing on or after the effective date of this Act." The amendment to Rule 72.1 adopted by paragraph 7 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.

PART XI. SUPERIOR COURT AND CLERKS

Rule 73. The Clerk.

(a) **When Clerk's Office Is Open.** The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except judicial holidays and Saturdays.

(b) **Orders by Clerk.** The clerk is authorized to enter the following orders of the superior or district court without further direction by the court:

(1) Orders on consent for the substitution of attorneys.

(2) Orders on consent satisfying a judgment or an order for the payment of money, withdrawing stipulations, annulling bonds and exonerating sureties.

(3) Orders entering default for failure to plead or otherwise defend as provided in Rule 55(a).

(4) Orders upon motions and applications for issuing mesne process and issuing final process to enforce and execute judgments.

(5) Any other orders which do not require allowance or order of the court.

The clerk must forthwith notify the judge before whom the action is pending of the clerk's action in entering any such order. Any order so entered may be suspended, altered or rescinded by the court for cause shown.

(c) **Judgments by Clerk.** The clerk is authorized to enter the following judgments of the superior or district court forthwith without further direction from the court:

(1) Default judgments under Rule 55(b) upon the following proof: an affidavit that the person against whom judgment is sought is not an infant or an incompetent person, and an affidavit under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, that defendant is not in the armed forces of the United States.

(2) Judgments on offers of judgment in the circumstances set forth in Rule 68.

(d) **Notice of Orders or Judgments.** Immediately upon the entry of an order or judgment, the clerk shall give notice by distributing a copy to each party who is not in default for failure to appear.

(Adopted by SCO 5 October 9, 1959; amended by SCO 77 effective July 30, 1965; by SCO 258 effective November 15, 1976; by SCO 289 effective January 15, 1978; by SCO 447 effective November 24, 1980; by SCO 499 effective January 18, 1982; by SCO 500 effective January 18, 1982; by SCO 554 effective April 4, 1983; and by SCO 1153 effective July 15, 1994)

Note: AS 10.06.658, as enacted by ch. 166, § 1, SLA 1988, amended Civil Rule 73 by requiring the clerk of the superior court to send a copy of an order dissolving a corporation to the commissioner of commerce and economic development.

Note: Ch. 128 SLA 2002 (HB 393), Section 3, adds a new Chapter 66 to Title 45 of the Alaska Statutes, concerning the sale of business opportunities. According to Section 4 of the Act, AS 45.66.120(b) has the effect of amending Civil Rule 73 by requiring the clerk of the court to mail a copy of an order or judgment in an action under AS 45.66.120 to the attorney general.

Rule 74. Books and Records Kept by Clerk and Entries Therein.

(a) **Civil Case File and Index.** All papers filed with the clerk shall be marked with the case number and the date of filing and shall be placed in the case file in chronological order. The clerk shall maintain an alphabetical index of every civil case filed. All parties in each case shall be included in the index.

(b) **Civil Judgments and Orders.** The clerk shall keep, in such form and manner as the administrative director of courts may prescribe, a record of every final judgment or order.

(c) **Civil Calendar.** The clerk shall prepare a calendar listing all cases scheduled for hearings and trials. The calendar shall indicate the type of proceeding and shall distinguish jury actions from nonjury actions. A copy of the calendar shall be posted in a public place within the court building.

(d) **Other Books and Records of the Clerk.** The clerk shall also keep such other books and records as may be required from time to time by the administrative director of the courts.

(e) **Records to Remain in Custody of Clerk.** Except as otherwise provided by these rules or by order of the court, no record or paper belonging to the files of the court may be taken from the office or custody of the clerk.

(f) **Use of Records by Court Officers.** If it is necessary for a judge, master, examiner, magistrate judge, or court reporter to use pleadings or other papers for purposes of the action or proceeding, at places other than the clerk's office, courtroom or judge's chambers, the same may be taken from the office of the clerk upon the delivery to the clerk of a receipt signed by the officer who desires the use of said papers.

(g) **Records After Final Determination.**

(1) After final judgment and after the time has passed for taking an appeal or filing a petition for review, all models, diagrams, exhibits and depositions heretofore or hereafter filed

in any action, shall be returned to the submitting party, without the necessity of filing any copies thereof.

(2) After final judgment, and upon the filing of a stipulation waiving and abandoning the right to appeal, to petition for review, or to move for a new trial, all such models, diagrams, exhibits and depositions may be withdrawn from the clerk's office by the submitting party, without the necessity of filing any copies thereof.

(3) If such models, diagrams, exhibits, and depositions are not so returned or withdrawn as above indicated, the clerk shall destroy the same or make such other disposition of them as the court may approve.

(4) Nothing contained in this subdivision (g) of this rule shall prevent the court, for special reasons and after notice, from making such other order with respect to any files, models, exhibits and depositions as it may deem advisable.

(h) **Documents Presented Ex Parte.** Every document presented by counsel to the court ex parte in support of an order, when signed by the court, will be deemed to be in the custody of the court. Each such document shall forthwith be delivered by counsel presenting the same to the clerk for filing, unless the judge or the judge's secretary desires to retain any such document in chambers for delivery by such judge or the judge's secretary to the clerk.

(Adopted by SCO 5 October 9, 1959; amended by SCO 152 effective April 20, 1972; by SCO 163 effective May 30, 1973; by SCO 554 effective April 4, 1983; by SCO 1098 effective January 15, 1993; by SCO 1153 effective July 15, 1994; by SCO 1210 effective July 15, 1994; and by SCO 1829 effective October 15, 2014)

Rule 75. Record of Proceedings—Transcript as Evidence.

(a) **Record of Proceedings.** In all actions and proceedings in the superior court there shall be kept a stenographic or electronic record of the following:

(1) All 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 may be required by court rule or order of the court.

(b) **Transcript as Evidence.** Whenever the testimony of a witness at a trial or a hearing which was stenographically reported or electronically recorded is admissible in evidence at a later trial, it may be proved by the transcripts thereof duly certified by the person who reported the testimony or by an officer of the court.

(Adopted by SCO 5 October 9, 1959; amended by SCO 465 effective June 1, 1981)

Rule 76. Form of Papers.

(a) **Form in General.** All pleadings, motions, affidavits, memoranda, instructions and other papers and documents presented for filing with the clerk or intended for use by the judge, must conform to the following requirements:

(1) *Paper Size and Quality:* Documents must be 8-1/2 x 11 inches. The paper must be opaque, unglazed white paper of good quality and at least sixteen pound weight.

(2) *Typed or Hand Printed in Ink:* Text must be typed in clear and legible black typeface or hand printed in black ink.

(3) *Typeface and Size:* If typed, the text of a document, including headings and footnotes, must be at least 12 point Courier or another typeface allowed under Appellate Rule 513.5(c) if its size meets the requirements of that rule. Footers required under (a)(5) of this rule and certificates of distribution or service may be typed in a smaller font, but not smaller than 10 point.

(4) *Line Spacing:* Unless otherwise provided in these rules, text must be double-spaced or one-and-one-half spaced, except that headings and footnotes must be single-spaced, and longer quotations must be single-spaced and indented at least one-half inch on each side. Other parts of a document, including the case caption, headers and footers, signature blocks, certificates, and notarizations, should be single-spaced.

(5) *Footer:* Documents longer than one page must contain a footer that sets out the title of the document, case name, case number, and page numbering (page x of y). The title of the document and the case name may be abbreviated.

(6) *Single-Sided:* Text may only be typed or printed on one side of the paper.

(7) *Two-Hole Punched:* Documents must be two-hole punched at the top center of each page.

(8) *Stapled:* If a document is longer than one page, all pages must be stapled together at the upper left corner. Documents that are too thick to be stapled must be bound together at the top with a metal fastener (e.g., an Acco fastener).

(b) **Interlineations.** Interlineations are not permitted unless made by the court.

(c) **Exhibits.**

(1) Each page of an exhibit must be marked with the number or letter of the exhibit, the page number, and the total number of pages in the exhibit. Example: Ex. A, p. 1 of 10

(2) Exhibits must be attached to the principal document unless they are confidential. Confidential exhibits must be submitted in a sealed envelope marked with the case name, case number, number or letter of the exhibit, and name of the document to which they relate.

(d) **Information To Be Placed on First Page.**

(1) *Attorney Information.* The name, address and telephone number of the attorney appearing for a party to an action or proceeding, or of a person appearing in propria personal, should be typewritten or printed in the left margin of the first page of the document. However, this information may

be printed in the space to the left of center of the paper beginning one inch below the top edge. The typeface must be no smaller than 10 point and no larger than 12 point.

(2) *Caption.* Every document must contain a caption setting forth the title of the court, the city in which the court is located, the title of the action (i.e., the names of the parties), the case number, and the document name. This information must be formatted as follows:

(A) The title of the court and the city in which the court is located must be centered at the top of the page, beginning 1 inch below the top edge or 1/2 inch below the name, address and telephone number of the attorney or pro se party, if this information appears at the top of the page.

(B) The title of the action (i.e., the names of the parties) must be inserted below the title of the court and to the left of center of the page.

(C) A space must be reserved for the clerk's file stamp to the right of the title of the action. The case number must be inserted below this space.

(D) The document name may be centered on the page below the title of the action and the case number or placed to the right of the title of the action beneath the case number.

(3) *Title of the Action.* The complaint must include the names of all the parties in the title of the action, but in other documents it is sufficient to state the name of the first party on each side with appropriate indication of other parties ("et al" or "and others"). *Note: See Civil Rule 10(a) for other requirements related to the names of parties in complaints.*

(e) **Name and Bar Number Typed Beneath Signature Line.** The name of the person signing a pleading or paper must be typed under the signature line. If the person is an attorney, the person's Alaska Bar Association membership number must be entered following the person's name. Documents must be dated and signed in blue or black ink.

(f) **Judge's Name Typed on Orders and Judgments.** The name of the judge signing an order or judgment must be typed under the judge's signature line.

(g) **Replacing Papers Lost or Withheld.** If an original paper or pleading is lost or withheld by any person, the court may order a verified copy of the document to be filed and used in lieu of the original.

(h) **Compliance With Rule.** The clerk may refuse to accept for filing any document that does not comply with the requirements of this rule. The judge to whom the case is assigned may, in cases of emergency or necessity, permit departure from the requirements of this rule.

(Adopted by SCO 5 October 9, 1959; amended by SCO 258 effective November 15, 1976; by SCO 441 effective November 15, 1980; by SCO 567 effective July 1, 1983; by SCO 568 effective September 1, 1983; by SCO 687 effective May 1, 1986; by SCO 907 effective August 1, 1988; by SCO 931 effective January 15, 1989; by SCO 1153 effective July 15, 1994; by SCO 1210 effective July 15, 1995; by SCO 1287 effective July 15, 1998; by SCO 1344 effective August 13, 1998; by SCO 1386 effective April 15, 2000; rescinded and readopted by SCO 1415 effective October 15, 2000)

Rule 77. Motions.

(a) **Service.** All motions, orders to show cause, petitions, applications and every other such matter shall be served upon the adverse party, or, after the adverse party has appeared by counsel, upon counsel for the adverse party.

(b) **Requirements.** There shall be served and filed with the motion:

(1) legible copies of all photographs, affidavits and other documentary evidence which the moving party intends to submit in support of the motion;

(2) a brief, complete written statement of the reasons in support of the motion, which shall include a memorandum of the points and authorities upon which the moving party will rely; and

(3) an appropriate order for the court's signature in the event that the motion is granted.

(4) In addition, if a motion is filed and served on a defendant before an answer to the complaint is due under the rules, the motion must be accompanied by a notice advising the defendant of the right to file a written opposition to the motion, the time within which the opposition must be filed under Civil Rule 77(c)(2)(i), and the place where it must be filed.

(c) **Opposition.** Unless otherwise ordered by the court or otherwise stipulated by the parties with court approval, opposition to the motion or other application shall be made as follows:

(1) *Form.* Each party opposing the motion or other application shall serve and file either:

(i) legible copies of all photographs, affidavits and other documentary evidence upon which the party intends to rely; and

(ii) a brief, complete written statement of the reasons in opposition to the motion, which shall include an adequate answering brief of points and authorities; and

(iii) an appropriate order for the court's signature in the event that the motion is denied; or

(iv) a written statement that the party does not oppose the motion.

(2) *Time.* The time for filing opposition to the motion or other application shall be 10 days from the date of service of the motion or application, except as follows:

(i) for motions or other applications filed and served on defendant before an answer to the complaint is due under the rules, the time for filing opposition shall be either 10 days from

the date of service, or the date the defendant's answer is due under the rules, whichever is later;

(ii) for motions to dismiss, motions for summary judgment and motions for judgment on the pleadings, the time for filing opposition shall be either 15 days from the date of service or, if the plaintiff is the movant, the date the defendant's answer is due under the rules, whichever is later; and

(iii) for motions filed under Civil Rules that prescribe their own response times (for example, Civil Rule 88 and Civil Rule 89) or that authorize expedited relief (for example, Civil Rule 77(g) or Civil Rule 65), the time for filing opposition shall be governed by the specific rule under which the motion is filed.

(d) **Reply.** Reply and supplemental materials and memoranda, if any, may be served and filed by the moving party within five days of the date of the service of the opposition to the motion.

(e) **Oral Argument.**

(1) If either party desires oral argument on the motion, that party shall request a hearing within five days after service of a responsive pleading or the time limit for filing such a responsive pleading, whichever is earlier.

(2) Except on motions to dismiss; motions for summary judgment; motions for judgment on the pleadings; other dispositive motions; motions for delivery and motions for attachment, oral argument shall be held only in the discretion of the judge. The amount of time to be allowed for oral argument shall be set by the judge.

(3) If oral argument is to be held, the argument shall be set for a date no more than 45 days from the date the request is filed or the motion is ripe for decision, whichever is later.

(f) **Disposition Without Oral Argument.** If oral argument is not heard, the court shall promptly rule on the motion and comply with Administrative Rule 3.

(g) **Expedited Consideration.** A party may move for expedited consideration of its principal motion by filing a second motion requesting relief in less time than would normally be required for the court to issue a decision.

(1) The motion must be captioned "Motion for Expedited Consideration" and must have an appropriate order on the issue of expedited consideration attached.

(2) The motion for expedited relief must comply with other provisions of this rule, including paragraph (e) concerning any request for oral argument except as the provisions of this paragraph specify otherwise.

(3) The motion for expedited consideration must include an affidavit or other evidence showing the facts which justify expedited consideration, and the date before which a decision on the principal motion is needed.

(4) If the parties are represented by counsel, the motion for expedited consideration shall include a certification of counsel that a good faith effort has been made to resolve the issues raised with opposing counsel, but that these efforts were not successful; or, in the alternative, that it was not possible to attempt to resolve the issues with opposing counsel beforehand. The certification shall include a description of what efforts were made to resolve the issues for which expedited consideration is sought, or an explanation of why no efforts were made.

(5) The motion for expedited consideration must include proof of service; and, if the motion requests a decision before the usual time for response to the motion, must include a certificate indicating when and how the opposing party was notified of the motion, or, if the opposing party was not notified, what efforts were made to notify the opposing party and why it was not practical to notify the opposing party in a manner and at a time that a response could be made.

(6) The court may not grant the motion for expedited consideration prior to allowing the opposing party a reasonable opportunity to respond, either in person, by telephone or in writing, absent compelling reasons for a prompt decision and a showing that reasonable efforts were made to notify the opposing party of the motion for expedited consideration in time to allow a reasonable opportunity to respond.

(7) The court may not grant the principal motion prior to allowing the opposing party a reasonable opportunity to respond, either in person, by telephone or in writing, unless it clearly appears from the specific facts in the motion papers or court records that immediate and irreparable injury, loss or damage would result to the moving party before any reasonable opportunity to respond could be given. In no event will a decision be rendered on the principal motion without a response until at least 24 hours after the date of service of the principal motion or the date actual notice is given, whichever is sooner. However, this limitation does not preclude a decision in less than 24 hours on an application for relief made pursuant to Civil Rule 65(b) or any other rule or statute authorizing such action.

(h) **Stipulations.** Stipulations between counsel may be submitted in support of motions, but are not binding on the court unless otherwise specifically provided by rule.

(i) **Evidence.** When a motion is based on facts not appearing of record, the court may hear the matter on affidavits or other documentary evidence presented by the respective parties, but the court may direct that the matter be heard wholly or partly on testimony or deposition.

(j) **Frivolous Motions or Oppositions.** The presentation to the court of frivolous or unnecessary motions or frivolous or unnecessary opposition to motions, which unduly delay the course of the action proceeding, or the filing of any motion to dismiss or motion to strike for the purpose of delay where no reasonable ground appears therefor subjects counsel presenting or filing such, at the discretion of the court, to imposition of costs and attorney's fees to the opposing party, to be fixed by the court and paid to the clerk of court, and any other

sanctions, which may be authorized by rule or law.

(k) **Motions for Reconsideration.** A motion to reconsider the ruling must be made within ten days after the date of notice of the ruling as defined in Civil Rule 58.1(c) unless good cause is shown why a later filing should be accepted. In no event shall a motion to reconsider a ruling be made more than ten days after the date of notice of the final judgment in the case.

(1) A party may move the court to reconsider a ruling previously decided if, in reaching its decision:

(i) The court has overlooked, misapplied or failed to consider a statute, decision or principle directly controlling; or

(ii) The court has overlooked or misconceived some material fact or proposition of law; or

(iii) The court has overlooked or misconceived a material question in the case; or

(iv) The law applied in the ruling has been subsequently changed by court decision or statute.

(2) The motion for reconsideration shall specifically state which of the grounds for reconsideration specified in the prior subparagraph exists, and shall specifically designate that portion of the ruling, the memorandum, or the record, or that particular authority, which the movant wishes the court to consider. The motion for reconsideration and supporting memorandum shall not exceed five pages.

(3) No response shall be made to a motion for reconsideration unless requested by the court, but a motion for reconsideration will ordinarily not be granted in the absence of such a request.

(4) The motion for reconsideration shall be decided by the court without oral argument. If the motion for reconsideration has not been ruled upon by the court within 30 days from the date of the filing of the motion, or within 30 days of the date of filing of a response requested by the court, whichever is later, the motion shall be taken as denied.

(5) The court, on its own motion, may reconsider a ruling at any time not later than 10 days from the date of notice of the final judgment in the case.

(*l*) **Citation of Supplemental Authorities.** When pertinent authorities come to the attention of a party after the party's memorandum has been filed, or after oral argument but before decision, the party may promptly advise the court, by letter, with a copy to adversary counsel, setting forth the citations. There must be a reference either to the page of the memorandum or to a point argued orally to which the citations pertain, but the letter may not contain argument or explanations. Any response must be made promptly and must be similarly limited.

(m) **Filings in Microfilmed Cases.** If a motion, petition or request is filed in a case that has been microfilmed and destroyed pursuant to the Records Retention Schedule, the attorney or party must attach (1) a copy of any relevant orders, judgments and other documents necessary for the court's ruling, and (2) either proof of notice pursuant to Civil Rule 5(g) or an affidavit that Rule 5(g) is not applicable. If such documents are not attached, the clerk will notify counsel that such documents must be submitted before the court will consider the motion, petition or request.

(Adopted by SCO 5 October 9, 1959; amended by SCO 49 effective January 1, 1963; by SCO 158 effective February 15, 1973; by SCO 236 effective March 1, 1976; by SCO 359 effective October 1, 1979; by SCO 367 effective August 1, 1979; by SCO 415 effective August 1, 1980; by SCO 434 effective November 1, 1980; by SCO 447 effective November 24, 1980; by SCO 554 effective April 4, 1983; by SCO 720 effective December 15, 1986; by SCO 819 effective August 1, 1987; by SCO 953 effective July 15, 1989; by SCO 1027 effective July 15, 1990; by SCO 1050 effective January 15, 1991; by SCO 1121 effective July 15, 1993; by SCO 1153 effective July 15, 1994; by SCO 1159 effective July 15, 1994; by SCO 1423 effective April 15, 2001; by SCO 1564 effective April 15, 2005; by SCO 1733 effective June 4, 2010; and by SCO 1787 effective July 1, 2012)

Editor's Note: Section 1 of Chapter 96 of the Session Laws of Alaska 1981 has the effect of changing Civil Rule 77 by establishing a procedure and time limits for court review of an income assignment order which differ from those generally applicable in civil actions.

Notes: Chapter 54 SLA 2005 (HB 95) enacted extensive amendments and new provisions related to public health, including public health emergencies and disasters. According to Section 13(a) of the Act, AS 18.15.375(c)(3), (d), and (e), and 18.15.385(d) –(k), enacted in Section 8, have the effect of amending Civil Rule 77 by adding special proceedings, timing, and pleading requirements for matters involving public health.

Note: Chapter 44, SLA 2010 (HB 334), effective June 4, 2010, enacted changes relating to child custody, modification, and visitation standards for a military parent. According to section 5 of the Act, AS 25.20.095(d), added by section 1 of the Act, and AS 25.20.110(f), added by section 2 of the Act, have the effect of amending Alaska Rule of Civil Procedure 77(g) by changing the procedure for expedited consideration in certain cases involving child custody or visitation and a military parent.

Notes: Chapter 71 SLA 2012 (SB 86) added new sections to AS 13.26 relating to the protection of vulnerable adults, effective July 1, 2012. According to section 48(c) of the Act, AS 13.26.206, enacted by section 10, has the effect of amending Alaska Rule of Civil Procedure 77, by requiring a hearing within 72 hours of the filing of a petition for the appointment of a temporary conservator. According to section 48(d) of the Act, AS 13.26.208, enacted by section 10, has the effect of amending Alaska Rule of Civil Procedure 77, by providing for a hearing on an application for a temporary protective order on 10 days' notice. According to section 48(e) of the Act, AS 13.26.209(a) and (b), enacted by section 10, have the effect of amending Alaska Rule of Civil Procedure 77, by providing for a hearing on a request for modification of

a protective order on 20 days' notice and for modification of an ex parte protective order on three days' notice.

Rule 78. Findings, Conclusions, Judgments and Orders—Preparation and Submission.

(a) **Preparation and Submission—Service.** Unless otherwise ordered by the court, counsel for the successful party to an action or proceeding shall prepare in writing and file and serve on each of the other parties proposed findings of fact, conclusions of law, judgments and orders. In a case in which the custody of children is at issue, a party required to prepare findings of fact, conclusions of law, or a judgment or order pertaining to that issue shall serve and file them within 10 days after the day on which the judge announces on the record that the party is to prepare them, pursuant to Rule 58.1(a)(1). Proof of service on the other parties must be on a separate document.

(b) **Objections.** Within 5 days after service of any of the documents mentioned in paragraph (a), a party may file and serve a written detailed statement of objections to any such document and the reasons therefor. If objections are filed and served within the time specified herein, the court may thereafter require the attorneys interested to appear before it, or it may sign the document as prepared by counsel for the successful party or as modified by the court.

(c) **Punitive Damages Award.** When punitive damages are awarded, the party preparing the proposed judgment shall serve on the Attorney General in Juneau a notice entitled "Notice of Award of Punitive Damages" and a copy of the proposed judgment.

(d) **Order Upon Stipulation.** When a party desires an order of court pursuant to stipulation, the party shall title the document "Stipulation and Order" and shall endorse at the end of the instrument the words "It is so ordered" with the date and a blank line for the signature of the judge. The word "Judge" shall appear at the end of the blank line. The name of the judge, if known, shall be typed immediately under the signature line prior to presentation for signature. A stipulation extending time or providing for a continuance shall state the grounds therefor.

(e) **Instruments on Which Judgment Entered.** In all cases in which a judgment upon a written instrument is entered, such instrument shall be filed with the court, and unless the court otherwise orders, it shall be canceled by marks and writing upon its face. The clerk shall retain the same in the files unless otherwise directed by the court.

(f) **Form of Judgments.** Judgments for the payment of money must be in the form required by Civil Rule 58.2.

(Adopted by SCO 5 October 9, 1959; amended by SCO 554 effective April 4, 1983; by SCO 580 effective February 1, 1984; by SCO 616 effective May 15, 1985; by SCO 1153 effective July 15, 1994; and by SCO 1415 effective October 15, 2000)

Note: Sections 41, 43, 45, and 46 of chapter 87 SLA 1997 amend AS 25.20.050(n), AS 25.24.160(d), AS 25.24.210(e), and AS 25.24.230(i), respectively, to require that an order or acknowledgement of paternity, a divorce decree, a petition for dissolution of marriage, and a dissolution decree include the social security number of each party to the action and each child whose rights are being addressed. According to § 151 of the Act, these provisions have the effect of amending Civil Rules 52, 58, 78, and 90.1 by requiring the court to include social security numbers, if ascertainable, of parties and children in certain petitions, pleadings, and judgments.

Cross References

CROSS REFERENCE: AS 09.17.020(j)

Rule 79. Costs—Taxation and Review.

(a) **Allowance to Prevailing Party.** Unless the court otherwise directs, the prevailing party is entitled to recover costs allowable under paragraph (f) that were necessarily incurred in the action. The amount awarded for each item will be the amount specified in this rule or, if no amount is specified, the cost actually incurred by the party to the extent this cost is reasonable.

(b) **Cost Bill.** To recover costs, the prevailing party must file and serve an itemized and verified cost bill, showing the date costs were incurred, within 10 days after the date shown in the clerk's certificate of distribution on the judgment. Failure of a party to file and serve a cost bill within 10 days, or such additional time as the court may allow, will be construed as a waiver of the party's right to recover costs. The prevailing party must have receipts, invoices, or other supporting documentation for each item claimed. This documentation must be available to other parties for inspection and copying upon request and must be presented to the clerk upon request. Documentation may be filed only if requested by the clerk or in response to an objection.

(c) **Objection and Reply.** A party may object to a cost bill by filing and serving an objection within 7 days after service of the cost bill. The prevailing party may respond to an objection by filing and serving a reply within 5 days after service of the objection.

(d) **Taxing of Costs by Clerk.** Promptly upon expiration of the time for filing objections, or if an objection is filed, the time for filing a reply, the clerk shall issue an itemized award of costs allowable under this rule. No cost bill hearing will be held unless requested by the clerk. If a hearing is held, it will be limited to issues identified by the clerk in the notice of hearing. The clerk may deny costs requested by the prevailing party on grounds that

(1) the cost is not allowed under paragraph (f);

(2) the party failed to provide an adequate description or adequate supporting documentation following a request by the clerk or another party; or

(3) the amount claimed by the prevailing party is unreasonable.

The clerk may not deny costs on grounds that the costs were not necessarily incurred in the action. If a party objects

on this basis, the party must seek review under paragraph (e) of the clerk's action in awarding the cost.

(e) **Review by Court.** A party aggrieved by the clerk's action in awarding costs may file a motion for review of the clerk's award. The motion must be filed and served within five days after the date shown on the clerk's certificate of distribution on the award. The motion must particularly designate each ruling of the clerk to which objection is made. Matters not so designated will not be considered by the court. Costs awarded by the clerk are presumed to be reasonable.

(f) **Allowable Costs.** The following items are the only items that will be allowed as costs:

(1) the filing fee;

(2) fees for service of process allowable under Administrative Rule 11 or postage when process is served by mail;

(3) other process server fees allowable under Administrative Rule 11;

(4) the cost of publishing notices required by law or by these rules;

(5) premiums paid on undertakings, bonds, or security stipulations where required by law, ordered by the court, or necessary to secure some right accorded in the action;

(6) the cost of taking and transcribing a deposition allowed by Civil Rule 30(a) or 31(a) (including a deposition that is ordered by the court or agreed to by the parties under those rules), as follows:

(A) the court reporter's fee and travel expenses to communities where a local court reporter is not available;

(B) expenses allowed by Civil Rule 30.1(e) for recording, editing, or using an audio or audio-visual deposition; and

(C) the cost of the original plus one copy of the transcript;

(7) witness fees allowed under Administrative Rule 7;

(8) the fee of an interpreter or translator for a witness when that witness is entitled to a fee under Administrative Rule 7;

(9) travel costs allowed under paragraph (g) of this rule;

(10) long distance telephone charges for telephonic participation by an attorney or party at court proceedings, depositions, the meeting of the parties required by Civil Rule 26(f), and interviews of witnesses other than the party;

(11) charges paid by the prevailing party's attorney for computerized legal research;

(12) copying costs for paper copies, photographs, and microfilm, the cost of scanning, imaging, coding, and creating electronic media files, such as computer diskettes or tapes, and the cost of duplicating text files or otherwise copying documents or data in an electronic medium, as follows:

(A) for copies from the court, a copy center, or a person or entity other than the prevailing party's attorney, the amount charged for the copies; and

(B) for copies from the prevailing party's attorney, the amount charged by the attorney or $.15 per copy, whichever is less;

(13) exhibit preparation costs;

(14) the cost of transcripts ordered by the court;

(15) other costs allowed by statute; and

(16) any sales or other taxes necessarily incurred by the party in connection with a cost allowed in this subsection.

(g) **Travel Costs.**

(1) Travel costs will be allowed for

(A) one attorney to attend trial, hearings on dispositive motions, settlement conferences, and the meeting of the parties required by Civil Rule 26(f), but only if no local attorney is present; if more than one out-of-town attorney attends a proceeding at which no local attorney is present, travel costs will be allowed for the attorney who traveled the shortest distance to the trial site;

(B) one attorney to attend depositions, interviews of witnesses who are not deposed, and meetings to review documents produced in the course of discovery;

(C) one legal assistant or investigator to interview witnesses who are not deposed or to review documents produced in the course of discovery; and

(D) witnesses to the extent permitted by Administrative Rule 7.

(2) Travel costs are subject to the following limitations:

(A) air fare is allowed at the coach class fare or the actual fare, whichever is less;

(B) ground transportation, including car rental, is allowed outside the traveler's home city; and

(C) food and lodging is allowed at the same per diem rate allowed for court employees.

(3) In unusually complex cases, the court may allow a prevailing party to recover travel costs for more than one attorney to participate in the activities described in section (g)(1)(A) of this rule. To request travel costs for more than one attorney, the prevailing party must file a motion for court review of the clerk's award as provided in paragraph (e) and must include supporting documentation for each item claimed. These costs should not be included in the cost bill filed with the clerk.

(4) To recover travel costs, the prevailing party must include the following information for each trip: the name of the traveler, whether the traveler is an attorney, legal assistant, or investigator, the reasons for the travel, and the travel dates.

(h) **Equitable Apportionment Under AS 09.17.080.** In a case in which damages are apportioned among the parties under AS 09.17.080, costs must be apportioned and awarded according to the provisions of Civil Rule 82(e).

(Adopted by SCO 5 October 9, 1959; amended by SCO 56 effective November 1, 1963; by SCO 258 effective November 15, 1976; by SCO 554 effective April 4, 1983; by SCO 1085 effective January 15, 1992; by SCO 1118 effective July 15, 1993; by SCO 1153 effective July 15, 1994; by SCO 1200 effective July 15, 1995; by SCO 1246 effective July 15, 1996; and by SCO 1279 effective July 31, 1997; rescinded and readopted by SCO 1306 effective January 15, 1998; amended by SCO 1340 effective January 15, 1999; by SCO 1631 effective April 16, 2007; and by SCO 1806 effective July 1, 2014)

Note: AS 25.25.313(c), added by § 6 of ch. 57 SLA 1995 (the Uniform Interstate Family Support Act), has the effect of amending Civil Rule 79 by requiring the court to award costs and fees against a party who requests a hearing primarily for delay in a support proceeding listed in AS 25.25.301.

Note: In 1997 the legislature enacted AS 18.16.030(m), which provides that a filing fee may not be required of, and court costs may not be assessed against, a minor in a proceeding to bypass parental consent to an abortion. According to ch. 14, § 10 SLA 1997, AS 18.16.030(m) has the effect of amending Administrative Rule 9, Civil Rule 79, and Appellate Rule 508 by prohibiting filing fees and assessment of court costs in certain actions. Instead of amending individual rules to implement AS 18.16.030, the supreme court has adopted a separate rule on judicial bypass proceedings in the superior court and a separate rule on judicial bypass appeals. See Probate Rule 20 & Appellate Rule 220.

Note: Chapter 94 SLA 1998 adopts AS 46.03.761, which allows the Department of Environmental Conservation to impose administrative penalties against an entity that fails to construct or operate a public water supply system in compliance with state law or a term or condition imposed by the department. According to section 5 of the act, subsection (j) of this statute has the effect of amending Civil Rules 79 and 82 by allowing the recovery of full reasonable attorney fees and costs in an action to collect administrative penalties assessed under AS 46.03.761.

Note: Chapter 136 SLA 03 (HB 151) amends Chapters 10 and 45 of Title 9 of the Alaska Statutes relating to claims and court actions for defects in the design, construction, and remodeling of certain dwellings and limits on when certain court actions may be brought. According to Section 4(2) of the Act, AS 09.45.889(b) has the effect of amending Civil Rule 79 by allowing the court to deny costs to a claimant in the situation described in AS 09.45.889(b), even if the claimant is the prevailing party.

Note: Chapter 60, SLA 2013 (HB 57), effective July 1, 2014, adopted the Alaska Entity Transactions Act, effective July 1, 2014. According to section 30 of the Act, AS 10.55.603(a), enacted by section 10 of the Act, has the effect of amending Alaska Rule of Civil Procedure 79, directing that the process service fee be allowed to a prevailing party, whether or not the fee amount exceeds the amount allowed by Rule 11, Alaska Rules of Administration.

Rule 80. Bonds and Undertakings.

(a) **Approval by Clerk.** Except where approval by a judge is required by law, the clerk is authorized to approve all undertakings, bonds, and stipulations of security given in the form and amount prescribed by statute or order of the court, where the same are executed by approved surety companies.

(b) **Qualifications of Sureties.**

(1) *Individuals.* Each individual surety must be a resident of the state. Each must be worth the sum specified in the undertaking, exclusive of property exempt from execution, and over and above all just debts and liabilities, except that where there are more than two sureties, each may be worth a lesser amount if the total net worth of all of them is equal to twice the sum specified in the undertaking. No attorney at law, peace officer, clerk of any court, or other officer of any court is qualified to be surety on the undertaking.

(2) *Corporations.* A corporate surety must be in compliance with applicable laws of the state, and must be qualified by law to act as surety in furnishing bail.

(c) **Affidavits of Sureties.**

(1) *Individuals.* The undertaking must contain an affidavit of each surety which shall state that the surety possesses the qualifications prescribed by subdivision (b) of this rule.

(2) *Corporations.* The undertaking of a corporate surety must contain affidavits showing the authority of the agent to act for the corporation and compliance by the corporation with all statutory requirements.

(d) **Justification of Sureties.**

(1) *Information to Be Furnished.* Sureties on any bond or undertaking shall furnish such information as may be required by the judge or magistrate judge approving the same, upon forms provided by the clerk of court for such purpose.

(2) *Examination as to Sureties' Qualifications.* Upon three days' notice to a party, an adverse party may require an individual surety or the agent of a corporate surety to be examined under oath concerning the surety's qualifications. Evidence as to such qualifications shall be taken before any judge or magistrate judge who shall have the authority to approve or reject the bond or undertaking.

(3) *Where Not Applicable.* The requirements set forth in paragraphs (1) and (2) of this subdivision shall not apply to individual sureties for a national banking association or for a

state bank or other financial institution regulated under Title 6 Alaska Statutes.

(e) **Approval by Attorneys.** Every recognizance, bond, stipulation or undertaking hereinafter presented to the clerk or a judge for approval shall have appended thereto a certificate of an attorney, if a party is represented by an attorney, substantially in the following form:

"Examined and recommended for approval as provided in Rule 80.
Attorney"

Such endorsement by an attorney will signify to the court that the attorney has carefully examined the recognizance, bond, stipulation or undertaking, and that the attorney knows the contents thereof; that the attorney knows the purposes for which it is executed; and that in the attorney's opinion the same is in due form. The recognizance, bond, stipulation or undertaking shall further have appended thereto a form substantially as follows:

"I hereby approve the foregoing. Dated this _ day of _____, 19____.

_____
Judge (or Clerk)"

(f) **Enforcement Against Sureties.** By entering into a bond or undertaking, the surety submits to the jurisdiction of the court and irrevocably appoints the clerk of court as the surety's agent upon whom any papers affecting the surety's liability on the bond may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk who shall forthwith mail copies to the surety if the surety's address is known. Every bond or undertaking shall contain the consent and agreement of the surety to the provisions of this subdivision of this rule.

(g) **Cash Deposit in Lieu of Bond.** A cash deposit of the required amount may be made with the clerk in lieu of furnishing a surety bond. At the time of such cash deposit, there shall be filed a written instrument properly executed and acknowledged by the owner of the cash, or by the owner's attorney or authorized agent, setting forth the conditions under which the deposit is being made, the ownership of the fund, and the consent and agreement to the provisions of subdivision (f) of this rule.

(Adopted by SCO 5 October 9, 1959; amended by SCO 49 effective January 1, 1963; by SCO 90 effective July 24, 1967; by SCO 258 effective November 15, 1976; by SCO 1153 effective July 15, 1994; by SCO 1670 effective July 1, 2009; and by SCO 1829 effective October 15, 2014)

Cross References

(a) **CROSS REFERENCE:** AS 09.68.030

Rule 81. Attorneys.

(a) **Who May Practice.**

(1) *Members of the Alaska Bar Association.* Subject to the provisions of paragraph (2) of this subdivision, only attorneys who are members of the Alaska Bar Association shall be entitled to practice in the courts of this state.

(2) *Other Attorneys.* A member in good standing of the bar of a court of the United States, or of the highest court of any state or any territory or insular possession of the United States, who is not a member of the Alaska Bar Association and not otherwise disqualified from engaging in the practice of law in this state, may be permitted, upon motion and payment of the required fee to the Alaska Bar Association, to appear and participate in a particular action or proceeding in a court of this state. The motion, and the notice of hearing, if any, shall be served on the executive director of the Alaska Bar Association and, unless the court directs otherwise by an order pursuant to Rule 5(c) of these Rules, on each of the parties to the action or proceeding. With the motion, the applicant must file with the court the following:

(A) The name, address and telephone number of a member of the Alaska Bar Association with whom the applicant will be associated, who is authorized to practice in the courts of this state.

(B) A written consent to the motion, signed by such member of the Alaska Bar Association.

(C) A certificate from the presiding judge, clerk of the court, or bar association where the applicant has been admitted to practice, executed not earlier than 60 days prior to the filing of the motion, showing that the applicant has been so admitted in such court, that he is in good standing therein and that the applicant's professional character appears to be good.

(D) Proof of payment of the required fee to the Alaska Bar Association.

An attorney thus permitted to appear may participate in a particular action or proceeding in all respects, except that all documents requiring signature of counsel for a party may not be signed solely by such attorney, but must bear the signature also of local counsel with whom the attorney is associated.

(3) *Authority and Duties of Attorneys.* Local counsel shall be primarily responsible to the court for the conduct of all stages of the proceedings, and their authority shall be superior to that of attorneys permitted to appear under paragraph (2) of this subdivision.

(b) **Ex Parte Applications.** All motions for ex parte orders must be made by an attorney or in propria persona.

(c) **General Appearance by Counsel.**

(1) An attorney who files a pleading or appears in a court proceeding on behalf of a party shall be deemed to have entered an appearance for all purposes in that case unless the attorney has filed and served a limited entry of appearance under (d) of this rule.

(2) Except as otherwise ordered by the court, or except as provided in Rule 81(d) and 81(e)(1)(D), a party who has appeared by an attorney may not thereafter appear or act in the party's own behalf in any action or proceeding, unless order of

substitution shall have been made by the court after notice to such attorney.

(d) **Limited Appearance By Counsel.** A party in a non-criminal case may appear through an attorney for limited purposes during the course of an action, including, but not limited to, depositions, hearings, discovery, and motion practice, if the following conditions are satisfied:

(1) The attorney files and serves an entry of appearance with the court before or during the initial action or proceeding that expressly states that the appearance is limited, and all parties of record are served with the limited entry of appearance; and

(2) The entry of appearance identifies the limitation by date, time period, or subject matter.

(e) **Withdrawal of Attorney.**

(1) An attorney who has appeared for a party in an action or proceeding may be permitted to withdraw as counsel for such party only as follows:

(A) Where the party has other counsel ready to be substituted for the attorney who wishes to withdraw;

(B) Where the party expressly consents in open court or in writing to the withdrawal of the party's attorney, the party has provided in writing or on the record a current service address, telephone number, and email address, and the attorney who wishes to withdraw has provided to the party a list of pending pretrial or post-trial deadlines, appellate deadlines, motion deadlines, and hearing dates and times;

(C) Where the party's consent has not been obtained, the court may grant a motion to withdraw for good cause. The court is required to hold a hearing on the motion only upon a party's timely request. A party's request for a hearing is timely if it is made within ten days of service of the motion to withdraw. In addition,

(i) the motion to withdraw must be served on the party in person or by mail at the last known address, and must inform the party of a right to request a hearing within ten days of service of the motion;

(ii) the attorney shall enclose with the motion a list of all hearing dates and pending deadlines including pretrial or post-trial deadlines, motion deadlines, and appellate deadlines; and

(iii) the attorney shall certify to the court that the attorney has complied with the requirements for service of the motion and shall provide the court with the party's last known address, telephone number, and email address; or

(D) In accordance with the limitations set forth in any limited entry of appearance filed pursuant to Civil Rule 81(d). An attorney may withdraw under this subparagraph by filing a notice with the court, served on all parties of record, stating that the attorney's limited representation has concluded; certifying that the attorney has taken all actions necessitated by the limited representation; and providing to the court a current service address, telephone number, and email address and to the party a list of pending pretrial or post-trial deadlines, appellate deadlines, motion deadlines, and hearing dates and times. Upon the filing of such notice, the withdrawal shall be effective, without court action or approval.

(2) An attorney shall be considered to have properly withdrawn as counsel for a party in an action or proceeding in which a period of one year has elapsed since the filing of any paper or the issuance of any process in the action or proceeding, and

(A) The final judgment or decree has been entered and the time for filing an appeal has expired, or

(B) If an appeal has been taken, the final judgment or decree upon remand has been entered or the mandate has issued affirming the judgment or decree.

This subparagraph (2) shall not apply to an attorney who files and serves a notice of continued representation.

(f) **Stipulations.** Stipulations between parties or their attorneys will be recognized only when made in open court, or when made in writing and filed with the clerk.

(g) **Time for Argument.** Unless otherwise specially ordered no longer than one quarter hour shall be allowed each party for argument upon any motion, or on any hearing other than a final hearing on the merits. The time for opening statements and arguments at the trial of an action shall be determined in accordance with Civil Rule 46(h).

(h) **Disbarment and Discipline.** Whenever it appears to the court that any member of the bar has been disbarred or suspended from practice or convicted of a felony, that member shall not be permitted to practice before the court until the member is thereafter reinstated according to existing statutes and rules.

(Adopted by SCO 5 October 9, 1959; amended by SCO 98 effective September 16, 1968; by SCO 258 effective November 15, 1976; by SCO 355 effective April 1, 1979; by SCO 390 effective November 7, 1979; by SCO 604 effective September 14, 1984; by SCO 612 effective January 1, 1985; by SCO 696 effective September 15, 1986; by SCO 876 effective July 15, 1988; by SCO 1153 effective July 15, 1994; by SCO 1450 effective October 15, 2001; by SCO 1544 effective October 15, 2004; by SCO 1627 effective October 15, 2007; by SCO 1627-Amended issued on April 10, 2007 effective October 15, 2007; and by SCO 1854 effective October 15, 2015)

Note: An entry of appearance filed under (d) of this rule must identify the limitation of representation. For example, a limitation by date may state "representation is provided through December 31, 2004;" a limitation by time period may state "representation is provided through the end of discovery;" or a limitation by subject matter may state "representation is provided only for the purpose of drafting an opposition to summary judgment and appearing at oral argument on summary judgment."

Rule 82. Attorney's Fees.

(a) **Allowance to Prevailing Party.** Except as otherwise provided by law or agreed to by the parties, the prevailing party in a civil case shall be awarded attorney's fees calculated under this rule.

(b) **Amount of Award.**

(1) The court shall adhere to the following schedule in fixing the award of attorney's fees to a party recovering a money judgment in a case:

	Judgment and, If Awarded, Prejudgment Interest	Contested With Trial	Contested Without Trial	Non-Contested
First	$25,000	20%	18%	10%
Next	$75,000	10%	8%	3%
Next	$400,000	10%	6%	2%
Over	$500,000	10%	2%	1%

(2) In cases in which the prevailing party recovers no money judgment, the court shall award the prevailing party in a case which goes to trial 30 percent of the prevailing party's reasonable actual attorney's fees which were necessarily incurred, and shall award the prevailing party in a case resolved without trial 20 percent of its actual attorney's fees which were necessarily incurred. The actual fees shall include fees for legal work customarily performed by an attorney but which was delegated to and performed by an investigator, paralegal or law clerk.

(3) The court may vary an attorney's fee award calculated under subparagraph (b)(1) or (2) of this rule if, upon consideration of the factors listed below, the court determines a variation is warranted:

(A) the complexity of the litigation;

(B) the length of trial;

(C) the reasonableness of the attorneys' hourly rates and the number of hours expended;

(D) the reasonableness of the number of attorneys used;

(E) the attorneys' efforts to minimize fees;

(F) the reasonableness of the claims and defenses pursued by each side;

(G) vexatious or bad faith conduct;

(H) the relationship between the amount of work performed and the significance of the matters at stake;

(I) the extent to which a given fee award may be so onerous to the non-prevailing party that it would deter similarly situated litigants from the voluntary use of the courts;

(J) the extent to which the fees incurred by the prevailing party suggest that they had been influenced by considerations apart from the case at bar, such as a desire to discourage claims by others against the prevailing party or its insurer; and

(K) other equitable factors deemed relevant.

If the court varies an award, the court shall explain the reasons for the variation.

(4) Upon entry of judgment by default, the plaintiff may recover an award calculated under subparagraph (b)(1) or its reasonable actual fees which were necessarily incurred, whichever is less. Actual fees include fees for legal work performed by an investigator, paralegal, or law clerk, as provided in subparagraph (b)(2).

(c) **Motions for Attorney's Fees.** A motion is required for an award of attorney's fees under this rule or pursuant to contract, statute, regulation, or law. The motion must be filed within 10 days after the date shown in the clerk's certificate of distribution on the judgment as defined by Civil Rule 58.1. Failure to move for attorney's fees within 10 days, or such additional time as the court may allow, shall be construed as a waiver of the party's right to recover attorney's fees. A motion for attorney's fees in a default case must specify actual fees.

(d) **Determination of Award.** Attorney's fees upon entry of judgment by default may be determined by the clerk. In all other matters the court shall determine attorney's fees.

(e) **Equitable Apportionment Under AS 09.17.080.** In a case in which damages are apportioned among the parties under AS 09.17.080, the fees awarded to the plaintiff under (b)(1) of this rule must also be apportioned among the parties according to their respective percentages of fault. If the plaintiff did not assert a direct claim against a third-party defendant brought into the action under Civil Rule 14(c), then

(1) the plaintiff is not entitled to recover the portion of the fee award apportioned to that party; and

(2) the court shall award attorney's fees between the third-party plaintiff and the third-party defendant as follows:

(A) if no fault was apportioned to the third-party defendant, the third-party defendant is entitled to recover attorney's fees calculated under (b)(2) of this rule;

(B) if fault was apportioned to the third-party defendant, the third-party plaintiff is entitled to recover under (b)(2) of this rule 30 or 20 percent of that party's actual attorney's fees incurred in asserting the claim against the third- party defendant.

(f) **Effect of Rule.** The allowance of attorney's fees by the court in conformance with this rule shall not be construed as fixing the fees between attorney and client.

(Adopted by SCO 5 October 9, 1959; amended by SCO 497 effective January 18, 1982; by SCO 712 effective September 15, 1986; by SCO 921 effective January 15, 1989; by SCO 1006 effective January 15, 1990; by SCO 1066 effective July 15, 1991; repealed and reenacted by SCO 1118am effective July 15, 1993; amended by SCO 1195 effective July 15, 1995;

by SCO 1200 effective July 15, 1995; by SCO 1241 effective July 15, 1996; by SCO 1246 effective July 15, 1996; by SCO 1281 effective August 7, 1997; by SCO 1340 effective January 15, 1999; and by SCO 1455 effective July 15, 1993)

Note to SCO 1118am: By adopting these amendments to Civil Rule 82, the court intends no change in existing Alaska law regarding the award of attorney's fees for or against a public interest litigant, **see, e.g., Anchorage Daily News v. Anchorage School Dist.**, 803 P.2d 402, 404 (Alaska 1990); **City of Anchorage v. McCabe**, 568 P.2d 986, 993-94 (Alaska 1977); **Gilbert v. State**, 526 P.2d 1131, 1136 (Alaska 1974), or in the law that an award of full attorney's fees is manifestly unreasonable in the absence of bad faith or vexatious conduct by the non-prevailing party. **See, e.g., Malvo v. J.C. Penney Co.**, 512 P.2d 575, 588 (Alaska 1973); **Demoski v. New**, 737 P.2d 780, 788 (Alaska 1987).

Note: AS 25.25.313(c), added by § 6 of ch. 57 SLA 1995 (the Uniform Interstate Family Support Act), has the effect of amending Civil Rule 82 by requiring the court to award costs and fees against a party who requests a hearing primarily for delay in a support proceeding listed in AS 25.25.301.

RABINOWITZ, Justice dissenting.

I dissent from the court's adoption of the amendments to Civil Rule 82 called for in [SCO 1118am.] In my view no compelling case has been made demonstrating the need for these changes. *1* Further, my judicial hunch is that these amendments to Civil Rule 82, in particular the new provisions reflected in (b)(3)(A) through (K), will unnecessarily and dramatically increase litigation over attorney's fees awards both in our trial courts as well as in this court. *2*

1 In this regard I note that the Alaska Judicial Council is scheduled to conduct an in depth empirical study of the workings of Civil Rule 82. My preference is to await the results of the Council's study before deciding whether any of the current provisions of Rule 82 should be amended. Such a study should position this court to make a more informed assessment as to whether the current rule operates in a fashion which unjustly denies access to our courts. I further note that our Civil Rules Committee recently surveyed the Alaska Bar membership on discrete aspects of Civil Rule 82. A clear majority of those responding to the committee's questionnaire indicated: that Civil Rule 82 does not deter people of moderate means from filing valid claims; that the rule does not put excessive pressure on moderate income people to settle valid claims; and that the rule is needed to discourage frivolous litigation.

2 Any attorney worth his or her salt will, pursuant to the expansive provisions of (b)(3)(A) through (K), request variations from the attorney's fees awards called for under either the monetary recovery schedule provisions of (b)(1), or the provisions of (b)(2) which apply where no money judgment is recovered by the prevailing party.

Note to SCO 1281: In 1997 the legislature amended AS 09.30.065 concerning offers of judgment. According to ch. 26, sec. 52, SLA 1997, the amendment to AS 09.30.065 has the effect of amending Civil Rules 68 and 82 by requiring the offeree to pay costs and reasonable actual attorney fees on a sliding scale of percentages in certain cases, by eliminating provisions relating to interest, and by changing provisions relating to attorney fee awards. According to sec. 55 of the session law, the amendment to AS 09.30.065 applies "to all causes of action accruing on or after the effective date of this Act." However, the amendments to Civil Rule 68 adopted by paragraph 5 of this order are applicable to all cases filed on or after August 7, 1997. See paragraph 17 of this order.

Note: Chapter 94 SLA 1998 adopts AS 46.03.761, which allows the Department of Environmental Conservation to impose administrative penalties against an entity that fails to construct or operate a public water supply system in compliance with state law or a term or condition imposed by the department. According to section 5 of the act, subsection (j) of this statute has the effect of amending Civil Rules 79 and 82 by allowing the recovery of full reasonable attorney fees and costs in an action to collect administrative penalties assessed under AS 46.03.761.

Note: Chapter 136 SLA 03 (HB 151) amends Chapters 10 and 45 of Title 9 of the Alaska Statutes relating to claims and court actions for defects in the design, construction, and remodeling of certain dwellings and limits on when certain court actions may be brought. According to Section 4(1) of the Act, AS 09.45.889(b) has the effect of amending Civil Rule 82 by allowing the court to deny attorney fees to a claimant in the situation described in AS 09.45.889(b), even if the claimant is the prevailing party.

Note (effective July 1, 2009): Chapter 92 SLA 2008 (HB 65) added a new chapter to AS 45 relating to security of personal information, effective July 1, 2009. According to section 6(b) of the Act, AS 45.48.200(a), 45.48.480(b), 45.48.560, and 45.48.750(d), enacted by section 4, have the effect of changing Civil Rule 82 by changing the criteria for determining the amount of attorney fees to be awarded to a party in an action under AS 45.48.200(a), 45.48.480(b), 45.48.560, or 45.48.750(d).

LAW REVIEW COMMENTARIES

"Summary Judgment In Alaska," 32 Alaska L. Rev. 181 (2015).

Rule 83. Fees: Witnesses—Physicians—Interpreters and Translators.

The payment of fees and mileage for witnesses, and for physicians and interpreters and translators, shall be governed by the rules for the administration of the courts.

(Adopted by SCO 5 October 9, 1959)

PART XII. SPECIAL PROCEEDINGS

Rule 84. Change of Name.

(a) **Petition.** Every action for change of name shall be commenced by filing a verified petition entitled in the name of petitioner, showing the name which petitioner desires to adopt and setting forth the reasons for requesting a change of name.

(b) **Notice of Application.** The court by order shall set a date for hearing not less than 40 days after the date of the order. Unless otherwise ordered by the court based on the petitioner's personal safety concerns, notice of the filing of the petition with a statement of the relief sought therein and the date of hearing thereon shall be continuously posted for four consecutive weeks prior to the date of the hearing on the Alaska Court System's legal notice website. Proof of posting to the legal notice website shall be made as prescribed in Rule 4(e)(6)(A). In its discretion, the court by order may also require the posting or publication of the notice as prescribed in Rule 4(e)(3). Proof of publication shall be made as prescribed in Rule 4(e)(6)(B), (C) or (E).

(c) **Judgment -- Notice -- Filing.** If satisfied that there is no reasonable objection to the assumption of another name by petitioner, the court shall by judgment authorize petitioner to assume such other name after a time to be fixed in the judgment, which shall not be less than 30 days after the date shown in the clerk's certificate of distribution on the judgment. Except in cases where notice is not required under subsection (b), within 10 days after the date shown in the clerk's certificate of distribution on the judgment, a copy thereof shall be posted on the Alaska Court System's legal notice website for one week. Proof of posting to the legal notice website shall be made as prescribed in Rule 4(e)(6)(A).

The court may also require publication of a copy of the judgment as provided in subdivision (b). Within 20 days after the date shown in the clerk's certificate of distribution on the judgment, proof of publication shall be filed with the clerk. The petitioner may then submit a certificate to be issued by the clerk stating that the judgment has been entered and that all requirements for posting a copy of the judgment have been met.

(d) **Applicability.** This rule shall not apply to restoration of a prior name sought in a complaint for divorce or in a petition for dissolution of marriage.

(e) **Change of Name for Minor Child.** An action for change of name for a minor child will be commenced by the filing of a verified petition in the name of a parent or guardian on behalf of the minor child, showing the name which the petitioner desires the child to assume and setting forth the reasons for requesting the change of name. No petition will be heard unless written consent to the petition is filed by both the child's legal parents and the child's legal guardian (if any), or unless proof of service is filed with the court showing that the child's parent(s) and legal guardian(s) have been served with a summons and a copy of the petition at least 30 days prior to the date set for hearing. Service of the petition and summons will be in accord with the provisions of these rules applicable to the service of a complaint and summons. The summons must advise the recipient of the date set for hearing on the petition.

If the court receives an objection to the proposed name change presented by a parent and/or legal guardian of the child prior to or at the time of the hearing on the proposed name change, the court shall consider the objection and shall only grant the name change if the court finds the name change to be in the best interest of the child. The court shall also consider the desires of a child old enough to express the same in determining whether a requested name change will be granted.

The requirements of (b) and (c) of this rule apply to a change of name proceeding brought under this section.

(Amended by SCO 49 effective January 1, 1963; by SCO 56 effective November 1, 1963; by SCO 252(2) effective September 22, 1976; by SCO 542 effective October 1, 1982; by SCO 554 effective April 4, 1983; by SCO 624 effective June 15, 1985; by SCO 671 effective June 15, 1986; by SCO 999 effective January 15, 1990; by SCO 1772 effective February 23, 2012; and by SCO 1834 effective October 15, 2014)

Cross References

(a) **CROSS REFERENCE:** AS 09.55.010

Note: A petitioner may file a motion or the court may act on its own motion under Administrative Rule 37.6 to have the case and case record made confidential based on the petitioner's personal safety concerns. The petitioner or court may also request under Administrative Rule 40(b) or (c) that the presiding judge substitute pseudonyms for the petitioner's current and requested names on the public index of cases.

Note: The Alaska Court System's legal notice website, referenced in subsections (b) and (c) of this rule is found on the Alaska Court System Website at:
http://www.courts.alaska.gov/.

Rule 85. Forcible Entry and Detainer.

(a) **Practice and Procedure.** In an action for the possession of any land, tenement or other real property brought under the forcible entry and detainer provisions of law, the practice and procedure shall be as in other civil actions, subject to the following:

(1) *Complaint.* The premises claimed shall be described in the complaint with such certainty that the defendant will be distinctly advised of their location so that possession thereof may be delivered according to that description. The complaint must contain a notice describing the circumstances under which the clerk may dismiss the case under subsection (a)(6) of this rule. This notice will be printed in the forcible entry and detainer complaint forms approved by the administrative director. If the plaintiff files an action without using the court form, the complaint must nonetheless contain a notice that is identical to that which appears in the court form. The notice shall serve as the actual notice to all parties that is required by paragraph (a)(6) of this rule.

(2) *Summons.* Summons shall be served not less than two days before the day of the eviction hearing. The date set for the eviction hearing shall be not more than 15 days from the date of filing of the complaint unless otherwise ordered by the court.

(3) *Continuances.* No continuance shall be granted for a longer period than 2 days, unless the defendant applying therefor shall give an undertaking to the adverse party, with sureties approved by the court, conditioned to the payment of

the rent that may accrue if judgment is rendered against defendant.

(4) *Appearance by Defendant.* An appearance by a defendant at the eviction hearing is an appearance in the entire matter for purposes of Civil Rule 55(a).

(5) *Service—How Made.* A defendant cannot be served under Civil Rule 5 by mailing a copy of the document to the address from which the defendant was evicted unless the defendant's current mailing address and whereabouts are not readily ascertainable.

(6) *Dismissal of Action for Want of Prosecution.*

(A) *By Clerk—Additional Notice to Parties Not Required*. A forcible entry and detainer case may be dismissed by the clerk for want of prosecution without further notice to the parties and without further order if

(i) the case has been pending for more than 180 days from the date the complaint was filed;

(ii) no trial or hearing is scheduled; and

(iii) no application for default judgment has been filed; and

(iv) the parties had actual notice that the case could be dismissed under this paragraph; actual notice of the procedure for dismissal of a forcible entry and detainer case shall be provided in all forcible entry and detainer complaints as provided in subsection (a)(1) of this rule.

(B) *By Order of Court*. The court on its own motion or on motion of a party to the action may enter a judgment of dismissal if the plaintiff fails to appear for a scheduled trial or hearing.

(C) *Dismissal Without Prejudice*. A case dismissed for want of prosecution under this rule is dismissed without prejudice unless otherwise ordered by the court. Any party may, as a matter of right, reopen a case that was dismissed for want of prosecution without refiling the action by making a request in writing to the clerk of court no later than one year after dismissal.

(b) **Referral to District Courts for Trial.** Any such action filed in the superior court may be referred by the court to a district court for trial when the amount does not exceed the jurisdiction of district court.

(Amended by SCO 49 effective January 1, 1963; amended by SCO 678 effective June 15, 1986; by SCO 739 effective August 28, 1986; by SCO 1461 effective April 15, 2002; and by SCO 1691 effective April 15, 2010)

Cross References

(a) (generally) **CROSS REFERENCE:** AS 09.45.070

Rule 86. Habeas Corpus.

(a) **Scope of Civil Rules.** The procedure in an action for habeas corpus shall be governed by the rules governing the procedure in civil actions in the superior court to the extent that such rules are applicable.

(b) **Complaint.** The complaint shall be verified by the prisoner or by someone on the prisoner's behalf who shall be known as the plaintiff and shall state in substance as follows:

(1) That the person in whose behalf the writ is applied for (the prisoner) is restrained of liberty.

(2) The name of the prisoner, if known, or the prisoner's description.

(3) The name of the officer or person by whom the prisoner is so restrained, if known, or the officer's or person's description.

(4) The place of restraint, if known.

(5) That the action for habeas corpus by or on behalf of the prisoner is not prohibited by law.

(6) The cause or pretense of such restraint, according to the best of the knowledge and belief of the plaintiff.

(7) The reasons why the restraint is illegal.

(8) If the restraint is by virtue of any warrant, judgment, order or process, a copy thereof shall be attached as an exhibit, or an explanation of its absence shall be made in the complaint.

(9) That the legality of the restraint has not been already adjudged upon a prior writ of habeas corpus to the knowledge or belief of the plaintiff.

(c) **Writ—Order to Show Cause—Warrant.**

(1) *Issuance Upon Application*. Upon the presentation or filing of a complaint, the court (or judge) shall, unless it appears that the plaintiff is not entitled to that relief:

[a] Issue a writ of habeas corpus directed to the person having custody of the prisoner, or the person's superior, ordering the person or superior to answer the writ stating the authority for restraining the prisoner and to bring the person alleged to be restrained before the court (or judge) forthwith, or at a designated time and place; or

[b] Issue an order to show cause why the writ should not be issued, returnable as in [a] above; or

[c] Issue a warrant in lieu of habeas corpus.

(2) *Issuance Without Application.* Any judicial officer may issue a writ of habeas corpus, or an order to show cause, sua sponte whenever it appears that any person is illegally restrained. A writ issued by a district court judge or magistrate judge is returnable before a judge of the superior court.

(3) *Duplicate Original Writs.* Duplicate original writs or orders to show cause may be issued in any number required.

(d) **Sufficiency of Writ.** The writ or order to show cause shall not be disobeyed for any defect of form. It is sufficient

(1) if the person having custody of the prisoner is designated simply as the person having custody of the prisoner, and (2) if the person restrained, or who is directed to be produced, is designated by name; or if that person's name is uncertain or unknown, if that person is described in any other way, so as to designate the person intended. Anyone served with the writ is deemed the person to whom it is directed.

(e) **Service of Writ.**

(1) *Person to Be Served.* The writ or order to show cause shall be served on the person having custody of the prisoner, who shall be known and designated as the defendant, in the manner prescribed in Rule 4. If the defendant cannot be found, or if the defendant does not have the prisoner in custody, the writ or order to show cause may be served upon anyone having the prisoner in custody, or that person's superior, in the manner and with the same effect as if that person or the superior had been made defendant in the action.

(2) *Tender of Fees.* To make the service of a writ of habeas corpus effective as to the production of the prisoner, the person making service shall tender to the person having custody of the prisoner, or that person's superior, the fees as follows:

[a] No fees need be tendered if the action is brought by the Attorney General or a prosecuting attorney, nor if the writ is issued by the judge on the judge's own motion.

[b] If the prisoner is in the custody of a public officer, the fees tendered shall be in a sum adequate to cover the cost of producing the prisoner and of returning the prisoner if remanded, said sum to be established by the judge upon the issuance of the writ and endorsed thereon by the judge.

[c] If the prisoner is in the custody of any other person, and if the judge allowing the writ so orders, the fees tendered shall be those established by the judge and endorsed on the writ, not to exceed the cost of producing and returning the prisoner.

[d] If the prisoner is not returned, the amount of the fee tendered to cover the cost of return shall be refunded to the owner.

(f) **Return.** Every person who serves or attempts to serve a writ or order to show cause shall make a return in accordance with the provisions of Rule 4(f). The execution or service and return of a warrant shall be governed by the provisions of Criminal Rule 4(c).

(g) **Answer.**

(1) *Contents.* The answer shall state plainly and unequivocally:

[a] Whether the defendant or person served then has, or at any time has had, the prisoner in custody, and if so, the authority and cause therefor; and

[b] If the prisoner has been transferred, to whom, when the transfer was made, and the reason and authority therefor.

[c] If the prisoner has been admitted to bail, the time of such admission to bail and the amount thereof.

[d] That the prisoner has not been produced as ordered for the reason that the tender of fees was not made or the amount tendered was inadequate, if such be the case.

(2) *Exhibits.* If the prisoner is detained by virtue of any judgment, order, warrant, or other written authority, a copy thereof shall be attached to the answer as an exhibit, and the original shall be produced and exhibited at the hearing.

(3) *Verification.* The answer shall be signed by the person answering and, except when the person is a sworn public officer and answers in the person's official capacity, it shall be verified by oath.

(h) **Contempt.** Neglect to produce the prisoner or to answer the writ or order to show cause in compliance with its terms shall constitute contempt.

(i) **Controverting Answer.** The plaintiff or the prisoner may, in a reply or at the hearing, controvert the answer under oath, to show either that the restraint of the prisoner was unlawful, or that the prisoner is entitled to discharge or other appropriate remedy.

(j) **Hearing and Judgment.** The court shall proceed in a summary manner to hear the matter and render judgment accordingly.

(k) **Notice of Hearing Before Discharge.** When the answer indicates that the prisoner is in custody on any process under which any other person has an interest in continuing the prisoner's restraint, no order may be made for the prisoner's discharge unless the person so interested, or that person's attorney, has had reasonable notice of the time and place of the hearing. When the answer indicates that the prisoner is detained upon a criminal accusation, the prisoner shall not be discharged until reasonable notice of the time and place of the hearing is given to the prosecuting attorney of the district within which the prisoner is detained or, if there is no prosecuting attorney within the district, to the Attorney General.

(*l*) **Custody of Child.** An order to show cause, and not a writ of habeas corpus, shall be issued initially if the action is brought by a parent, foster parent, or other relative of the child, to obtain custody of the child under the age of sixteen years from a parent, foster parent, or other relative of the child, the Commissioner of Health and Social Services, or any other person.

(m) **Superseded By Post-Conviction Relief Procedure Under Criminal Rule 35.1.** This rule does not apply to any post-conviction proceeding that could be brought under Criminal Rule 35.1. The court shall treat such a complaint as an application for post-conviction relief under Criminal Rule 35.1 and, if necessary, transfer the application to the court of appropriate jurisdiction for proceedings under that rule.

(n) **Not a Substitute for Remedies in Trial Court or Direct Review.** This remedy is not a substitute for nor does it

affect any remedy incident to the proceedings in the trial court, or direct review of a sentence or conviction.

(Amended by SCO 49 effective January 1, 1963; by SCO 107 effective July 1, 1970; by SCO 457 effective March 15, 1981; by SCO 880 effective July 15, 1988; by SCO 1153 effective July 15, 1994; by SCO 1186 effective July 15, 1995; and by SCO 1829 effective October 15, 2014)

Cross References

(b) **CROSS REFERENCE:** AS 12.75.010; AS 12.75.020; AS 12.75.030

(c)(1) **CROSS REFERENCE:** AS 12.75.180; AS 12.75.190; AS 12.75.200

(e)(1) **CROSS REFERENCE:** AS 12.75.040

(g)(1) **CROSS REFERENCE:** AS 12.75.110

Rule 87. Civil Arrest.

A motion for an order of arrest in a civil action shall be accompanied by affidavit setting out the facts supporting the ground for arrest. The order of arrest shall state the amount of bail. The arresting officer, at the time of arrest, shall deliver to the defendant copies of the order of arrest and all affidavits supporting the motion.

(Amended by SCO 49 effective January 1, 1963)

Cross References

CROSS REFERENCE: AS 09.40.120—AS 09.40.180

Rule 88. Procedure for Claiming Delivery of Personal Property.

(a) **Prejudgment Delivery of Personal Property to Plaintiff; Availability.** When the plaintiff has commenced a civil action to recover possession of personal property, the plaintiff may make application to the court to have the property delivered to the plaintiff. The court may order the prejudgment seizure of the property in accordance with the provisions of this rule.

(b) **Motion and Affidavit for Delivery.** The plaintiff shall file a motion with the court requesting the delivery of personal property, together with an affidavit showing:

(1) A particular description of the property claimed, and if the property claimed is a portion of divisible property of uniform kind, quality and value, that such is the case, and the amount thereof which the plaintiff claims; and

(2) That the plaintiff is the owner of the property or lawfully entitled to its possession, and the facts and circumstances relating thereto; and

(3) The value of the property claimed; and if more than one article is claimed, the current value of each article; and

(4) That the property is in the possession of the defendant, and the facts and circumstances relating to such possession according to the plaintiff's best knowledge or belief; and

(5) That the prejudgment seizure is not sought and the action is not prosecuted to hinder, delay or defraud any other creditor of the defendant; and

(6) That the plaintiff has no information or belief that the defendant has filed any proceeding under the National Bankruptcy Act or has made a general assignment for the benefit of creditors, or, if any such proceeding has been terminated, that the claim of the plaintiff was not discharged in such proceeding.

The plaintiff or the plaintiff's attorney shall endorse in writing upon the motion attached to the affidavit a request that the property claimed be taken by a peace officer from the defendant and be delivered to the plaintiff.

(c) **Notice of Motion; Pre-Seizure Hearing.** Except as section (j) provides, the court may order prejudgment delivery of personal property to the plaintiff only after:

(1) The defendant is served with notice of the motion and a copy of the affidavit; and

(2) The defendant is given an opportunity for a judicial hearing to determine the necessity of and justification for the prejudgment seizure of the property. The hearing shall be held not less than three (3), nor more than seven (7) business days (exclusive of Saturdays, Sundays, and legal holidays) after the service of the notice of motion upon the defendant.

(3) The hearing shall be held before the court on the day specified and shall take precedence over all other matters not of a similar nature pending on that day. If the defendant does not appear at the hearing, in person or by counsel, the court, without taking further evidence, shall immediately order the prejudgment seizure of the property. The hearing shall be conducted in conformity with Civil Rule 77, except where the provisions of Rule 77 conflict with the specific requirements of the instant rule, in which case, the requirements of the instant rule shall control.

(d) **Hearing; Burden of Proof.** At the hearing the court shall require the plaintiff to establish by a preponderance of the evidence the probable validity of the plaintiff's claim to the property and the absence of any reasonable probability that a successful defense can be asserted by the defendant.

(e) **Issuance of Order; Seizure.** If at the hearing the court finds that the plaintiff has met the burden of proof as set forth in paragraph (d) of this rule, the court shall issue an order prescribing the written undertaking, with sufficient sureties, to be provided by the plaintiff and directing a peace officer to seize and take into custody the property described in the affidavit upon the furnishing of the undertaking by the plaintiff.

(f) **New or Additional Undertaking.** The court at any time may require the giving of a new or additional undertaking to protect the interest of the defendant, the peace officer, or any party who intervenes, if good reason is shown that a new or additional bond is necessary.

(g) **Sureties on Undertaking.** The qualifications of sureties and their justification shall be as prescribed by these rules.

(h) **Return by Peace Officer.** The peace officer shall file a return with the court promptly and in any event within 20 days after the taking of the property from the defendant. Such return shall contain an inventory of the property taken, a statement of the claims, if any, by persons other than the plaintiff, and the name of the person to whom the property has been delivered. If the property is not taken, the peace officer shall promptly make a return to the court stating the fact and giving the reasons therefor.

(i) **Defendant's Security.** No order for prejudgment seizure of personal property may issue, or the peace officer shall redeliver to the defendant any property seized pursuant to the hearing, when the defendant provides a written undertaking with sufficient sureties as ordered by the court. The court may take into account a defendant's indigency, and may, in its discretion, permit the defendant to establish security by means other than the posting of bonds or the provision of a written undertaking. Such alternative means may include an installment payment arrangement or any other mechanism which the court deems just.

(j) **Ex Parte Prejudgment Delivery of Personal Property.** The court may issue a prejudgment order for delivery of personal property in an ex parte proceeding upon the plaintiff's motion, affidavit, and undertaking only in the following extraordinary situations:

(1) *Imminence of Defendant Concealing, Destroying or Conveying the Property.* The court may issue an ex parte order for delivery if the plaintiff establishes the probable validity of the plaintiff's claim for possession of the property, and if the plaintiff states in the affidavit specific facts sufficient to support a judicial finding of one of the following circumstances:

(i) The defendant is concealing, or about to conceal, the property; or

(ii) The defendant is about to destroy the property; or

(iii) The defendant is causing, or about to cause, the property to be removed beyond the limits of the state; or

(iv) The defendant is about to convey or encumber the property; or

(v) The defendant is otherwise disposing, or about to dispose, of the property in a manner so as to defraud the defendant's creditors, including the plaintiff.

(2) *Defendant's Waiver of Right to Pre-Seizure Hearing.* The court may issue an ex parte order for delivery if the plaintiff establishes the probable validity of the plaintiff's claim for possession of the property, and if the plaintiff accompanies the affidavit and motion with a document signed by the defendant voluntarily, knowingly and intelligently waiving the defendant's constitutional right to a hearing before prejudgment seizure of the property.

(3) *The Government as Plaintiff.* The court may issue an ex parte order for delivery when the possessory action and claim for delivery is brought by a government agency (state or federal), provided the government-plaintiff demonstrates that an ex parte seizure is necessary to protect an important governmental or general public interest.

(k) **Execution, Duration, and Vacation of Ex Parte Orders.** When the peace officer executes an ex parte delivery order, the peace officer shall at the same time serve on the defendant copies of the plaintiff's affidavit, motion and undertaking, and the order. No ex parte order shall be valid for more than seven (7) business days (exclusive of Saturdays, Sundays, and legal holidays), unless the defendant waives the right to a pre-seizure hearing in accordance with subsection (j)(2) of this rule, or unless the defendant consents in writing to an additional extension of time for the duration of the ex parte order. The defendant may at any time after service of the order request an emergency hearing at which the defendant may refute the special need for the seizure and the validity of the plaintiff's claim for possession of the property.

(*l*) **Duration and Vacation of Prejudgment Seizure Orders Issued Pursuant to Hearing.** A prejudgment seizure order issued pursuant to a hearing provided for in section (c) of this rule shall unless sooner released or discharged, cease to be of any force or effect and the property seized shall be released from the operation of the order at the expiration of six (6) months from the date of the issuance of the order, unless a notice of readiness for trial is filed or a judgment is entered against the defendant in the action in which the order was issued, in which case the order shall continue in effect until released or vacated after judgment as provided in these rules. However, upon motion of the plaintiff, made not less than ten (10) nor more than sixty (60) days before the expiration of such period of six (6) months, and upon notice of not less than five (5) days to the defendant, the court in which the action is pending may, by order filed prior to the expiration of the period, extend the duration of the order for an additional period or periods as the court may direct, if the court is satisfied that the failure to file the notice of readiness is due to the dilatoriness of the defendant and was not caused by any action of the plaintiff. The order may be extended from time to time in the manner herein prescribed.

(Amended by SCO 49 effective January 1, 1963; by SCO 156 effective December 8, 1972; by SCO 416 effective August 1, 1980; by SCO 1153 effective July 15, 1994; and by SCO 1435 effective October 15, 2001)

Cross References

(b) **CROSS REFERENCE:** AS 09.40.260

(e) **CROSS REFERENCE:** AS 09.40.270 — AS 09.40.300

Rule 89. Attachment.

(a) **Prejudgment Attachment; Availability.** After a civil action is commenced, the plaintiff may apply to the court to have the property of the defendant attached under AS 09.40.010–.110 as security for satisfaction of a judgment that may be recovered. The court may issue the writ of attachment in accordance with the provisions of this rule. However, no

writ may be issued unless the plaintiff has provided a written undertaking with sufficient sureties as ordered by the court.

Any party bringing a claim against another party may utilize prejudgment attachment procedures and is considered a plaintiff for purposes of this rule.

(b) **Motion and Affidavit for Attachment.** The plaintiff shall file a motion with the court requesting the writ of attachment, together with an affidavit showing:

(1) That the action is one upon an express or implied contract for the payment of money, and the facts and circumstances relating thereto; and

(2) That the sum for which the attachment is asked is an existing debt due and owing from the defendant to the plaintiff, over and above all legal setoffs and counterclaims, and the facts and circumstances relating thereto; and

(3) That the payment of such debt has not been secured by any mortgage, lien or pledge upon real or personal property, or if so secured, that the value of the security (specifying its value) is insufficient to satisfy any judgment that may be recovered by the plaintiff in the action; and

(4) That the attachment is not sought nor the action prosecuted to hinder, delay, or defraud any other creditor of the defendant; and

(5) That the plaintiff has no information or belief that the defendant has filed any proceeding under the National Bankruptcy Act or has made a general assignment for the benefit of creditors, or, if any such proceeding has been terminated, that the claim of the plaintiff was not discharged in such proceeding.

(c) **Notice of Motion; Pre-Attachment Hearing.** Except as section (m) provides, the court may issue the writ of attachment only after:

(1) The defendant is served with notice of the motion and a copy of the affidavit; and

(2) The defendant is given an opportunity for a judicial hearing to determine the necessity of and justification for the prejudgment attachment of the property. The hearing shall be held not less than three (3), nor more than seven (7) business days (exclusive of Saturdays, Sundays and legal holidays) after the service of the notice of motion upon the defendant.

(3) The hearing shall be held before the court on the days specified and shall take precedence over all other matters not of a similar nature pending on that day. If the defendant does not appear at the hearing, in person or by counsel, the court, without taking further evidence, shall immediately order the prejudgment attachment of the property. The hearing shall be conducted in conformity with Civil Rule 77, except where the provisions of Rule 77 conflict with the specific requirements of the instant rule, in which case, the requirements of the instant rule shall control.

(d) **Hearing; Burden of Proof.** At the hearing the court shall require the plaintiff to establish by a preponderance of the evidence the probable validity of the plaintiff's claim for relief in the action and the absence of any reasonable probability that a successful defense can be asserted by the defendant.

(e) **Issuance of Writ.** If at the hearing the court finds that the plaintiff has met his burden of proof set forth in section (d) of this rule, the court shall order that a writ of attachment be issued unless the defendant posts security as provided in section (j). The writ shall be directed to a peace officer and shall require the peace officer to attach and safely keep property of the defendant not exempt from execution sufficient to satisfy the plaintiff's demand (the amount of which shall be stated in conformity with the complaint), together with costs and expenses. Several writs may be issued at the same time and delivered to different peace officers, provided the total amount of the several writs does not exceed the plaintiff's claim. Additional writs may be issued where previous writs have been returned unexecuted, or executed in an amount insufficient to satisfy the full amount of the plaintiff's claim.

(f) **Execution of Writ.** The peace officer shall execute the writ without delay, as follows:

(1) Real property shall be attached by leaving a certified copy of the writ with the occupant of such property, or if there be no occupant, then in a conspicuous place on such property.

(2) Personal property capable of manual delivery to the peace officer, and not in the possession of a third party, shall be attached by the peace officer by taking it into custody.

(3) Other personal property shall be attached by leaving a certified copy of the writ, and a notice specifying the property attached, with the person having possession of same, or if it be a debt, then with the debtor.

(g) **New or Additional Undertaking.** The court at any time may require the giving of a new or additional undertaking to protect the interests of the defendant, the peace officer, or any party who intervenes, if good reason is shown that a new or additional bond is necessary.

(h) **Sureties on Undertaking.** The qualifications of sureties and their justification shall be as prescribed by these rules.

(i) **Return by Peace Officer.** The peace officer shall note upon the writ of attachment the date of its receipt. When the writ has been executed, the peace officer shall promptly return it to the clerk with the officer's proceedings endorsed thereon, including a full inventory of any property attached. If the writ cannot be executed, the peace officer shall promptly return it to the clerk stating thereon the reasons why it could not be executed.

(j) **Defendant's Security.** No writ of attachment may issue, or the peace officer shall redeliver to the defendant any property seized pursuant to the hearing, when the defendant provides a written undertaking with sufficient sureties as ordered by the court. The court may take into account a defendant's indigency, and may, in its discretion, permit the

defendant to establish security by means other than the posting of bonds or the provision of a written undertaking. Such alternative means may include an installment payment arrangement or any other mechanism which the court deems just.

(k) **Wages of Defendant.** No part of the defendant's wages shall be attached prior to entry of final judgment except as permitted under 15 U.S.C. § 1673, AS 09.38.030–09.38.050, AS 09.38.065 and AS 09.40.030.

(*l*) **Garnishee Proceedings.**

(1) *Order of Appearance—Service.* When a person is ordered to appear before the court to be examined as to any property or debt held by the person belonging to a defendant, such person shall be known as the garnishee. The order shall state the time and place where the garnishee is to appear, shall be served upon the garnishee and return of service made in the manner provided for service of summons and return thereof in Rule 4.

(2) *Failure to Appear—Default.* When a garnishee fails to appear in compliance with the order, the court on motion may compel the garnishee to do so.

(3) *Discovery.* After entry of the order mentioned in subsection (1), plaintiff may utilize the rules of discovery under the supervision of the court with respect to all matters relating to property of the defendant believed to be in the possession of the garnishee. The consequences of the garnishee's failure or refusal to make discovery shall be governed by these rules.

(4) *Trial of Issues of Fact.* Issues of fact arising between the plaintiff and the garnishee shall be resolved and disposed of in accordance with these rules as in the case of issues of fact arising between plaintiff and defendant. Witnesses, including the defendant and garnishee, may be required to appear and testify as upon the trial of an action.

(5) *Judgment Against Garnishee.* If it shall be found that the garnishee, at the time of service of the writ of attachment and notice, had any property of the defendant liable to attachment beyond the amount admitted in the garnishee's statement, or in any amount if a statement is not furnished, judgment may be entered against the garnishee for the value of such property in money. At any time before judgment, the garnishee may be discharged from liability by delivering, paying or transferring the property to the peace officer.

(6) *Order Restraining Garnishee.* At the time of the application by plaintiff for the order provided for in subsection (1), and at any time thereafter and prior to the entry of judgment against the garnishee, the court may enter an order restraining the garnishee from paying, transferring, or in any manner disposing of or injuring any of the property of the defendant alleged by the plaintiff to be in the garnishee's possession or control, or owing by the garnishee to the defendant. Disobedience of such order may be punished as a contempt.

(7) *Execution.* Execution may issue upon a judgment against a garnishee as upon a judgment between plaintiff and defendant, and costs and disbursements shall be allowed and recovered in like manner.

(m) **Ex Parte Attachments.** The court may issue a writ of attachment in an ex parte proceeding based upon the plaintiff's motion, affidavit, and undertaking only in the following extraordinary situations:

(1) *When Defendant Non-Resident.* In an action upon an express or implied contract against a defendant not residing in the state, the court may issue an ex parte writ of attachment only when necessary to establish jurisdiction in the court. To establish necessity, the plaintiff must demonstrate that personal jurisdiction over the defendant is not readily obtainable under AS 09.05.015.

(2) *Imminence of Defendant Avoiding Legal Obligations.* The court may issue an ex parte writ of attachment if the plaintiff establishes the probable validity of the plaintiff's claim for relief in the main action, and if the plaintiff states in the affidavit specific facts sufficient to support a judicial finding of one of the following circumstances:

(i) The defendant is fleeing, or about to flee, the jurisdiction of the court; or

(ii) The defendant is concealing the defendant's whereabouts; or

(iii) The defendant is causing, or about to cause, the defendant's property to be removed beyond the limits of the state; or

(iv) The defendant is concealing, or about to conceal, convey or encumber property in order to escape the defendant's legal obligations; or

(v) The defendant is otherwise disposing, or about to dispose, of property in a manner so as to defraud the defendant's creditors, including the plaintiff.

(3) *Defendant's Waiver of Right to Pre-Attachment Hearing.* The court may issue an ex parte writ of attachment if the plaintiff establishes the probable validity of the plaintiff's claim for relief in the main action, and if the plaintiff accompanies the affidavit and motion with a document signed by the defendant voluntarily, knowingly and intelligently waiving the constitutional right to a hearing before prejudgment attachment of the property.

(4) *The Government as Plaintiff.* The court may issue an ex parte writ of attachment when the motion for such writ is made by a government agency (state or federal), provided the government-plaintiff demonstrates that such ex parte writ is necessary to protect an important governmental or general public interest.

(n) **Execution, Duration, and Vacation of Ex Parte Writs of Attachment.** When the peace officer executes an ex parte writ of attachment, the peace officer shall at the same time serve on the defendant copies of the plaintiff's affidavit,

motion and undertaking, and the order. No ex parte attachment shall be valid for more than seven (7) business days (exclusive of Saturdays, Sundays, and legal holidays), unless the defendant waives the right to a pre-attachment hearing in accordance with subsection (m) (3) of this rule, or unless the defendant consents in writing to an additional extension of time for the duration of the ex parte attachment, or the attachment is extended, after hearing, pursuant to section (e) of this rule. The defendant may at any time after service of the writ request an emergency hearing at which the defendant may refute the special need for the attachment and validity of the plaintiff's claim for relief in the main action.

(o) **Discharge of Attachment Where Perishable Goods Have Been Sold.** Whenever the defendant shall have appeared in the action, the defendant may apply to the court for an order to discharge the attachment on perishable goods which have been sold. If the order be granted, the peace officer shall deliver to the defendant all proceeds of sales of perishable goods, upon the giving by the defendant of the undertaking provided for in section (j).

(p) **Duration and Vacation of Writs of Attachment Issued Pursuant to Hearing.** A writ of attachment issued pursuant to a hearing provided for in section (c) of this rule shall unless sooner released or discharged, cease to be of any force or effect and the property attached shall be released from the operation of the writ at the expiration of six (6) months from the date of the issuance of the writ unless a notice of readiness for trial is filed or a judgment is entered against the defendant in the action in which the writ was issued, in which case the writ shall continue in effect until released or vacated after judgment as provided in these rules. However, upon motion of the plaintiff, made not less than ten (10) nor more than sixty (60) days before the expiration of such period of six (6) months, and upon notice of not less than five (5) days to the defendant, the court in which the action is pending may, by order filed prior to the expiration of the period, extend the duration of the writ for an additional period or periods as the court may direct, if the court is satisfied that the failure to file the notice of readiness is due to the dilatoriness of the defendant and was not caused by any action of the plaintiff. The order may be extended from time to time in the manner herein prescribed.

(q) The administrative director may adopt alternative procedures from those set out in this rule in order to allow electronic executions pursuant to Civil Rule 69(h).

(Amended by SCO 49 effective January 1, 1963; by SCO 156 effective December 8, 1972; by SCO 417 effective August 1, 1980; by SCOs 635, 636 and 637 effective September 15, 1985; by SCO 820 effective August 1, 1987; by SCO 853 effective January 15, 1988; by SCO 1135 effective July 15, 1993; by SCO 1153 effective July 15, 1994; and by SCO 1683 effective nunc pro tunc to May 24, 2008)

Cross References

(b) **CROSS REFERENCE:** AS 09.40.010

(k) **CROSS REFERENCE:** AS 09.40.010

(m)(1) **CROSS REFERENCE:** AS 09.40.060

(n)(1) **CROSS REFERENCE:** AS 09.40.010

(p) **CROSS REFERENCE:** AS 09.40.070

NOTE: Chapter 41 SLA 2008 (HB 166), effective May 24, 2008, enacted changes relating to execution upon permanent fund dividends. According to section 5 of the Act, AS 43.23.065 as amended by sections 2 and 3 of the Act, has the effect of amending Civil Rule 89 by allowing a civilian process server licensed by the commissioner of public safety to execute upon a permanent fund dividend by electronic means in accordance with regulations adopted by the Department of Revenue, and by establishing how the commissioner of revenue shall deliver the portion of the dividend executed upon to the court.

Rule 90. Contempts.

(a) **Contempt in Presence of Court.** A contempt may be punished summarily if the judge certifies that the judge saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

(b) **Other Contempts—Proceedings—Parties.** For every contempt other than that specified in subdivision (a) of this rule, upon a proper showing on ex parte motion supported by affidavits, the court shall either order the accused party to show cause at some reasonable time, to be therein specified, why the accused party should not be punished for the alleged contempt, or shall issue a bench warrant for the arrest of such party. Such proceeding may be commenced and prosecuted in the same action or in an independent proceeding either by the state, or by the aggrieved party whose right or remedy in an action has been defeated or prejudiced or who has suffered a loss or injury by the act constituting a contempt.

(c) **Party in Custody.** If the party charged with contempt is imprisoned or otherwise in custody under any judicial order or process, the court may require such party to be brought before it, and may make such provision as is appropriate for the disposition and custody of the party.

(d) **Bond for Appearance.** The court may permit the giving of a bond in lieu of arrest. In such case the court shall state in the bench warrant the amount of the bond and the time when the party charged with contempt must appear before the court. Such party shall be discharged from arrest upon delivering to the officer serving the warrant a bond in the amount stated in the warrant, executed by sufficient surety, and conditioned upon such party appearing before the court at the time stated and abiding the orders of the court. The amount recovered in a proceeding to enforce liability on the bond shall be applied first as compensation to the aggrieved party for damages resulting from the act constituting the contempt, with costs of the proceeding, and the residue, if any, shall become the property of the state and be deposited with the court.

(e) **Return.** Proof of service of an order to show cause or execution of a bench warrant shall be governed by Rule 4(f).

Any bond delivered to an officer making service shall be filed by the officer with the court.

(f) **Hearing and Determination.** When the defendant has been brought before the court or has appeared, the court or judicial officer shall proceed to investigate the charge by examining the defendant and witnesses for or against the defendant. Upon the evidence so taken, the court or judicial officer shall determine the defendant's guilt or innocence of the contempt charged.

(Amended by SCO 49 effective January 1, 1963; amended by SCO 1153 effective July 15, 1994)

Cross References

CROSS REFERENCE: AS 09.50.010—AS 09.50.060

(b) **CROSS REFERENCE:** AS 09.50.030

(d) **CROSS REFERENCE:** AS 09.50.040; AS 09.50.060

(f) **CROSS REFERENCE:** AS 09.50.030

Rule 90.1. Dissolution of Marriage, Divorce, and Legal Separation Actions.

(a) **Dissolution of Marriage.**

(1) *Commencement of Action.* An action for dissolution of marriage under AS 25.24.200–.260 shall be commenced by the filing of a petition in superior court containing the recitations required by statute. The petition may not be filed more than 60 days after the date of the signature of the first person signing the petition.

(2) *Verification.* The petition shall be signed and verified by both petitioners if the petition is filed by husband and wife together or by the petitioner filing the action if filed separately.

(3) *Form of Petition.* The petition may be filed on forms approved by the supreme court. Information may be inserted on the form in legible handwriting.

(b) **Divorce Actions—Corroborating Witnesses Not Required.** No corroborating witnesses as to legal residence shall be required in any divorce action unless ordered by the court; provided however, that the evidence of such residence shall be specific as to time, place, and manner of residence, and to the pertinent facts in the knowledge of the party attending to corroborate such residence.

(c) **Hearing of Divorce and Dissolution Cases.** Unless otherwise ordered upon good cause shown, no divorce or dissolution action shall be tried or heard on the merits within thirty days of the filing of the complaint.

(d) **Divorce Actions—Discovery and Disclosure.** Discovery and disclosure in divorce actions is governed by Civil Rule 26.1.

(e) **Divorce Actions—Property Division Table.** In divorce cases involving property division disputes, and unless otherwise ordered by the court, the parties shall file and serve the information required by this paragraph 5 days before trial is scheduled to begin. The required information consists of:

(1) a list, including a brief description of all assets and liabilities of the parties, whether owned jointly or individually;

(2) whether the party asserts each asset or liability is marital property, separate property of the husband, or separate property of the wife;

(3) the value of each asset and liability; and

(4) the proposed disposition, if any, of each asset or liability.

(f) **Confidential Information.**

(1) *Social Security Numbers.* Social security numbers, when required, shall not become part of the public record and shall be provided to the court confidentially as follows:

(A) A petition for dissolution or a complaint and answer for divorce, custody, legal separation, or annulment must be accompanied by an information sheet stating the name, date of birth, and social security number of each party to the action and each child who is or may be subject to a child support order in the action, to the extent known. The information sheet is confidential and shall not be considered part of the public record. The clerk of court shall provide a copy of the confidential information sheet to the Child Support Services Division upon request or whenever the court provides a child support order to a child support agency as required by state law. The clerk of court may also disclose the social security numbers on the confidential information sheet to the Bureau of Vital Statistics upon entry of a decree of divorce, dissolution, legal separation, or annulment of marriage, as required by state law. Further disclosure shall be authorized by court order only upon a showing of good cause.

(B) Once a complete confidential information sheet has been submitted to the court listing names, dates of birth, and social security numbers as required, the parties shall omit or redact social security numbers from documents subsequently filed in the action unless otherwise ordered by the court.

(C) A person whose interest in confidentiality may be adversely affected by disclosure of a social security number on a document filed in an action may move for an order requiring (i) the social security number to be redacted or the document to be treated as confidential, if the document has already been filed with the social security number included, or (ii) the document to be filed with the social security number redacted, if the document has not yet been filed.

(2) *Financial Account Numbers.* Unless otherwise ordered by the court, financial account numbers, when required under subsection (e) of this rule or when submitted in support of a motion, need not be provided in full. To protect against public disclosure of sensitive financial information, partial account numbers may be provided, as follows:

(A) a party may identify any credit card, bank card, or debit card account by using only the last four digits of the account number and the name of the issuing institution;

(B) a party may identify any bank, credit union, or other financial institution account by using only the last three digits of the account number and the name of the financial institution; and

(C) a person whose interest in confidentiality may be adversely affected by disclosure of a financial account number on a document filed in an action may move for an order requiring (i) the financial account number to be redacted or the document to be treated as confidential, if the document has already been filed with the financial account number included, or (ii) the document to be filed with the financial account number redacted, if the document has not yet been filed.

(g) **Qualified Domestic Relations Orders.** The party submitting a proposed Qualified Domestic Relations Order, or any similar order requiring the social security number of the beneficiary and alternate payee, shall submit a duplicate of the original proposed order with the social security number of the beneficiary and alternate payee redacted. The original proposed order is confidential and shall not be considered part of the public record. Only the redacted duplicate shall become part of the public case file.

(h) **Applicability.** Subsections (f) and (g) of this rule apply to documents filed with the court on or after October 15, 2006.

(i) **Action for Divorce, Dissolution, or Annulment Filed After Action for Legal Separation.**

(1) *Notice of Legal Separation Action.* A divorce, dissolution, or annulment action that is filed after the filing of an action for legal separation must include notice of the prior action.

(2) *Consolidation of Cases.* The consolidation of a divorce, dissolution, or annulment action with a legal separation action previously filed in Alaska is governed by AS 25.24.430 and Civil Rule 42(a).

(j) **Action for Legal Separation—Commencement.** An action for legal separation under AS 25.24.400-.460 is commenced by the filing of a complaint in the superior court.

(Adopted by SCO 252(1) effective September 22, 1976; amended by SCO 265 effective January 1, 1977; by SCO 370 effective August 1, 1979; by SCO 717 effective September 15, 1986; by SCO 805 effective August 1, 1987; by SCO 975 effective July 15, 1989; by SCO 1172 effective July 15, 1995; by SCO 1266 effective July 15, 1997; by SCO 1295 effective January 15, 1998; by SCO 1325 effective July 15, 1998; by SCO 1595 effective October 15, 2006, and by SCO 1596 effective October 15, 2006)

Note: Sections 41, 43, 45, and 46 of chapter 87 SLA 1997 amend AS 25.20.050(n), AS 25.24.160(d), AS 25.24.210(e), and AS 25.24.230(i), respectively, to require that an order or acknowledgement of paternity, a divorce decree, a petition for dissolution of marriage, and a dissolution decree include the social security number of each party to the action and each child whose rights are being addressed. According to § 151 of the Act, these provisions have the effect of amending Civil Rules 52, 58, 78, and 90.1 by requiring the court to include social security numbers, if ascertainable, of parties and children in certain petitions, pleadings, and judgments.

Rule 90.2. Settlement and Judgments in Favor of a Minor.

(a) **Approval of Settlement of Claims on Behalf of Minors.**

(1) *Approval.* A parent or guardian of a minor who has a claim against another person has the power to execute a full release or a covenant not to sue, or to execute a stipulation for entry of judgment on such claim. However, before such a document is effective, it must be approved by the court upon the filing of a petition or motion.

(2) *Petition or Motion.* A petition or motion for court approval of a minor's settlement under this rule must state the date of birth of the minor, the relationship between the moving party and the minor, the circumstances giving rise to the claim, the amount of any applicable liability insurance, and the basis for determining that the settlement is fair and reasonable. If the settlement arises from personal injuries to the minor, the petition or motion must describe the extent of the injuries, the medical treatment provided and the probable future course of treatment. If the settlement arises from the wrongful death or injury of another person, the petition or motion must describe the relationship between the other person and the minor and state whether the amount of the settlement is consistent with applicable state law.

(3) *Attorneys' Fees and Costs.* The court shall approve any attorneys' fees and costs that are to be paid from the settlement proceeds when the minor claimant is represented by counsel.

(4) *Hearing.* The court may approve the minor's settlement without a hearing if the settlement proceeds, after attorney's fees and costs are deducted, do not exceed $25,000. When a hearing on the petition or motion is held, the court may require the presence of any person that has information concerning the minor's claim, the fairness of the settlement or any related matter.

(5) *Termination of Minor's Rights.* No instrument executed under this rule is effective to terminate a minor's interests until such funds are paid as directed by the court.

(b) **Disbursement of Proceeds.**

(1) *Order Directing Payment of Expenses, Costs and Fees.* The court shall order that reasonable expenses (medical or otherwise, including reimbursement to a parent, guardian or conservator), costs and attorney's fees be paid from the settlement.

(2) *Disposition of Remaining Balance.* The court shall order that the remaining balance of the settlement, including any future payments, be disposed of in a manner which benefits the best interests of the minor. Dispositions which may be allowed include:

(A) ordering the settlement to be held by a parent or guardian for the benefit of the minor if the remaining balance of the settlement does not exceed $10,000;

(B) ordering that a formal trust be established for the benefit of the minor;

(C) ordering the appointment of a conservator to hold the proceeds of the settlement for the benefit of the minor;

(D) ordering that the proceeds of the settlement be deposited in a federally insured financial institution in an account from which withdrawal is not permitted without authority of the court; or

(E) ordering that the proceeds of the settlement be transferred to a custodian for the benefit of the minor under the Alaska Uniform Transfers to Minors Act (commencing with AS 13.46.010).

(3) *Standards for Disbursement of Proceeds.* The person or institution with authority under subparagraph (b) (2) may authorize disbursement of the settlement proceeds:

(A) for the support and education of the minor if the settlement proceeds are the result of the death or disability of another person;

(B) for the medical bills, special education or other costs related to the minor's injuries if the settlement proceeds are the result of injuries to the minor; or

(C) for any payment in the best interests of the minor after consideration of the benefit to the minor, the resources of the parents or guardian, and the amount of remaining settlement proceeds.

(c) **Probate Master.**

A master appointed to hear probate proceedings has the authority under this rule to:

(1) conduct the hearing set forth in paragraph (a) (4) and recommend to the court that the settlement be approved; (2) receive proof that the proceeds have been disposed of as set forth in subparagraph (b) (2); and (3) issue orders approving the withdrawal of funds pursuant to subparagraph (b) (2) (D).

(d) **Disbursement of Proceeds Resulting from Judgment.**

Proceeds resulting from a judgment in favor of a minor must be disbursed as set forth in paragraph (b).

(Adopted by SCO 835 effective August 1, 1987; amended by SCO 1106 effective January 15, 1993)

Rule 90.3. Child Support Awards.

(a) **Guidelines—Primary Physical Custody.** A child support award in a case in which one parent is awarded primary physical custody as defined by paragraph (f) will be calculated as an amount equal to the adjusted annual income of the non-custodial parent multiplied by a percentage specified in subparagraph (a)(2).

(1) Adjusted annual income as used in this rule means the parent's total income from all sources minus:

(A) mandatory deductions such as:

(i) federal, state, and local income tax,

(ii) Social Security tax or the equivalent contribution to an alternate plan established by a public employer, and self-employment tax,

(iii) medicare tax,

(iv) mandatory union dues,

(v) mandatory contributions to a retirement or pension plan;

(B) voluntary contributions to a retirement or pension plan or account in which the earnings are tax-free or tax-deferred, except that the total amount of these voluntary contributions plus any mandatory contributions under item (a)(1)(A)(v) above may not exceed 7.5% of the parent's gross wages and self-employment income;

(C) child support and spousal support payments arising from prior relationships which are required by other court or administrative proceedings and actually paid; however, the amount deducted for child support under this item may not exceed the support amount calculated under subparagraph (a)(2);

(D) in-kind child support for children from prior relationships in the primary or shared physical custody of the parent:

(i) for primary custody, the amount calculated under subparagraph (a)(2); or

(ii) for shared custody, the amount calculated under subparagraph (a)(2), multiplied by the percentage of time that parent has physical custody of the prior children; however, the total amount deducted under this sub-item and any deduction for the same children under item (a)(1)(C) may not exceed the amount calculated under subparagraph (a)(2); and

(E) work-related child care expenses for the children who are the subject of the child support order.

(2) The percentage by which the non-custodial parent's adjusted income must be multiplied in order to calculate the child support award is:

(A) 20% (.20) for one child;

(B) 27% (.27) for two children;

(C) 33% (.33) for three children; and

(D) an extra 3% (.03) for each additional child.

(3) The court may allow the obligor parent to reduce child support payments by up to 75% for any period in which the obligor parent has extended visitation of over 27 consecutive days. The order must specify the amount of the reduction which is allowable if the extended visitation is exercised.

(4) Potential Income. The court may calculate child support based on a determination of the potential income of a parent who voluntarily and unreasonably is unemployed or underemployed. A determination of potential income may not be made for a parent who is physically or mentally incapacitated, or who is caring for a child under two years of age to whom the parents owe a joint legal responsibility. Potential income will be based upon the parent's work history, qualifications, and job opportunities. The court also may impute potential income for non-income or low income producing assets.

(b) **Shared, Divided, and Hybrid Physical Custody.**

(1) *Shared Physical Custody.* A child support award in a case in which the parents are awarded shared physical custody as defined by paragraph (f) will be calculated by:

(A) Calculating the annual amount each parent would pay to the other parent under paragraph (a) assuming the other parent had primary custody. In this calculation the income limit in subparagraph (c)(2) and the minimum support amount in subparagraph (c)(3) apply.

(B) Multiplying this amount for each parent by the percentage of time the other parent will have physical custody of the children. However, if the court finds that the percentage of time each parent will have physical custody will not accurately reflect the ratio of funds each parent will directly spend on supporting the children, the court shall vary this percentage to reflect its findings.

(C) The parent with the larger figure calculated in the preceding subparagraph is the obligor parent and the annual award is equal to the difference between the two figures multiplied by 1.5. However, if this figure is higher than the amount of support which would be calculated under paragraph (a) assuming primary custody, the annual support is the amount calculated under paragraph (a).

(D) The child support award is to be paid in 12 equal monthly installments except as follows:

(i) if shared custody is based on the obligor parent having physical custody for periods of 30 consecutive days or more, the total annual award may be paid in equal installments over those months in which the obligor parent does not have physical custody; or

(ii) if the obligor parent's income is seasonal, the court may order unequal monthly support payments as provided in subparagraph (c)(5).

(E) The child support order must state that failure to exercise sufficient physical custody to qualify for shared physical custody under this rule is grounds for modification of the child support order. Denial of visitation by the custodial parent is not cause to increase child support.

(2) *Divided Physical Custody.* A child support award in a case in which the parents have divided custody is calculated, first, by determining what each parent would owe the other for children in that parent's primary physical custody under paragraph (a), taking into account the income limit in subparagraph (c)(2) and the minimum support amount in subparagraph (c)(3), and offsetting those amounts. Second, because divided custody is an "unusual circumstance," the court must consider whether this support amount should be varied under subparagraph (c)(1).

(3) *Hybrid Physical Custody.* A child support award in a case in which the parents have hybrid custody is calculated by applying paragraph (a), taking into account the income limit in subparagraph (c)(2) and the minimum support amount in subparagraph (c)(3), to determine support for children in the primary physical custody of each parent and applying subparagraph (b)(1) to determine support for children in the shared physical custody of the parents. In these calculations, the sub-paragraph (a)(2) percentages must be adjusted pro rata based on the number of children in each type of custody. These results are then combined to determine the net obligation. Finally, because hybrid custody is an "unusual circumstance," the court must consider whether this support amount should be varied under subparagraph (c)(1).

(c) **Exceptions.**

(1) The court may vary the child support award as calculated under the other provisions of this rule for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied. The court must specify in writing the reason for the variation, the amount of support which would have been required but for the variation, and the estimated value of any property conveyed instead of support calculated under the other provisions of this rule. Good cause may include a finding that unusual circumstances exist which require variation of the award in order to award an amount of support which is just and proper for the parties to contribute toward the nurture and education of their children. The court shall consider the custodial parent's income in this determination.

(2) Paragraph (a) does not apply to the extent that the parent has an adjusted annual income of over $120,000. In such a case, the court may make an additional award only if it is just and proper, taking into account the needs of the children, the standard of living of the children and the extent to which that standard should reflect the supporting parent's ability to pay.

(3) The minimum child support amount that may be ordered is $50 per month ($600 per year) except as provided in subparagraph (a)(3) and paragraph (b).

(4) In addition to ordering a parent to pay child support as calculated under this rule, the court may, in appropriate circumstances, order one or more grandparents of a child to pay child support to an appropriate person in an amount

determined by the court to serve the best interests of the child. However, the amount may not exceed the smaller of (A) a proportionate share of the amount required to provide care in a supervised setting to the grandchild, as determined by the court, or (B) the amount that would have been awarded if the child's parents had the incomes of the child's grandparents and paragraphs (a) and (b) were applied. An order under this paragraph may be issued only with respect to a child whose parents are both minors, and the order terminates when either parent becomes 18 years of age. The court must specify in writing the reasons why it considers it to be appropriate to order a grandparent to pay child support under this paragraph and the factors considered in setting the amount of the child support award. In this paragraph, "grandparent" means the natural or adoptive parent of the minor parent.

(5) If the non-custodial parent's income is seasonal, the court may order that the annual support amount be paid in unequal monthly payments, with higher payments during the months the parent expects to receive higher income and lower payments in other months. The court should not make such an order unless (a) it finds that the burden of budgeting for periods of unequal income should be placed on the obligee rather than the obligor and (b) the obligee agrees. The court's order must specify the annual support amount, the average monthly support amount, and the amount due month by month. The order must provide that variations from the average monthly amount begin with monthly payments in excess of the average monthly amount such that a deficit situation cannot occur. Until the excess payments begin, the average monthly amount must be ordered.

(d) **Health Care Coverage.**

(1) *Health Insurance.*

(A) The court shall address coverage of the children's health care needs and require health insurance for the children if insurance is available to either parent at a reasonable cost and accessible to the children. The court shall consider whether the children are eligible for services through the Indian Health Service (or any other entity) or other insurance coverage before ordering either or both parents to provide health care coverage through insurance or other means.

(i) *Reasonable Cost.* There is a rebuttable presumption that the cost of health insurance is reasonable if the cost does not exceed five percent of the adjusted annual income of the parent who may be required to purchase the insurance.

(ii) *Accessible.* Health insurance is accessible to the children if the plan pays for health care services reasonably available to the children.

(B) The court shall allocate equally the cost of this insurance between the parties unless the court orders otherwise for good cause. An obligor's child support obligation will be decreased by the amount of the obligee's portion of health insurance payments ordered by the court and actually paid by the obligor. A child support award will be increased by the obligor's portion of health insurance if the obligee is ordered to, and actually does obtain and pay for insurance.

(C) The cost of insurance is the cost attributable to the children for whom support is paid. If the cost to the employee of covering the employee alone is the same as the cost to the employee of covering the employee and dependents, then there is no additional cost to the employee for adding the children and no portion of the cost of coverage may be allocated to the children. If dependent coverage can be added for a single cost, rather than per dependent, and the dependent coverage covers dependents in addition to the children subject to the order, the cost of the dependent coverage will be allocated equally among the dependents covered. If there is reason to believe that there is an incremental cost to the employee for insuring dependents but evidence of that incremental cost is unavailable, the cost of insurance is determined by dividing the total cost of coverage by the number of family members covered and multiplying that amount by the number of children subject to the order.

(2) *Uncovered Health Care Expenses.* The court shall allocate equally between the parties the cost of reasonable health care expenses not covered by insurance unless the court orders otherwise for good cause. A party shall reimburse the other party for his or her share of the uncovered expenses within 30 days of receipt of the bill for the health care, payment verification, and, if applicable, a health insurance statement indicating what portion of the cost is uncovered. Reasonable, uncovered expenses exceeding $5,000 in a calendar year will be allocated based on the parties' relative financial circumstances when the expenses occur.

(e) **Child Support Affidavit and Documentation.**

(1) Subject to the confidentiality requirements of Civil Rule 90.1(f), each parent in a court proceeding at which child support is involved must file a statement under oath which states the parent's adjusted annual income and the components of this income as provided in subparagraph (a)(1). This statement must be filed with a party's initial pleading (such as the dissolution petition, divorce complaint or answer, etc.), motion to modify, and any response to a motion to modify. The statement must be accompanied by documentation verifying the income. The documents must be redacted to delete social security numbers and to provide only partial financial account information as provided in Civil Rule 90.1(f). The statement must state whether the parent has access to health insurance for the children and, if so, the additional cost to the parent of the children's health insurance. For any infraction of these rules, the court may withhold or assess costs or attorney's fees as the circumstances of the case and discouragement of like conduct in the future may require; and such costs and attorney's fees may be imposed upon offending attorneys or parties.

(2) While there is an ongoing monthly support obligation, either party must provide to the other party, within 30 days of a written request, documents such as tax returns and pay stubs showing the party's income for the prior calendar year. The party making the request must provide documentation of his or her annual income for the same period at the time the request is made. A request under this section may not be made more than once per year. This section does not preclude discovery under other civil rules.

(3) Unless the information has already been provided to the court under Civil Rule 90.1(f), a statement under subsection (e)(1) of this rule must be accompanied by a confidential information sheet as described in Civil Rule 90.1(f). Once a complete confidential information sheet has been submitted to the court listing names, dates of birth, and social security numbers as required, the parties shall omit or redact social security numbers from documents subsequently filed in the action unless otherwise ordered by the court. This paragraph applies to documents filed with the court on or after October 15, 2006.

(f) **Definitions.**

(1) *Shared Physical Custody.* A parent has shared physical custody (or shared custody) of children for purposes of this rule if the children reside with that parent for a period specified in writing in the custody order of at least 30, but no more than 70, percent of the year, regardless of the status of legal custody.

(2) *Primary Physical Custody.* A parent has primary physical custody (or primary custody) of children for purposes of this rule if the children reside with the other parent for a period specified in the custody order of less than 30 percent of the year.

(3) *Divided Custody.* Parents have divided custody under this rule if one parent has primary physical custody of one or more children of the relationship and the other parent has primary custody of one or more other children of the relationship, and the parents do not share physical custody of any of their children.

(4) *Hybrid Custody.* Parents have hybrid custody under this rule if at least one parent has primary physical custody of one or more children of the relationship, and the parents have shared physical custody of at least one child of the relationship.

(5) *Health Care Expenses.* Health care expenses include medical, dental, vision, and mental health counseling expenses.

(g) **Travel Expenses.** After determining an award of child support under this rule, the court shall allocate reasonable travel expenses which are necessary to exercise visitation between the parties as may be just and proper for them to contribute.

(h) **Modification.**

(1) *Material Change of Circumstances.* A final child support award may be modified upon a showing of a material change of circumstances as provided by state law. A material change of circumstances will be presumed if support as calculated under this rule is more than 15 percent greater or less than the outstanding support order. For purposes of this paragraph, support includes health insurance payments made pursuant to (d)(1) of this rule.

(2) *No Retroactive Modification.* Child support arrearage may not be modified retroactively, except as allowed by AS 25.27.166(d). A modification which is effective on or after the date that a motion for modification, or a notice of petition for modification by the Child Support Services Division, is served on the opposing party is not considered a retroactive modification.

(3) *Preclusion.* The court may find that a parent and a parent's assignee are precluded from collecting arrearages for support of a child that accumulated during a time period exceeding nine months for which the parent agreed or acquiesced to the obligor exercising primary custody of the child. A finding that preclusion is a defense must be based on clear and convincing evidence.

(i) **Third Party Custody.**

(1) When the state, or another third party entitled to child support, has custody of all children of a parent, the parent's support obligation to the third party is an amount equal to the adjusted annual income of the parent multiplied by the percentage specified in subparagraph (a)(2). If the third party has custody of some but not all children, the parent's support obligation to the third party is an amount equal to the adjusted annual income of the parent, multiplied by the percentage specified in subparagraph (a)(2) for the total number of the parent's children, multiplied by the number of the parent's children in third party custody, divided by the total number of the parent's children. For purposes of this paragraph, the number of the parent's children only includes children of the parent who live with the parent, are substantially supported by the parent or who are in custody of the third party entitled to support.

(2) If, in addition to a support obligation to a third party, one or both parents retain primary or shared physical custody of at least one of their children, the support obligation between the parents is calculated pursuant to the other paragraphs of this rule, without consideration of the third party custodian or any children in the custody of the third party custodian, except that the percentage in 90.3(a)(2) must be adjusted pro rata for the number of children in the primary custody of a parent, or shared custody of the parents, compared to the total number of children. After that calculation is completed, any support owed may be offset with support owed to a third party custodian under the preceding subparagraph in order to minimize transactions.

(j) **Support Order Forms.** All orders for payment or modification of child support shall be entered on a form developed by the administrative director. A party may lodge a duplicate of the court form produced by a laser printer or similar device. A device may also print, in a contrasting typestyle equivalent to that produced by a typewriter, text that otherwise would have been entered by a typewriter or word processor. A party or attorney who lodges a duplicate certifies by lodging the duplicate that it is identical to the current version of the court form.

(k) **Dependent Tax Deduction.** The court may allocate the dependent tax deduction for each child between the parties as is just and proper and in the child's best interests. The allocation must be consistent with AS 25.24.152 and federal law.

(Adopted by SCO 833 effective August 1, 1987; amended by SCO 935 effective January 15, 1989; by SCO 1008 effective January 15, 1990; by SCO 1192 effective July 15, 1995; by SCO 1246 effective July 15, 1996; by SCO 1269 effective July 15, 1997; by SCO 1295 effective January 15, 1998; by SCO 1362 effective October 15, 1999; by SCO 1399 effective October 15, 2000; by SCO 1417 effective April 15, 2001; by SCO 1526 effective April 15, 2005; by SCO 1595 effective October 15, 2006; by SCO 1686 effective April 15, 2009; by SCO 1716 effective July 1, 2009; by SCO 1782 effective October 15, 2013; and by SCO 1800 effective October 15, 2013)

Note: This rule is adopted under the supreme court's interpretive authority pursuant to Article IV, Section I of the Alaska Constitution. Thus, it may be superseded by legislation even if the legislation does not meet the procedural requirements for changing rules promulgated under Article IV, Section 15.

Note to Civil Rule 90.3(c)(1)(B): The Federal Poverty Guidelines are usually revised each February. The new poverty income guideline for one person in Alaska in 1999 is $10,320 (Federal Register, Vol. 64, No. 52, 13428–13430, March 18, 1999). The Alaska Supreme Court has indicated that the poverty guideline that should be used is the guideline for the state in which the obligor resides. See **Carstens v. Carstens**, 867 P.2d 805, 810 (Alaska 1994).

Note to Civil Rule 90.3(h)(1): Section 44 of ch. 87 SLA 1997 amended AS 25.24.170(b) to allow support to be modified without a showing of a material change in circumstances as necessary to comply with federal law. Federal law eliminates the need for a showing only in cases being enforced by CSED that are being reviewed under CSED's periodic review and modification program. According to § 152 of ch. 87 SLA 1997, the amendment to AS 25.24.170(b) has the effect of amending Civil Rule 90.3 by changing the standard for certain modifications of a support order.

Note to Civil Rule 90.3(h)(2): AS 25.27.166(d), enacted by § 14 of ch. 57 SLA 1995, has the effect of amending Civil Rule 90.3(h)(2) by allowing retroactive modification of child support arrearage under circumstances involving disestablishment of paternity, to the extent such modification is not prohibited by federal law.

Note: Civil Rule 90.3(c)(3) was added by § 44 ch, 107 SLA 1996. Section 22 of ch. 107 SLA 1996 enacts 25.27.195(b), which allows CSED to vacate an administrative support order that was based on a default amount rather than the obligor's actual ability to pay. If an order is vacated on this basis, AS 25.27.195(d) allows the agency to modify the obligor's arrearages under the original order. According to § 50 ch. 107 SLA 1996, AS 25.27.195(d) has the effect of amending Rule 90.3(h)(2), which prohibits retroactive modification of child support arrearages.

Note: Section 41 of ch. 87 SLA 1997 amends AS 25.20.050 relating to paternity actions. According to § 150 of the Act, § 41 has the effect of amending Civil Rule 90.3 by requiring the court in a paternity action to issue a temporary child support order upon a showing by clear and convincing evidence of paternity.

Note: Chapter 106 SLA 2000 amends various laws relating to medical support orders. According to section 24 of the act, the act amends Civil Rule 90.3 "by specifying that a medical support order may be issued even when a support order for periodic monetary payments is not issued and by setting the requirements for medical support orders."

Note: Chapter 108 SLA 04 (HB 514) enacted several amendments to the child support statutes, including a provision that permits periodic modifications of a child support order without a showing of materially changed circumstances. According to Section 17 of the Act, statutory modifications to AS 25.27.190(e) have the effect of amending Civil Rule 90.3 by changing the grounds for modifying a support order.

Note (effective nunc pro tunc to July 1, 2009): Chapter 45 SLA 2009 (SB 96), effective July 1, 2009, enacted changes relating to child support, including changes concerning orders for medical support of a child. According to section 13 of the Act, AS 25.27.060(c) as amended by section 4 of the Act, has the effect of changing Civil Rule 90.3 by changing standards for issuance of medical and other support orders by the court.

Civil Rule 90.3

COMMENTARY

I. INTRODUCTION

A. Committee Commentary. This commentary to Civil Rule 90.3 was prepared by the Child Support Guidelines Committee. The commentary has not been adopted or approved by the Supreme Court, but is published by the court for informational purposes and to assist users of Rule 90.3.

B. Purpose. The primary purpose of Rule 90.3 is to ensure that child support orders are adequate to meet the needs of children, subject to the ability of parents to pay.

The second purpose of 90.3 is to promote consistent child support awards among families with similar circumstances. Third, the rule is intended to simplify and make more predictable the process of determining child support, both for the courts and the parties. Predictable and consistent child support awards will encourage the parties to settle disputes amicably and, if resolution by the court is required, will make this process simpler and less expensive.

The final purpose of 90.3 is to ensure that Alaska courts comply with state and federal law. AS 25.24.160(a)(1) requires that child support be set in an amount which is "just and proper...."The Child Support Enforcement Amendments of 1984 (P.L. 98–378) and its implementing regulations (45 CFR 302.56) require states to adopt statewide guidelines for establishing child support. The Family Support Act of 1988 (P.L. 100–485) requires that the guidelines presumptively apply to all child support awards and that the guidelines be reviewed every four years.

The Nature of Child Support. Every parent has a duty to support his or her child. Child support is the contribution to a child's maintenance required of both parents. The amount of support a child is entitled to receive from a particular parent is determined by that parent's ability to provide for the child. Typically, the obligation to pay child support begins on the child's date of birth if the parents are not living together, or on the date the parents stop living together if separation is after the birth of the child.

C. Scope of Application. Rule 90.3 applies to all proceedings involving child support, whether temporary or permanent, contested or non-contested, including without limitation actions involving separation, divorce, dissolution, support modification, domestic violence, paternity, Child in Need of Aid and Delinquency. The support guidelines in the rule may be varied only as provided by paragraph (c) of the rule. Rule 90.3 applies to support of children aged 18 authorized by Chapter 117, SLA 1992, but otherwise does not apply to set support which may be required for adult children.

II. PERCENTAGE OF INCOME APPROACH

Rule 90.3 employs the percentage of income approach. This approach is based on economic analyses which show the proportion of income parents devote to their children in intact families is relatively constant across income levels up to a certain upper limit. Applications of the rule should result in a non-custodial parent paying approximately what the parent would have spent on the children if the family was intact.

Integral to the rule is the expectation that the custodial parent will contribute at least the same percentage of income to support the children. The rule operates on the principle that as the income available to both parents increases, the amount available to support the children also will increase. Thus, at least in the primary custodial situation, the contribution of one parent does not affect the obligation of the other parent.

III. DEFINING INCOME

A. Generally. The first step in determination of child support is calculating a "parent's total income from all sources" Rule 90.3(a)(1). This phrase should be interpreted broadly to include benefits which would have been available for support if the family had remained intact. Income includes, but is not limited to:

1. salaries and wages (including overtime and tips);

2. commissions;

3. severance pay;

4. royalties;

5. bonuses and profit sharing;

6. interest and dividends, including permanent fund dividends;

7. income derived from self-employment and from businesses or partnerships;

8. social security;

9. veterans' benefits, except those that are means based;

10. insurance benefits in place of earned income such as workers' compensation or periodic disability payments;

11. workers' compensation;

12. unemployment compensation;

13. pensions;

14. annuities;

15. income from trusts;

16. capital gains in real and personal property transactions to the extent that they represent a regular source of income;

17. spousal support received from a person not a party to the order;

18. contractual agreements;

19. perquisites or in-kind compensation to the extent that they are significant and reduce living expenses, including but not limited to employer provided housing (including military housing) and transportation benefits (but excluding employer provided health insurance benefits);

20. income from life insurance or endowment contracts;

21. income from interest in an estate (direct or through a trust);

22. lottery or gambling winnings received either in a lump sum or an annuity;

23. prizes and awards;

24. net rental income;

25. disability benefits;

26. G.I. benefits (excluding education allotments);

27. National Guard and Reserves drill pay; and

28. Armed Service Members base pay plus the obligor's allowances for quarters, rations, COLA and specialty pay.

Lump sum withdrawals from pension or profit sharing plans or other funds will not be counted as income to the extent that the proceeds have already been counted as income for the purposes of calculating child support under this rule (i.e., contributions to a voluntary pension plan).

Social security Children's Insurance Benefits (CIB) must be counted as income of the retired or disabled parent on whose behalf the payments are made. CIB paid to the other parent also constitute child support payments by the retired or disabled parent. See *Pacana v. State*, 941 P.2d 1263 (Alaska 1997).

Means based sources of income such as Alaska Temporary Assistance Program (ATAP), formerly Aid to Families with Dependent Children (AFDC), Food Stamps, and Supplemental Security Income (SSI) should not be considered as income. The principal amount of one-time gifts and inheritances should not be considered as income, but interest from the principal amount should be considered as income and the principal amount may be considered as to whether unusual circumstances exist as provided by 90.3(c). Tax deferred dividends and interest earned on pension or retirement accounts, including individual retirement accounts, which are not distributed to the parent are not income. Child support is not income.

B. Self Employment Income. Income from self-employment, rent, royalties, or joint ownership of a partnership or closely held corporation includes the gross receipts minus the ordinary and necessary expenses required to produce the income. Ordinary and necessary expenses do not include amounts allowable by the IRS for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court to be inappropriate. Expense reimbursements and in-kind payments such as use of a company car, free housing or reimbursed meals should be included as income if the amount is significant and reduces living expenses.

C. Potential Income. The court may calculate child support based on a determination of the potential income of a parent who voluntarily and unreasonably is unemployed or underemployed. A determination of potential income may not be made for a parent who is physically or mentally incapacitated, or who is caring for a child under two years of age to whom the parents owe a joint legal responsibility. Potential income will be based upon the parent's work history, qualifications and job opportunities. The court shall consider the totality of the circumstances in deciding whether to impute income. When a parent makes a career change, this consideration should include the extent to which the children will ultimately benefit from the change. The court also may impute potential income for non-income or low income producing assets.

D. Deductions. A very limited number of expenses may be deducted from income. Mandatory deductions such as taxes and mandatory union dues are allowable.

1. Mandatory retirement contributions are a deduction. Voluntary contributions, up to the limit stated in the rule, are also a deduction if the earnings on the retirement account or plan are tax-free or tax-deferred. If a parent is not a participant in a mandatory plan, the limit on voluntary contributions is 7.5 % of gross wages and self-employment income. If a parent is a participant in a mandatory plan, the limit on voluntary contributions is 7.5 % of gross wages and self-employment income minus the amount of the mandatory contribution. Some examples of plans and accounts that qualify for the voluntary contribution are: those qualified under the Internal Revenue Code, 26 USC §§ 401, 403, 408 or 457 (such as a traditional IRA, Roth IRA, SEP-IRA, SIMPLE IRA, Keogh Plan, 401(k) Plan, etc.); Thrift Savings Plans under 5 USC § 8440, 37 USC § 211, etc.; and any other pension plan as defined by § 3 (2) of ERISA (P.L. 93–406; 29 USC § 1002(2)).

2. Child support and spousal support payments paid to another person arising out of different cases are deductible if three conditions are met. First, the child support or spousal support must actually be paid. Second, it must be required by a court or administrative order. (Support which is paid voluntarily without a court or administrative order may be considered under Rule 90.3(c).) Third, it must relate to a prior relationship or prior children. The date of birth or adoption of a child determines whether a child is a prior child. *See Coleman v. McCullough*, 290 P.3d 413 (Alaska 2012). A child support order for children of a later marriage or relationship should take into account an order to pay support for children of a prior marriage or relationship, but not vice-versa. (*See* Commentary VI.B.2 regarding "subsequent" children.) The amount deducted for support of prior children that is ordered and paid may not exceed the support amount calculated under Rule 90.3(a)(2), using the parent's current income, as if the prior children were the only children.

3. A deduction also is allowed for in-kind support of prior children of a different relationship in the primary or shared physical custody of the parent. If the parent has primary physical custody of the prior children, the in-kind deduction is the amount calculated under Rule 90.3(a)(2), using the parent's current income, as if the prior children were the only children. If the parent has shared physical custody of the prior children, the in-kind deduction is calculated as follows: first, calculate the parent's support under Rule 90.3(a)(2), using the parent's current income, as if the prior children were the only children; second, multiply this number by the percentage of time the parent has physical custody of the prior children. A parent who pays support for prior children may also take a deduction under Rule 90.3(a)(1)(C) for support ordered and paid. Rule 90.3 was amended to allow deductions for both in-kind and paid support for shared custody of prior children. (*Gorton v. Mann*, 281 P.3d 81 (Alaska 2012) interpreted the previous version of the rule.) When adding the in-kind deduction to a deduction based on court or administrative-ordered support, the total deduction cannot exceed the amount calculated under subparagraph (a)(2). The deduction for in-kind support of prior children is not reduced by child support received from the other parent. *Faulkner v. Goldfuss*, 46 P.3d 993, 998 (Alaska 2002).

4. Also, reasonable child care expenses that are necessary to enable a parent to work, or to be enrolled in an educational program which will improve employment opportunities, are deductible. However, the expense must be for the children who are the subject of the support order.

E. Time Period for Calculating Income. Child support is calculated as a certain percentage of the income which will be earned when the support is to be paid. This determination will necessarily be somewhat speculative because the relevant income figure is expected future income. The court must examine all available evidence to make the best possible calculation.

The determination of future income may be especially difficult when the obligor has had very erratic income in the

past. In such a situation, the court may choose to average the obligor's past income over several years.

Despite the difficulty in estimating future income, a child support order should award a specific amount of support, rather than a percentage of whatever future income might be. The latter approach has been rejected because of enforcement and oversight difficulties.

IV. PRIMARY CUSTODY

A. Generally. "Primary custody" as this term is used in Rule 90.3 covers the usual custodial situation in which one parent will have physical custody of the child—in other words, the child will be living with that parent—for over seventy percent of the year. The shared custody calculation in paragraph (b) applies only if the other parent will have physical custody of the child at least thirty percent of the year (110 overnights per year). The visitation schedule must be specified in the decree or in the agreement of the parties which has been ratified by the court. **See also** commentary V.A.

The calculation of child support for the primary custodial case under Rule 90.3(a) simply involves multiplying the obligor's adjusted income times the relevant percentage given in subparagraph (a)(2). (Normally, the portion of an adjusted annual income over $120,000 per year will not be counted. **See** Commentary VI.D.) As discussed above, the rule assumes that the custodial parent also will support the children with at least the same percentage of his or her income.

B. Visitation Credit. An obligor who exercises extended visitation, even if the visitation does not reach the thirty percent level of shared custody, probably will spend significant funds directly for the children during visitation. The parent with primary custody conversely will have somewhat lower expenses during the extended visitation even though that parent's fixed costs such as housing will not decrease. Consequently, 90.3(a)(3) authorizes the trial court, in its discretion, to allow a partial credit (up to 75% of total support for the period of extended visitation) against a child support obligation. In considering a visitation credit, the court may consider the financial consequences to the parties of the visitation arrangement and a credit. The court shall ensure that support for the child, including contributions from both parents, is adequate to meet the child's needs while the child resides with the custodial parent. A visitation credit may be taken only if the extended visitation actually exercised exceeds 27 consecutive days and the court has authorized the specific amount of the credit. Nominal time with the custodial parent during the visitation period, including occasional overnights, does not defeat the visitation credit.

V. SHARED, DIVIDED, AND HYBRID PHYSICAL CUSTODY

A. Shared Custody—Generally.

"Shared custody" as this term is used in Rule 90.3 means that each parent has physical custody of the children at least thirty percent of the year according to a specified visitation schedule in the decree. "Shared custody" as used in 90.3 has no relation to whether a court has awarded sole or joint legal custody. "Shared custody" is solely dependent on the time that the decree or agreement of the parties which has been ratified by the court specifies the children will spend with each parent.

In order for a day of visitation to count towards the required thirty percent, the children normally must remain overnight with that parent. (Thirty percent of the overnights in a year total 110 overnights.) Thus, a day or an evening of visitation by itself will not count towards the total of time necessary for shared custody. Visitation from Saturday morning until Sunday evening would count as one overnight. However, the court may use another method of calculating the percentages of custody when counting overnights does not accurately reflect the ratio of expenditures by the parents.

B. Calculation of Shared Custody Support. The calculation of support in shared custody cases is based on two premises. First, the fact that the obligor is spending a substantial amount of the time with the children probably means the obligor also is paying directly for a substantial amount of the expenses of the children. Thus, the first step in calculating shared custody support is to calculate reciprocal support amounts for the time each parent will have custody based on the income of the other parent. The "high income" limit of paragraph (c)(2) ($205,000) applies to the determination of adjusted income at the first stage of this process. A parent's annual support amount for purposes of this calculation will be no less than $600. The support amounts then are offset.

This calculation assumes that the parents are sharing expenses in roughly the same proportion as they are sharing custody. If this assumption is not true, the court should make an appropriate adjustment in the calculation.

The second premise is that the total funds necessary to support children will be substantially greater when custody is shared. For example, each parent will have to provide housing for the children. Thus, the amount calculated in the first step is increased by 50% to reflect these increased shared custody costs. However, the obligor's support obligation never will exceed the amount which would be calculated for primary custody under 90.3(a). The amount which would be calculated under 90.3(a) should include any appropriate visitation credit as provided by (a)(3).

C. Failure to Exercise Shared Custody. An inequity may arise under the shared custody calculation of support if the obligor does not actually exercise the custody necessary to make shared custody applicable (i.e., at least 30% of the time). If the obligor parent does not actually exercise sufficient physical custody to qualify for the shared custody calculation in the rule (at least 110 overnights per year—See Commentary, Section V.A), then (a)(2) of this rule will apply to the child support calculation. Failure to exercise custody in this regard is grounds for modification of support, even if the custody order is not modified. However, this provision may not be interpreted to allow the custodial parent to profit by denying visitation.

D. Divided Custody. Rule 90.3(f)(3) defines divided custody as when both parents have primary physical custody of

at least one of the parent's children and the parents do not share custody of any of their children. The calculation of support for divided custody is a two-part process.

The first step is to offset the amounts of support each parent would pay the other for the children in that parent's primary custody calculated under 90.3(a). For example, if the father has primary custody of one child and the mother primary custody of three children (four children total), the father would owe support to the mother of 33% (three children) of his adjusted annual income. This amount would be offset by 20% (one child) of the mother's adjusted annual income. This method was implicitly approved in *Bunn v. House*, 934 P.2d 753, 755–58 (Alaska 1997). Note that this method of calculation supercedes the method used in *Rowen v. Rowen*, 963 P.2d 249, 254 (Alaska 1998).

The second step in determining divided custody support is for the court to carefully consider whether the support amount should be varied under paragraph (c)(1). A divided custody case should be treated as an unusual circumstance under which support will be varied if such a variation is "just and proper...."

E. Hybrid Custody. Rule 90.3(f)(4) defines hybrid custody as when at least one parent has primary physical custody of at least one child of the relationship, and the parents share physical custody of at least one child of the relationship.

The method for calculating child support in a hybrid custody situation in Rule 90.3(b)(3) comes from *Turinsky v. Long*, 910 P.2d 590, 596–97 n.13 (Alaska 1996).

Step One. Determine the percentage of income to use in both the "primary" and "shared" calculations as follows: divide the Rule 90.3(a)(2) percentage for the total number of children by the total number of children to determine a per-child percentage. For example, if there are four children, divide 36% by 4 to get a per child percent of 9%.

Step Two. Use Rule 90.3(a) to calculate the amount each parent owes for any children in the primary physical custody of the other parent. However, instead of using the percentages in (a)(2), use the per-child percent from Step One multiplied by the number of children in the other parent's primary physical custody. For example, if two of the four children are in the mother's primary physical custody, the father would owe 18% (2 x 9%) of his adjusted annual income for the support of those children.

Step Three. Use Rule 90.3(b) to determine the amount owed for the children in shared physical custody and which parent owes it. Use the per-child percentage from Step One multiplied by the number of children in shared physical custody instead of the percentage in (a)(2). For example, if two of the four children are in shared physical custody, each parent's adjusted annual income will be multiplied by 18% (2 x 9%).

Step Four. Add the amounts calculated in Steps Two and Three if they are owed by the same parent. Offset the amounts calculated in Steps Two and Three if they are owed by different parents. The result is the total amount owed each year.

Step Five. Consider whether the support amount should be varied under paragraph (c)(1) of the rule. Hybrid custody is an unusual circumstance in which support must be varied if such a variation is "just and proper."

Sample hybrid custody calculation: In the following sample calculation, there are four children in the family. Mother has primary custody of two, and the parents share custody of the other two. The shared two children will be in mother's physical custody 70 percent of the time and in father's 30 percent of the time. Father's adjusted annual income is $50,000. Mother's is $40,000. *Step One.* The percentage of income from (a)(2) of the rule for four children is 36 percent. Therefore, the percentage per child is 9 percent [36 divided by 4]. *Step Two.* Father owes mother <u>$9000</u> per year for the two children in mother's primary custody [$50,000 x 18%]. *Step Three.* Father owes mother <u>$6210</u> per year for the two children in shared custody [(father owes $50,000 x 18% = $9000 x 70% = $6300)—(mother owes $40,000 x 18% = $7200 x 30% = $2160). $6300 - $2160 = $4140 x 1.5 = $6210]. *Step Four.* Thus, for all four children, father owes mother <u>$15,210</u> [$9000 + $6210].

VI. EXCEPTIONS

A. Generally. Child support in the great majority of cases should be awarded under 90.3(a) or (b) in order to promote consistency and to avoid a tendency to underestimate the needs of the children. Nevertheless, the circumstances in which support issues arise may authorize courts to vary support awards for good cause.

The court may apply this good cause exception only if the parent requesting that support be varied presents clear and convincing evidence that manifest injustice would result if the support award were not varied. In addition, a prerequisite of any variation under 90.3(c) is that the reasons for it must be specified in writing by the court.

What constitutes "good cause" will depend on the circumstances of each cause. Three situations constituting "good cause" are discussed below in sections VI.B D. These three specific exceptions are not exclusive; however, the general exception for good cause may not be interpreted to replace the specific exceptions. Absent the (c)(1) exception (unusual circumstances), the (c)(2) exception (high income), or the (c)(3) exception (low income), the rule presumes that support calculated under 90.3(a) or (b) does not result in manifest injustice.

B. Unusual Circumstances. 90.3(c)(1) provides that a court shall vary support if it finds, first, that unusual circumstances exist and, second, that these unusual circumstances make application of the usual formula unjust. Examples might include especially large family size, significant income of a child, health or other extraordinary expenses, or unusually low expenses. This determination should be made considering the custodial parent's income because the percentage of income approach used in Alaska tends to slightly understate support relative to the national average for cases in which the custodial spouse does not earn a significant income. This understatement relative to the national

average becomes substantial if the custodial parent has child care expenses. The application of the unusual circumstances exception to particular types of factual situations is considered below.

1. Agreement of the Parents. The fact that the parties, whether or not represented by counsel, agree on an amount of support is not reason in itself to vary the guidelines. The children have an interest in adequate support independent of either parent's interest. Thus, approval of any agreement which varies the guidelines, whether in a dissolution, by stipulation or otherwise, must be based upon an explanation by the parties of what unusual factual circumstances justify the variation.

2. Subsequent Children. A parent with a support obligation may have other children living with him or her who were born or adopted after the support obligation arose. The existence of such "subsequent" children, even if the obligor has a legal obligation to support these children, will not generally constitute good cause to vary the guidelines. However, the circumstances of a particular case involving subsequent children might constitute unusual circumstances justifying variation of support. The court should reduce child support if the failure to do so would cause substantial hardship to the "subsequent" children.

In addition, the interests of the subsequent family may be taken into account as a defense to a modification action where an obligor proves he or she has taken a second job or otherwise increased his or her income specifically to better provide for a subsequent family. This defense to an upward modification action should not be allowed to the extent that the prior support was set at a lower amount prior to the adoption of this rule, or to the extent that the obligor's increase in income is limited to ordinary salary increases.

In considering whether substantial hardship to "subsequent" children exists, or whether the existence of a subsequent family should defeat a motion to increase child support, the court should consider the income, including the potential income, of both parents of the "subsequent" children.

3. Relocation of Custodial Parent. The relocation of the custodial parent to a state with a lower cost of living normally will not justify a reduction in support. The level of Alaska's guidelines is comparable to the national average. The fact that the obligor parent's income has in effect marginally increased relative to the children's living expenses simply enables the children to be supported at a slightly higher level.

4. Prior and Subsequent Debts. Prior or subsequent debts of the obligor, even if substantial, normally will not justify a reduction in support. The obligation to provide child support is more important than the obligation to fulfill most other obligations. However an obligor parent may attempt to present evidence which shows the existence of exceptional circumstances in an individual case.

5. Income of New Spouse (or other person in the household). The income of a new spouse of either the custodial or obligor parent normally will not justify a variation in support. Either party may attempt to show that exceptional circumstances exist in a particular case. A parent who does not work because of the income of a new spouse (or other person in the household) may be assigned a potential income.

6. Age of Children. While the costs of raising children who are very young or who are over about ten years old are generally greater than raising other children, this in itself does not justify an increase in support. However, it should be considered in concert with other circumstances, and a parent always may seek to establish exceptional expenses in a particular case.

7. Denial of Visitation. A denial of visitation may not be countered with a reduction in support. See AS 25.27.080(c). Neither may non-payment of support be countered by a denial of visitation. Courts should use their powers to strictly enforce the visitation and custody rights of obligor parents.

8. Property Settlement. A parent may justify variation of the guidelines by proving that a property settlement in a divorce or dissolution between the parents provided one of the parents with substantially more assets than the parent otherwise would have been entitled to, that this inequity was intended to justify increasing or decreasing child support, and that this intent specifically was stated on the record. Any such change in monthly child support may not exceed the actual excess of the property settlement apportioned over the minority of the child.

However, courts should not approve in the first instance unequal property settlements which are meant to increase or decrease child support payments. "Property divisions are final judgments which can be modified only under limited circumstances, whereas child support awards can be changed periodically under much more liberal standards. One should not be a trade-off for the other." *Arndt v. Arndt*, 777 P.2d 668, (Alaska 1989)

9. Overtime Income. In most cases income from overtime or a second job will be counted as adjusted annual income under Rule 90.3(a). However, the court has discretion not to include this income when, for example, the extra work is undertaken to pay off back child support.

C. Low Income of Obligor. Paragraphs (a) and (b) of the rule must be applied even in low-income situations. However, in a paragraph (a) [primary custody] calculation and in the first stage of a paragraph (b) [shared, divided or hybrid custody] calculation, if the calculations result in a support amount below $50.00 per month, a minimum support amount of $50.00 per month ($600 per year) must be set. This $50.00 minimum support applies for all children, not to each child separately. The minimum level may be reduced if an extended visitation credit is granted under Rule 90.3(a)(3). This minimum support amount does not apply to final support amounts for shared, divided, or hybrid custody entered under Rule 90.3(b).

D. High Income of a Parent. Rule 90.3 provides that the percentages for child support will not be applied to a parent's adjusted annual income of over $120,000. An additional award may be made only if the other parent is able

to present evidence which justifies departure from this general rule. The standard of proof for a departure is preponderance of the evidence, unlike the higher standard of clear and convincing evidence required for a showing of manifest injustice under exception (c)(1). The factors which the court should consider when making an additional award in high income cases are specified in the rule.

E. Retroactive Establishment.

1. Retroactive Establishment of Child Support. It will sometimes be necessary for the court to establish support for a time when no complaint or petition for support had yet been served, and there was no other court or administrative order in effect. The court has determined that Civil Rule 90.3 applies to such calculations. *Vachon v. Pugliese*, 931 P.2d 371, 381–2 (Alaska 1996). However, in some circumstances unfairness may result from rigid application of the rule. The court should consider all relevant factors in such a situation, including whether the obligor was aware of the support obligation, especially if the obligor had children subsequent to that child. See also Commentary VI.B.2.

2. Retroactive Application of Amendments. When establishing support for a period of time before a complaint or petition was served, the court should apply the most current version of the rule, except for portions of the rule that state dollar amounts. This is because Civil Rule 90.3, unlike most other court rules, is interpretive. The most current version of the rule is presumably the most refined interpretation to date of the statute calling for fair and equitable child support awards. For example, the credit for prior children living with the obligor was not found in early versions of the rule, but nonetheless should be applied when support is being established. However, the dollar amounts in the rule, such as the minimum support amount (increased from $40 to $50) and the income cap (increased from $60,000 to $120,000), have been revised over time to reflect inflation or for other reasons. With regard to these amounts, the court should apply the version of the rule that was in effect in the month for which support is being calculated.

F. Seasonal Income. In Alaska, seasonal employment is common. Obligors employed in such seasonal industries as commercial fishing, tourism, and construction often earn a large percentage of their income during only a few months of the year. It might be easier for some seasonally-employed obligors to meet their child support obligations if their child support orders required the bulk of their annual child support amount to be paid during the months they are employed. Thus, the rule allows courts the flexibility of ordering unequal monthly payments, as long as the total annual amount equals the amount calculated in paragraph (a) or (b) of the rule. The court should not make such an order unless it finds that the burden of budgeting for periods of unequal income should be placed on the obligee rather than the obligor.

The court's order must specify the annual support amount, the average monthly support amount, and the amount due for each month. For example, if the annual child support amount is $3600, the average monthly amount is $300. Instead of requiring 12 equal monthly payments of $300, the order could require payments of $500 per month from April through September and $100 per month from October through March.

Payments under the order must be set up so that a deficit situation will not occur. This means that, at any point in time, the total amount owed under the order (for the entire period the order has been in effect) must not be less than the amount that would have been owed for that entire period if no seasonal adjustment had been made. Therefore, in the above example, if the order is entered in April through September, it can order $500 monthly payments for the April–September period, followed by $100 monthly payments for October–March. However, if the order is entered anytime in October through March, the order must require $300 payments through March, then $500 payments from April through October, and then $100 payments the following October–March.

VII. HEALTH CARE COVERAGE

A. Health Insurance. Rule 90.3(d) requires that the court address coverage of the children's health care needs including expenses not covered by insurance. The court must require health insurance if the insurance is available to either party at a reasonable cost. There is a rebuttable presumption that the cost of health insurance is reasonable if the cost does not exceed five percent of the adjusted annual income of the parent who may be required to purchase the insurance. In determining whether the presumption has been rebutted, the court should consider any evidence relevant to its conclusion, including the cost of any health insurance for the children that either parent was paying before the action was commenced. This recognizes that a cost that a parent voluntarily paid for a child's insurance before an action was commenced was likely a cost that the parent considered to be reasonable.

The health insurance will be paid by the party to whom it is available. However, the court must allocate the cost of insurance between the parties. Note that the cost to be allocated is limited to that portion of the total cost necessary to insure the children involved - not the parent, the parent's new spouse or children of another relationship. If the insurance for the children also covers other members of the purchaser's family, and evidence is unavailable on the specific cost of insuring only the children subject to the order, the cost of covering the children must be determined by allocating the total cost of coverage pro rata among all covered family members. See *Rusenstrom v. Rusenstrom*, 981 P.2d 558 (Alaska 1999). If there is no additional cost to the employee for adding children to the coverage - that is, the cost of coverage is the same whether there are no dependants or several dependants - no portion of the cost of coverage may be allocated to the children. In such cases, no adjustment may be made to the child support obligation because none of the cost of coverage can be allocated to the children.

The allocation of the cost of the children's insurance between the parents should be 50/50 unless the court finds good cause to change that percentage. A substantial difference in the parties' relative financial circumstances may constitute good cause. The rule requires the court to adjust child support either upward or downward to reflect the allocation. Paragraph (h)(1) provides that payments for health care insurance are

included in deciding whether there has been a 15% change in support which constitutes a material change of circumstances.

The court must also determine if the health insurance is accessible. Health insurance is accessible if the plan pays for health care services reasonably available to the child. "Accessibility" is broadly applied in the rule. Due to the geographical expanse of the state, "accessibility" is not limited to health care services available in the child's home town or village; some health care plans will pay for transportation to receive services from a health care provider in another city. If the health insurance pays for health care services in another city and transportation to the city, the insurance is considered accessible to the children.

B. Uncovered Health Care Expenses. Rule 90.3(d)(2) provides that the court also allocate reasonable health expenses not covered by insurance. The rule requires the party who did not obtain the health care to reimburse the other party within 30 days of receiving the necessary paperwork. The paperwork should include the medical bill, payment verification, and, if medical insurance applies, an insurance statement indicating any uncovered health care expenses. These materials should be sent to the other party within a reasonable time. The rule should be read to require prepayment of allowable uncovered medical cost when prepayment is required by the health care provider.

The rule provides that the usual 50/50 presumption does not apply for any amount in excess of $5,000 per calendar year. In such a situation, the excess expenses should be allocated based on the parties' relative financial circumstances during the approximate time period when the expenses occurred.

C. Definition of Health Care Expenses. Paragraph (f) defines health care expenses to include medical, dental, vision and mental health counseling expenses.

VIII. CHILD SUPPORT AFFIDAVIT AND DOCUMENTATION

A. Affidavit and Documentation Each parent in a proceeding involving a determination of child support must provide the court with an income statement under oath. The rule also requires that the income statement of a parent be verified with documentation of current and past income. Suitable documentation of earnings might include paystubs, employer statements, or copies of federal tax returns. The income statement, with documentation, must be filed with the party's first pleading in the action. This first pleading is the dissolution petition in a dissolution, the complaint or answer in a divorce, the custody petition or response in a child custody case under AS 25.20.060, or the motion or opposition in a motion to modify child support or motion to change custody. The court may impose sanctions on a party who does not timely file the income statement with appropriate documentation. The rule repeats language set out in Civil Rule 95(a). In a default case the court must decide support on the best available information, but should require the present party to make reasonable efforts to obtain reasonably accurate information. The court may use the best evidence available, including statistics maintained by the Department of Labor and Workforce Development, to determine the parent's total income from all sources.

Income affidavits must be filed even by a parent whose income is not presently being used to calculate child support. That parent's income may be relevant if there is a request by either parent for a variation under subsection (c), or it may be needed to determine what percentage of uncovered health care expenses each parent will pay under subsection (d)(2) or how much of travel expenses each parent will pay under subsection (g). In addition, the court may wish to enter an order which automatically shifts the child support obligation if a child changes his or her primary residence, as permitted under *Karpuleon v. Karpuleon*, 881 P.2d 318 (Alaska 1994).

B. Request for Income Information Paragraph (h) of the rule allows child support orders to be modified if a material change of circumstances is shown. A change in a parent's income qualifies as a 'material change' if it would increase or decrease the support amount by 15 percent. Paragraph (e)(2) of the rule provides an informal method either parent can use, while a support order is in effect, to learn whether there has been a large enough change in the other parent's income to justify a change in the amount of child support. This paragraph allows a parent to send the other parent a written request for documents such as tax returns and pay stubs showing the other parent's income for the prior calendar year (January through December). However, the parent making this request must attach to the request a copy of the same type of documents showing his or her own income for the prior calendar year. This request can only be made once each year. The parent who receives the request must provide the requested information within 30 days after the request is made. The parents can then do the necessary calculations to determine whether a motion to modify child support should be filed. In addition, a parent may always use the formal discovery procedures provided in the other civil rules to obtain income information from the other parent.

IX. TRAVEL EXPENSES

The court shall allocate any travel expenses that are necessary to exercise visitation. This allocation should generally be done on a percentage basis because the actual costs may not be known or may change. The court should take care that its allocation of these expenses does not interfere with a parent's ability to provide the basic necessities for the children.

X. MODIFICATION

A. Material Change in Circumstances.

Alaska law allows the modification of support orders upon a material change in circumstances. A significant amendment to Rule 90.3 constitutes a material change in circumstances pursuant to AS 25.24.170(b). Rule 90.3(h) states that a material change in circumstances will be presumed whenever the change would result in an increase or decrease of support under the rule of at least 15%. However, a support order can provide that the support obligation will be adjusted without further order of the court upon a change of health

insurance costs and notice of the change to the other parent (and CSSD if CSSD is handling collections).

See *Flannery v. Flannery, 950 P.2d 126 (Alaska 1997)* , concerning what constitutes a material change of circumstances when the parties by agreement originally set support at a level higher than would have normally been required under Rule 90.3.

A temporary reduction in income normally will not justify an ongoing modification reducing child support. However, a temporary, unforeseen, and involuntary reduction in income may justify a temporary reduction in support subject to the retroactivity provisions in Rule 90.3(h)(2). In considering such a reduction, the court should consider the needs of the children, the ability of the other parent to provide support, liquid assets available to provide support, and the future earning capability of the obligor parent. See *Flannery v. Flannery*, 950 P.2d 126, 133 (Alaska 1997); *Patch v. Patch*, 760 P.2d 526, 530 (Alaska 1988).

Federal law, recognized in AS 25.24.170(b) and AS 25.27.193, appears on its face to require allowing modifications every three years without a showing of a material change in circumstances. See 42 U.S.C. 666(a)(10)(A)(iii). However, in response to questions from states, the federal Office of Child Support Enforcement has stated (in Action Transmittal OCSE-97-10, pages 28–31) that existing regulations which allow reasonable quantitative standards for modifications (such as Alaska's 15% standard) continue to apply.

B. No Retroactive Modification.

The Omnibus Budget Reconciliation Act of 1986, P.L. 99–509, Section 9103(a) (the Bradley Amendment), prohibits retroactive modification of child support arrearages. Rule 90.3(h)(2) is intended to restate this prohibition, including the exception allowed by federal law for modification during the pendency of a modification motion. Pursuant to this rule, the notice of petition for modification sent by the Child Support Services Division triggers the legal process for modification of child support awards and thus an increase or decrease of support back to the date of this notice does not constitute retroactive modification.

The prohibition against retroactive modification limits both requested decreases and increases in child support. See Prohibition of Retroactive Modification of Child Support Arrearages, 54 Fed. Reg. 15,763 (1989). Thus, either the custodial or the obligor parent should promptly apply for a modification of child support when a material change in circumstances occurs.

See Section VI.(B).(2) of the commentary as to the extent support of a "subsequent" family may be used as a defense to a modification action to increase child support.

C. Preclusion.

The sometimes harsh effect of the rule against retroactive modification may be mitigated by the preclusion provision of Rule 90.3, which limits collection of a support arrearage in limited and appropriate cases. Preclusion may be applied to limit collection by a parent's assignee, such as the child support services agency of this or another state. Clear and convincing evidence is required to support a finding of preclusion.

Preclusion may apply only in cases in which the obligor assumed primary physical custody of a child for the time period for which the obligee now attempts to collect support. The time period must be more than nine months. Preclusion does not apply in cases in which the proportion of shared custody changed or when there is a shift from primary physical custody to shared custody. Preclusion may apply when the obligor assumes primary physical custody of any number of the children on which the support obligation in arrearage is based. *Murphy v. Newlynn*, 34 P.3d 331 (Alaska 2001).

As an alternative to preclusion, AS 25.27.020(b) may allow a reduction of support owed to the other parent when the obligor assumes custody of one or more of the children. See *State v. Gause*, 967 P.2d 599 (Alaska 1998).

XI. THIRD PARTY CUSTODY

A. Support Owed to the Third Party

If the state or another third party entitled to child support has custody of all of a parent's children, child support is calculated in the same way as it would be calculated in other cases. In other words, support is equal to the parent's adjusted annual income multiplied by the relevant percentage in paragraph (a)(2) based on the number of children.

However, this basic calculation does not work when the state or other third party has custody of only some of a parent's children. In this case, the rule provides that the total support calculation (as calculated for the total number of the parent's children) be reduced to only the proportion of the parent's children of whom the third party has custody. For example, the third party might have custody of two of a parent's three children. Support would be calculated as the parent's adjusted annual income, multiplied by .33 (the relevant percentage for three children), multiplied by 2/3 (the third party has custody of two of the parent's three children). Note that the calculation only takes into account children which are either in third party custody, substantially supported by the parent, or living with the parent. A child of the parent, for example, living with a relative without substantial support would not be counted in the above calculation.

The deduction for prior children in (a)(1)(C) and (D) would not apply because these children are already taken into account as children living with or supported by the parent.

B. Support Owed Between the Parents

There will be instances when a third party is entitled to support for some of the parent's children, but one or both parents retain primary or shared custody of their remaining children. In this case, child support between the parents should be calculated using Rule 90.3 based on the pro rata support percentages for the children not in third party custody. After

that calculation, any support owed may be offset with amounts owed under 90.3(i)(1) to minimize transactions.

For example, a father might have custody of two children and the mother's sister might have custody of, and be entitled to support for, the parents' third child. Both parents in this example have a $45,000 adjusted annual income. Under Rule 90.3(i)(1), the sister is entitled to $4,950 per year from the father [$45,000 (annual income) x 33% (percentage for three children) x 1/3 (custodian has one of three children)]. The sister also is entitled to the same amount from the mother. (The parents' incomes are the same and the mother supports the children living with the father.)

The pro rata percentage for each child under 90.3 (a)(2) would be 33% (three children), 3 or 11% per child. Under 90.3(i)(2), the mother owes the father $9,900 per year in support ($45,000 x 22%). If the support amounts are offset, the mother will owe her sister $9,900 per year and the father $4,950 per year. The court could decide, however, that it was preferable not to offset the support amounts because one of the parents might not pay the third party.

XII. SUPPORT ORDER FORMS

Subsection (j) was formerly Civil Rule 67(b).

XIII. DEPENDENT TAX DEDUCTION

Waggoner v. Foster, 904 P.2d 1234 (Alaska 1995), provides that tax deductions for the children should be allocated based on the child's best interests. AS 25.24.152 places some limits on giving the deduction to the parent with less physical custody. Federal income tax law also may limit who can take the deduction.

(Amended by SCO 1417 effective April 15, 2001; by SCO 1526 effective April 15, 2005; by SCO 1686 effective April 15, 2009; by SCO 1782 effective October 15, 2013; and by SCO 1800 effective October 15, 2013)

Rule 90.4. Proceedings to Establish Parentage.

When genetic testing is ordered under AS 25.20.050, test results must be served on all parties to the action at least 20 days prior to any hearing or trial at which such results may be introduced into evidence. The test results must be accompanied by an affidavit, prepared by a qualified person, which addresses the qualifications of the affiant and the validity of the testing procedures and results. Any objection to the test results must be filed and served no later than 10 days before the hearing or trial. If no timely objection is filed, the test results are admissible as evidence of paternity at the hearing or trial without the need for foundation testimony or other proof of authenticity or accuracy.

(Adopted by SCO 1221 effective September 1, 1995)

Rule 90.5. Expedited Judicial Relief from Action Against Occupational or Driver's License for Unpaid Child Support.

(a) **Scope.** This rule sets out the procedure for requesting expedited judicial relief from a decision by the Child Support Services Division (CSSD) under AS 25.27.244 (adverse action against delinquent obligor's occupational license) or AS 25.27.246 (adverse action against delinquent obligor's driver's license).

(b) **Petition.**

(1) *Requirements.* To request expedited judicial relief under AS 25.27.244 or 25.27.246, a person must file a petition in the superior court. The petition must be on a form published by the Alaska Court System and must specify which of the statutory grounds for relief the petitioner is relying on. The petition should be accompanied by:

(A) a written explanation of why the petitioner is entitled to judicial relief (not to exceed five pages);

(B) any documents that the petitioner intends to present to the court;

(C) a list of the witnesses whom the petitioner intends to present at the court hearing;

(D) a copy of CSSD's decision (titled "Notice of Occupational License Review Decision" or "Notice of Driver's License Review Decision"); and

(E) a copy of the child support order or payment schedule that CSSD seeks to enforce.

(2) *Number of Copies.* The petitioner must file the original plus one copy of the petition and any attachments.

(3) *Deadline for Filing.* The petition must be filed within 30 days after the date that the petitioner receives CSSD's decision (titled "Notice of Occupational License Review Decision" or "Notice of Driver's License Review Decision"). The petition may be filed either by delivering or mailing it to the clerk of court. A petition is deemed to be filed on the date it is received by the clerk.

(4) *Service on CSSD.* Upon receipt of the petition, the court shall promptly serve CSSD by mailing or delivering the extra copy to the appropriate office of the Department of Law.

(5) *Grounds for Rejecting Petition.* The clerk shall refuse to accept the petition for filing if the petitioner has failed to specify which of the statutory grounds for relief the petitioner is relying on and has provided no other written explanation of why the petitioner is entitled to judicial relief.

(c) **Response.** CSSD's response to the petition must be filed and served within fifteen days after service of the petition under (b)(4). The response must include a written explanation of CSSD's position (not to exceed five pages) and must be accompanied by any documents that CSSD intends to present at the hearing and a list of the witnesses whom CSSD intends to present.

(d) **Hearing.** Upon receipt of the petition, the court shall schedule a hearing. The hearing must be held not less than 20 nor more than 30 days after the petition is served under (b)(4).

Telephonic participation at the hearing is governed by Civil Rule 99.

(e) **Peremptory Challenge.** A party may file a notice of change of judge under Civil Rule 42(c). A party's notice is timely if filed within five days after notice that the case has been assigned to a specific judge.

(f) **Relief Available in Expedited Proceeding.** The court's decision is limited to a determination of the following issues, which the court shall determine de novo:

(1) whether a support order or payment schedule is in effect;

(2) whether the petitioner is the obligor under the support order that CSSD is seeking to enforce; and

(3) whether the petitioner is in substantial compliance with the support order or payment schedule. A petitioner is in substantial compliance if: (A) the petitioner owes less than four times the monthly obligation; or (B) the petitioner is making the best possible efforts under the circumstances to pay the arrearages.

(g) **Other Judicial Relief.** To obtain other judicial relief, the petitioner must file an appeal from an administrative agency decision under Appellate Rule 602.

(Adopted by SCO 1375 effective October 15, 1999; amended by SCO 1676 effective October 15, 2008)

Note: The petition forms (DR-335 for occupational licenses and DR-336 for driver's licenses) are available at all superior court locations and from the Child Support Services Division.

Rule 90.6. Appointment of Child Custody Investigator.

(a) **Appointment.** In an action under AS 25.20, AS 25.24, or AS 18.66, the court may appoint an expert under Evidence Rule 706 to investigate custody, access, and visitation issues and provide an independent opinion concerning the child's best interests. If the parties cannot afford a private custody investigator, the court may appoint the court custody investigator to conduct the investigation and provide an expert opinion.

(b) **Qualifications.**

(1) A custody investigator should possess knowledge, skill, experience, training, or education that allows the custody investigator to conduct a thorough and impartial investigation and offer an informed opinion to the court regarding custody and visitation issues. Specifically, the custody investigator should have an understanding of the following as appropriate to the case:

(A) child development from infancy through adolescence;

(B) impact of divorce and parental separation on a child;

(C) unique issues related to families involved in custody disputes;

(D) domestic violence and substance abuse and their impact on children;

(E) Alaska statutes and rules relating to custody determinations;

(F) the ability to communicate effectively with children and adults;

(G) the ability to communicate recommendations orally and in writing; and

(H) other qualifications appropriate to the particular case.

(2) Upon request of a party, a custody investigator or prospective custody investigator shall provide to the parties a written summary of relevant education and experience.

(c) **Disclosure of Conflicts.** The custody investigator shall disclose any relationships or associations between the investigator and any party which might reasonably cause the investigator's impartiality to be questioned. This disclosure must be made no later than 10 days after appointment.

(d) **Report.**

(1) *Deadline for Filing and Contents.* The court shall specify the date by which the custody investigator must file and serve a written report. The report must describe the investigation, including who was interviewed and what records were reviewed, summarize the information obtained, and explain the custody investigator's conclusions and recommendations utilizing the applicable statutory factors.

(2) *Admission of Report into Evidence.* Unless otherwise ordered, the custody investigator's report is deemed to be admitted into evidence upon filing and may be reviewed by the court before the hearing or trial. A party may require the custody investigator to appear at a hearing or trial to testify about the report. To preserve this right, the party must include the custody investigator on the party's final witness list. The party must also take appropriate steps to ensure the custody investigator's presence at the hearing or trial, which may include requesting the issuance of a subpoena.

(3) *Confidentiality.* The custody investigator's report is confidential unless otherwise ordered by the court. However, it may be disclosed to a party's expert for the purpose of consultation for trial.

(4) *Meeting with Parties.* The custody investigator may meet with the parties jointly or separately at any time to discuss the investigation and the investigator's conclusions in order to facilitate a voluntary resolution of the issues.

(e) **Investigation.** Unless the court has limited the scope of the investigation, a custody investigation should usually include:

(1) individual interviews with each parent;

(2) individual interviews with new spouses, live-in partners, or significant others of each parent;

(3) individual interviews with or observations of each child in the family;

(4) observation of parent-child interactions;

(5) review of the court file and other documents provided by the parties;

(6) criminal and child protection record checks on the parents, new spouses, and other people living in the household;

(7) review of relevant records pertaining to the child and household members, subject to applicable privileges;

(8) review of personal references provided by friends or family members of the parents;

(9) in-person or telephone interviews with other individuals who have information about the family, as the investigator believes is necessary.

(f) **Release of Records.** Unless otherwise specified in the appointment order, the custody investigator may request a party to execute a release authorizing the investigator to inspect and copy confidential records pertaining to the child or to the party. Within ten days after receiving a request for a release, a party must either execute the release or file a motion for a protective order under Civil Rule 26(c). A motion for a protective order must be accompanied by a certification that the party has conferred or attempted to confer with the custody investigator in an effort to resolve the dispute without court action. If the party fails to respond, the custody investigator may notify the court and the court shall enter an order directing that the records be released.

(g) **Contact with Parties and the Court.**

(1) *Contact with Parties.* Unless otherwise ordered, a custody investigator may communicate with a party who is represented by an attorney without prior notice to the attorney.

(2) *Contact with Court.* Unless all parties consent, a custody investigator shall not engage in ex parte communications with the court concerning a pending case except for scheduling and other administrative purposes when circumstances require.

(h) **Discovery.** A party may depose a custody investigator appointed under this rule after completion of a report. Documents and records in the possession of the custody investigator are discoverable under Civil Rule 30(b)(5) and Civil Rule 34 as though the custody investigator were a party to the action subject to any limitations set by the court as to the use and dissemination of confidential records.

(i) **Compensation.** Fees and costs for a private custody investigator will be divided equally between the parties unless the court finds good cause to change this allocation.

Commentary.—*Evidence Rule 706 authorizes the court to appoint independent experts in civil or criminal litigation. An expert appointed under Rule 706 must advise the parties of the expert's findings, may be deposed by either party, and may be called to testify by either party or the court.*

When a private custody investigator is being appointed, the court may ask the parties to suggest individuals for appointment.

A full custody investigation should usually include all of the elements listed in paragraph (e). Some of these elements may be dispensed with if the court has limited the scope of the investigation, either by narrowing the issues that the custody investigator should address or by limiting the tasks that the investigator should perform. If the court has appointed a private custody investigator, for example, the court may agree to dispense with some of the elements of a full investigation in order to reduce the cost to the parties. In addition, for budget reasons, the presiding judge of the judicial district may enter an administrative order limiting the tasks that court custody investigators will routinely perform. Even when the court has requested a full investigation, the custody investigator has discretion to dispense with interviews or record checks that are clearly unwarranted in a particular case.

Paragraph (e) also indicates that the custody investigator should review relevant records of the child and other household members. Relevant records may include school records, medical records, alcohol or drug abuse treatment records, and records regarding incidents of domestic violence.

(Adopted by SCO 1377 effective April 15, 2000 and amended by SCO 1591 effective January 15, 2006)

Note to SCO 1591: "Confidential" in Civil Rule 90.6(d)(3) has the meaning set out in Administrative Bulletin No. 48, Standard 6.F.2., and in Administrative Rule 37.5(c)(4).

Rule 90.7. Appointment of Guardian Ad Litem in Child Custody Proceedings.

(a) **When Guardian Ad Litem May Be Appointed.** In an action under AS 25.20, 25.24, or 18.66 involving custody, support, or visitation of a child, the court may appoint a guardian ad litem for the child only when the court finds separate representation of the child's best interests is necessary, such as when the guardian ad litem may be expected to present evidence not otherwise likely to be available or presented, or the proceeding is unusually complex.

Commentary.—*AS 25.24.310 authorizes the court to appoint a guardian ad litem in any action involving custody, support, or visitation of a child. AS 25.24.310(c) states in part:*

> *"Instead of, or in addition to, appointment of an attorney under (a) of this section, the court may, upon motion of either party or upon its own motion, appoint an attorney or other person or the office of public advocacy to provide guardian ad litem services to a child in any legal proceeding involving the child's welfare. The court shall require a guardian ad litem when, in the opinion of the court, representation of the child's best interests, to be distinguished from preferences, would serve the welfare of the child."*

Courts should not routinely appoint guardians ad litem in custody, support, and visitation proceedings. In most instances, the child's best interests are adequately protected

and presented by the parties. In most contested proceedings in which professional input is warranted, a child custody investigator (whether public or private) should be appointed instead of a guardian ad litem. The child custody investigator can provide the court and the parties with an independent analysis of the dispute and may serve as a catalyst to settlement without adding another party to the proceeding.

(b) **Qualifications.**

(1) A guardian ad litem should possess knowledge, skill, experience, training, or education that allows the guardian ad litem to conduct a thorough and impartial investigation and effectively advocate for the best interests of the child. Specifically, the guardian ad litem should have an understanding of the following as appropriate to the case:

(A) child development from infancy through adolescence;

(B) impact of divorce and parental separation on a child;

(C) unique issues related to families involved in custody disputes;

(D) domestic violence and substance abuse and their impact on children;

(E) Alaska statutes, rules, and supreme court decisions relating to custody, support, and visitation;

(F) the ability to communicate effectively with children and adults; and

(G) other qualifications appropriate to the particular case.

Further, the guardian ad litem should possess the knowledge and skills to effectively negotiate settlements on behalf of the child and to effectively advocate the child's best interests in contested litigation.

(2) Upon request of a party, a guardian ad litem or prospective guardian ad litem shall provide to the parties a written summary of relevant education and experience.

(c) **Appointment Order.** An order appointing a guardian ad litem must include findings why the appointment is necessary and must set forth the role of the guardian ad litem, the duties to be performed by the guardian ad litem in the case, deadlines for completion of these duties to the extent appropriate, the duration of the appointment, and compensation as provided in paragraph (m). If the court denies a motion for appointment of a guardian ad litem, the court must make findings to explain the denial. An order appointing a guardian ad litem should authorize the guardian ad litem access, without further release, to all confidential and privileged records of the child, including but not limited to psychiatric records, psychological treatment records, drug and alcohol treatment records, medical records, evaluations, law enforcement records, and school records.

Commentary. —*If the court determines that the appointment of a guardian ad litem is appropriate in a particular case, the court may ask the parties to suggest individuals for appointment.*

There is no right to a peremptory change of a guardian ad litem. Allegations that a guardian ad litem appointment is unnecessary, that a particular appointee is unqualified or otherwise unsuitable, or that an appointee is or has become biased should be addressed by trial courts through motion practice.

The appointment order should authorize the guardian ad litem to review confidential and privileged records pertaining to the child. To review records pertaining to a parent, the guardian ad litem must file a motion requesting access to those records unless the parent agrees to sign a release.

(d) **Disclosure of Conflicts.** The guardian ad litem shall disclose any relationships or associations between the guardian ad litem and any party which might reasonably cause the guardian ad litem's impartiality to be questioned. This disclosure must be made no later than 10 days after appointment.

(e) **Role of Guardian Ad Litem.** The guardian ad litem shall represent and advocate the best interests of the child. The court may appoint an attorney to advise or represent a non-attorney guardian ad litem if the court finds that legal advice or legal representation of the guardian ad litem is necessary to represent the child's best interests. The guardian ad litem shall be treated as a party to the proceeding for all purposes, except as otherwise provided in this rule.

Commentary.—*When custody is contested, the court has discretion to appoint a custody investigator, a guardian ad litem, and/or an attorney for the child. See AS 25.24.310(a), (c). The roles of a custody investigator, a guardian ad litem, and an attorney for the child are different and must be clearly distinguished:*

■ ***custody investigator:*** *A custody investigator is an expert witness appointed by the court. The custody investigator's duty is to conduct a thorough investigation and give an expert opinion on the custody arrangement that is in the best interests of the child. A custody investigator does not participate in court proceedings, other than to testify as an expert witness.*

■ ***guardian ad litem:*** *A guardian ad litem has the duty to conduct a thorough factual investigation. Based on this investigation, the guardian ad litem must decide what course of action is in the child's best interests. The guardian ad litem must then advocate this course of action, regardless of whether the child agrees with the guardian ad litem's position. The guardian ad litem participates as a party in court proceedings that affect the child, but only testifies in exceptional circumstances and then only as to factual matters. The guardian ad litem never testifies as an expert witness.*

The guardian ad litem must be served with copies of all pleadings and papers relating to the child, see Civil Rule 4(i), and must be given notice of all court appearances and conferences involving issues that affect the child. The guardian ad litem's rights include the right to appear and

participate at hearings, engage in motion practice, conduct discovery, introduce evidence, examine and cross-examine witnesses, make objections, and make opening statements and closing arguments.

The guardian ad litem's advocacy need not be confined to custody and visitation issues. If included within the scope of the appointment, the guardian ad litem should be prepared to participate in decisions about any special education or psychological needs of the child (such as counseling) and child support and other financial issues related to the child.

■ ***attorney for child:*** *A child's attorney represents the child, and it is the child who ultimately decides what position will be advocated in court. The attorney's duty is to conduct a thorough investigation, advise and consult the client, and zealously advocate the client's position in court. See Wagstaff v. Superior Court, 535 P.2d 1220 (Alaska 1975) (concerning child's right to select attorney when child's interests are hostile to parents' interests).*

The court may appoint an attorney to advise or represent a non-attorney guardian ad litem. If the court takes this action, the court should take care to specify the scope and duration of the appointment and the attorney's compensation.

(f) **Duty to Investigate.** The guardian ad litem shall investigate the pertinent facts of the case.

(1) The guardian ad litem shall review and consider any child custody investigation already conducted in the case and confer with the investigator. The guardian ad litem shall promptly conduct any further investigation necessary to carry out the order of appointment.

(2) If no child custody investigation has been done, the guardian ad litem shall either conduct an appropriate investigation or arrange for a custody investigation under Civil Rule 90.6. The investigation shall be conducted as soon as reasonably possible after the appointment.

Commentary*.—In developing a position, the guardian ad litem should usually solicit and receive input from professionals and other persons with experience or evidence related to the family, such as mental health professionals, teachers, day care providers, medical providers, close relatives of the child, and other adults residing in the home of either parent.*

The guardian ad litem may move for an order requiring the child or one or both parents to undergo evaluation or assessment related to psychological, substance abuse, or other issues raised in the investigation.

Paragraph (m) requires a guardian ad litem to seek court approval before hiring a private custody investigator to conduct an investigation. If the parties cannot afford a private custody investigator, the court may appoint the court custody investigator to conduct the investigation. See Civil Rule 90.6(a).

(g) **Contact with Child, Other Parties, and the Court.**

(1) *Contact with Child.* The guardian ad litem may meet with the child as often as necessary to ascertain and represent the child's best interests. An attorney for a party shall not have independent contact with the child without the consent of the guardian ad litem or a court order. A party or attorney shall not arrange for mental health evaluations or assessments of the child without the consent of the guardian ad litem or a court order.

(2) *Contact with Other Parties.* A guardian ad litem may communicate with a party who is represented by an attorney unless the party's attorney has notified the guardian ad litem in writing that such communication should not occur outside the attorney's presence.

(3) *Contact with Court.* Unless all parties consent, a guardian ad litem shall not engage in ex parte communications with the court concerning a pending case except for scheduling and other administrative purposes when circumstances require.

(h) **Trial or Hearing Brief.** The court shall set a deadline for the guardian ad litem to file a trial or hearing brief. The brief must describe the guardian ad litem's investigation, including who was interviewed and what records were reviewed, analyze the facts that the guardian ad litem believes will be presented, explain the position taken by the guardian ad litem utilizing the applicable statutory factors, and address other matters the guardian ad litem believes to be appropriate. If there is a conflict between the guardian ad litem's position and the child's preference, that conflict must be disclosed in the brief.

Commentary.*—The guardian ad litem's brief cannot be treated as testimony or as evidence of any fact unless agreed to by the parties. Absent a stipulation, facts discussed in the guardian ad litem's brief must be proved at trial.*

In many cases, the parties will not know the guardian ad litem's position or what facts the guardian ad litem has relied on until they receive the guardian ad litem's brief. Ideally, that brief should be due at least 30 days before the trial or hearing date so that the parties have sufficient time to prepare evidence in order to respond at trial. An early due date is also desirable because the guardian ad litem's brief often serves as a catalyst for settlement. At a minimum, the brief should be filed before the parties' briefs are due so that the parties can address the guardian ad litem's position in their briefs.

If there is a conflict between the guardian ad litem's position and the child's preference, the court may appoint a separate attorney to represent the child. The court should take this action only if the child's preference cannot be presented adequately by one of the parties. If the court appoints a separate attorney for the child, the court may either discharge the guardian ad litem or continue the guardian ad litem appointment to represent what the guardian ad litem believes to be in the child's best interests.

(i) **Testimony.**

(1) The guardian ad litem shall not testify at the trial or hearing unless:

(A) the testimony relates to an uncontested issue;

(B) the testimony relates to the nature and value of services rendered by the guardian ad litem in the case; or

(C) the testimony is necessary to present factual evidence on a material issue that is not available from another source.

(2) If the guardian ad litem intends to testify, the guardian ad litem shall file and serve notice of this intent with the trial or hearing brief. The notice must identify the subject of the guardian ad litem's testimony.

(3) Upon receiving notice that the guardian ad litem intends to testify, the court should consider whether the guardian ad litem can still effectively represent the best interests of the child. If not, the court may discharge the guardian ad litem, appoint another guardian ad litem, or appoint an attorney for the guardian ad litem or the child.

(4) If the guardian ad litem testifies, the guardian ad litem may be cross-examined as any other witness.

Commentary.—*Subparagraph (i)(1) reflects the principles of Alaska Rule of Professional Conduct 3.7(a), which under most circumstances prohibits an attorney from acting as an advocate in a proceeding in which the attorney is likely to be a witness.*

In opening statements and closing arguments, a guardian ad litem is free to comment on the evidence and to suggest conclusions that the court should draw from the evidence. But the statements themselves are not and cannot be treated as testimony or evidence.

(j) **Discovery.**

(1) *Discovery of Documents in Guardian Ad Litem's Possession.* A party may obtain discovery of documents in the possession, custody, or control of the guardian ad litem, subject to the following limitations:

(A) the documents must be discoverable under Civil Rule 26(b)(1); and

(B) trial preparation materials as defined in Civil Rule 26(b)(3) are discoverable only as permitted by that rule.

(2) *Discovery Regarding Guardian Ad Litem's Testimony.* If the guardian ad litem has served notice that the guardian ad litem intends to testify, a party may obtain discovery from the guardian ad litem about the substance of this testimony.

(3) *Other Inquiry.* A party may obtain other discovery from a guardian ad litem only as permitted by the court upon a showing of good cause. The court may permit a party to question a guardian ad litem about the guardian ad litem's professional qualifications and experience or the guardian ad litem's actions in the case. But this inquiry must be conducted in the presence of the court.

(k) **Duty to Maintain Confidentiality.** The guardian ad litem shall not disclose communications made by the child or reveal information relating to the child, except as necessary to carry out the representation, unless:

(1) the guardian ad litem determines that disclosure is in the best interests of the child;

(2) disclosure would be permitted under Alaska Rule of Professional Conduct 1.6(b) as if the guardian ad litem were the child's lawyer;

(3) disclosure is required under paragraph (h) (duty to tell the court that child's preference differs from guardian ad litem's position); or

(4) disclosure is permitted by court order or by law.

Commentary.—*A guardian ad litem should advise the child that statements made by the child will ordinarily be kept confidential but may be disclosed if the guardian ad litem determines that disclosure is in the child's best interests and in the other circumstances described in this rule.*

(*l*) **Privileges.**

(1) The guardian ad litem has a privilege to refuse to disclose and to prevent anyone other than the child from disclosing confidential communications made by the child. This privilege does not apply if disclosure of the communication is required by law or if the court finds there are compelling reasons to reveal the communication.

(2) The attorney-client privilege does not apply to confidential communications between the child and an attorney guardian ad litem.

Commentary.—*An attorney serving as a guardian ad litem does not act as legal counsel for the child but rather as a party to the proceeding. Therefore, the attorney-client privilege does not apply. But the policy behind the attorney-client privilege is equally compelling in the guardian ad litem-child relationship: to encourage the child to talk openly and candidly to the guardian ad litem so that the guardian ad litem can make the best possible determination about what is in the child's best interests. Therefore, this rule adopts a limited privilege for confidential communications between an attorney or non-attorney guardian ad litem and the child. It also allows the guardian ad litem to protect confidential communications made by the child to other persons.*

(m) **Compensation.** The guardian ad litem, an attorney for a guardian ad litem, and expert witnesses used by the guardian ad litem will be compensated at a rate that the court determines is reasonable. Fees and costs for a private guardian ad litem will be divided equally between the parties unless the court finds good cause to change this allocation. The guardian ad litem must seek court approval before incurring extraordinary expenses, such as expert witness fees. The appointment order, or order authorizing the guardian ad litem to hire expert witnesses, must specify the hourly rate to be paid to the guardian ad litem, attorney, or expert witness, the maximum fee that may be incurred without further authorization of the court, how the fee will be allocated between the parties, and when payment is due. Unless

otherwise ordered, bills must be submitted on a monthly basis and must state the total amount billed to date.

(Adopted by SCO 1377 effective April 15, 2000)

Rule 90.8. Expedited Applications to Compel Correction of Any Error in Redistricting Plan.

(a) **Scope.** This rule applies to applications to the superior court under art. VI, sec. 11, Constitution of the State of Alaska, to compel the Redistricting Board to correct any error in its redistricting plan. This rule supersedes the other civil rules to the extent that they may be inconsistent with this rule.

(b) **Application.**

(1) Application to compel the Redistricting Board to correct any error in redistricting must be made within 30 days following the adoption of the final redistricting plan and proclamation by the Redistricting board.

(2) Service of the application shall be made on the Redistricting Board, the Office of the Attorney General, and the Office of the Lieutenant Governor.

(c) **Expedited Proceeding.** Applications under this rule shall be expedited, and shall have priority over all other matters pending before the court. The date for the court's decision shall be no later than 120 days prior to the statutory filing deadline for the first statewide election in which the challenged redistricting plan is scheduled to take effect.

(d) **Record.** The record in the superior court proceeding consists of the record from the Redistricting Board (original papers and exhibits filed before the board and the electronic record or transcript, if any, of the board's proceedings), as supplemented by such additional evidence as the court, in its discretion, may permit. If the court permits the record to be supplemented by the testimony of one or more witnesses, such testimony may be presented by deposition without regard to the limitations contained in Civil Rule 32(a)(3)(B). A paginated copy of the record from the Redistricting Board shall be filed in the supreme court at the same time it is filed in the superior court.

(e) **Scheduling Conference.** Within ten days of the application, the assigned judge shall hold a scheduling conference, which all parties must attend. Telephonic participation may be permitted at the judge's discretion. At the conference, the judge shall enter a scheduling order that addresses all matters appropriate in the circumstances of the case.

(f) **Assignment.** Cases shall be assigned by presiding judges and may be assigned across judicial district lines in coordination with other presiding judges and the administrative director.

(Adopted by SCO 1457 effective November 15, 2001)

PART XIII. GENERAL PROVISIONS

Rule 91. Applicability of Civil Rules In General.

(a) **Scire Facias—Quo Warranto.** The writs of scire facias and quo warranto, and proceedings by information in the nature of quo warranto, are abolished. Relief available under those forms or under the provisions of statutes may be obtained by appropriate action or by appropriate motion under the practice prescribed in these rules.

(b) **Mandamus.** The writ of mandamus is abolished. Relief heretofore available by mandamus as prescribed by statutes may be obtained by appropriate action or by appropriate motion under the practice prescribed in these rules.

(c) **Administrative Subpoenas.** These rules are applicable to proceedings in court to compel the giving of testimony or production of documents in accordance with subpoena issued or other authority exercised by an officer or agency of the state, except as otherwise provided by order of the court in the proceedings.

(Adopted by SCO 5 October 9, 1959; amended by SCO 49 effective January 1, 1963)

Rule 92. Construction of Rules.

These rules are designed to provide for the efficient operation of the courts of the State of Alaska. If no specific procedure is prescribed by rule, the court may proceed in any lawful manner not inconsistent with these rules, the constitution, and the common law.

(Adopted by SCO 5 October 9, 1959; amended by SCO 49 effective January 1, 1963)

Rule 93. Legal Effect of Rules—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.

(Adopted by SCO 5 October 9, 1959; amended by SCO 49 effective January 1, 1963)

Rule 94. Relaxation of Rules.

These rules are designed to facilitate business and advance justice. They may be relaxed or dispensed with by the court in any case where it shall be manifest to the court that a strict adherence to them will work injustice.

(Adopted by SCO 5 October 9, 1959; amended by SCO 49 effective January 1, 1963)

Rule 95. Penalties.

(a) For any infraction of these rules, the court, after providing reasonable notice and an opportunity to be heard,

may withhold or assess costs or attorney's fees as the circumstances of the case and discouragement of like conduct in the future may require; and such costs and attorney's fees may be imposed upon offending attorneys or parties.

(b) **[Applicable to cases filed before August 7, 1997].** In addition to its authority under (a) of this rule and its power to punish for contempt, a court may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing by the court, if requested, impose a fine not to exceed $1,000.00 against any attorney who practices before it for failure to comply with these rules or any rules promulgated by the supreme court.

(b) **[Applicable to cases filed on or after August 7, 1997].** In addition to its authority under (a) of this rule and its power to punish for contempt, a court may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing by the court, if requested, impose a fine not to exceed $50,000.00 against any attorney who practices before it for failure to comply with these rules or any rules promulgated by the supreme court.

(Adopted by SCO 5 October 9, 1959; amended by SCO 49 effective January 1, 1963; by SCO 246 effective May 1, 1976; by SCO 1099 effective January 15, 1993; by SCO 1281 effective August 7, 1997; and by SCO 1643 effective October 15, 2007)

Note to SCO 1281: Paragraph (b) of this rule was amended by ch. 26, sec. 43, SLA 1997. According to sec. 55 of the Act, the amendment to Civil Rule 95 applies "to all causes of action accruing on or after the effective date of this Act." The amendment to Rule 95 adopted by paragraph 9 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 97. Title.

These rules may be known and cited as the Rules of Civil Procedure.

Rule 98. Effective Date.

These rules become effective on the date to be established by order of the supreme court. They shall govern all civil actions and proceedings thereafter commenced and so far as just and practicable all proceedings then pending.

Rule 99. Telephonic Participation in Civil Cases.

(a) **Authorization for Telephonic, Video, or Internet Participation.** The court may allow one or more parties, counsel, witnesses or the judge to participate telephonically in any hearing or deposition for good cause and in the absence of substantial prejudice to opposing parties. The court shall allow video or Internet testimony if the hearing or deposition involves the custody or visitation of a child of a parent who is deployed, as that term is definsed in AS 25.20.095, at the request of the deployed parent. Authorization for a witness to telephonically participate in a deposition does not bar the witnesses' testimony from being videotaped under Civil Rule 30.1; nor does it bar a party or attorney from being present at the site at which the witness is physically present.

(b) **Procedure.** The following procedure must be observed concerning telephonic participation in court hearings:

(1) Hearings involving telephonic participation must be scheduled in the same manner as other hearings.

(2) When telephonic participation is requested, the court, before the hearing, shall designate the party responsible for arranging the call and the party or parties responsible for payment of the call pursuant to Administrative Rule 48.

(3) Upon convening a telephonic proceeding, the judge shall:

(i) Recite the date, time, case name, case number, names and locations of parties and counsel, and the type of hearing;

(ii) Ascertain that all statements of all parties are audible to all participants;

(iii) Give instructions on how the hearing is to be conducted, including notice that in order to preserve the record speakers must identify themselves each time they speak.

(4) A verbatim record must be made in accord with Administrative Rule 35.

(c) The right of public access to court proceedings must be preserved in accordance with law.

(Added by SCO 623 effective June 15, 1985; amended by SCO 790 effective March 15, 1987; by SCO 922 effective January 15, 1989; and by SCO 1733 effective June 4, 2010)

Note: Chapter 44, section 4, SLA 2010 (HB 334), effective June 4, 2010, amended Civil Rule 99 relating to child custody, modification, and visitation standards for a military parent, as reflected in section 1 of this Order. The changes to Civil Rule 99 are adopted for the sole reason that the legislature has mandated the amendments.

Rule 100. Mediation and Other Forms of Alternative Dispute Resolution.

(a) **Application.** At any time after a complaint is filed, a party may file a motion with the court requesting mediation for the purpose of achieving a mutually agreeable settlement. The motion must address how the mediation should be conducted as specified in paragraph (b), including the names of any acceptable mediators. If domestic violence has occurred between the parties and mediation is requested in a matter covered by AS 25, mediation may only be ordered when permitted under AS 25.20.080, AS 25.24.060, or 25.24.140. In matters not covered by AS 25, the court may order mediation in response to such a motion, or on its own motion, whenever it determines that mediation may result in an equitable settlement. In making this determination, the court shall consider whether there is a history of domestic violence between the parties which could be expected to affect the fairness of the mediation process or the physical safety of the domestic violence victim. Mediation may not be ordered

between the parties to, or in, a case filed under AS 18.66.100–18.66.180.

(b) **Order.** An order of mediation must state:

(1) the name of the mediator, or how the mediator will be decided upon;

(2) any changes in the procedures specified in paragraphs (d) and (e), or any additional procedures;

(3) that the costs of mediation are to be borne equally by the parties unless the court apportions the costs differently between the parties; and

(4) a date by which the initial mediation conference must commence.

(c) **Challenge of Mediator.** Each party has the right once to challenge peremptorily any mediator appointed by the court if the "Notice of Challenge of Mediator" is timely filed pursuant to Civil Rule 42(c).

(d) **Mediation Briefs.** Any party may provide a confidential brief to the mediator explaining its view of the dispute. If a party elects to provide a brief, the brief may not exceed five pages in length and must be provided to the mediator not less than three days prior to the mediation. A party's mediation brief may not be disclosed to anyone without the party's consent and is not admissible in evidence.

(e) **Conferences.** Mediation will be conducted in informal conferences at a location agreed to by the parties or, if they do not agree, at a location designated by the mediator. All parties shall attend the initial conference at which the mediator shall first meet with all parties. Thereafter the mediator may meet with the parties separately. Counsel for a party may attend all conferences attended by that party.

(f) **Termination.** After the initial joint conference and the first round of separate conferences if separate conferences are required by the mediator, a party may withdraw from mediation, or the mediator may terminate the process if the mediator determines that mediation efforts are likely to be unsuccessful. Upon withdrawal by a party or termination by the mediator, the mediator shall notify the court that mediation efforts have been terminated.

(g) **Confidentiality.** Mediation proceedings shall be held in private and are confidential. The mediator shall not testify as to any aspect of the mediation proceedings. Evidence of conduct or statements made in the course of court-ordered mediation is inadmissible to the same extent that conduct and statements are inadmissible under Alaska Rule of Evidence 408. This rule does not *relieve any person of a duty imposed by statute.*

(h) **Dismissal.** If the mediation is successful, the party requesting mediation shall prepare a stipulation for dismissal which dismisses all or such portions of the action as have been concluded by mediation as agreed upon at the mediation.

(i) Other Forms of Alternative Dispute Resolution.

(1) *Early Neutral Evaluation.* Parties or the court may use the procedure set out in this rule to refer a case to early neutral evaluation instead of mediation. All provisions of this rule apply to a case in which early neutral evaluation has been ordered under paragraph (a).

(2) *Arbitration.* Parties may stipulate to arbitration without further order of the court.

(3) *Settlement Conference.* At any time after a complaint is filed, a party may file a motion with the court requesting a settlement conference with a judge for the purpose of achieving a mutually agreeable settlement. The court may order a settlement conference in response to such a motion or on its own motion.

(4) *Local Dispute Resolution.* Parties may agree to resolve disputes, subject to court approval, by referring them to tribal courts, tribal councils, elders' courts, or ethnic organizations.

(Added by SCO 1116 effective July 15, 1993; amended by SCO 1130 effective July 15, 1993; by SCO 1269 effective July 15, 1997; by SCO 1318 effective July 15, 1998; and by SCO 1469 effective October 15, 2002)

Note to SCO 1269: Civil Rule 100(a) was amended by § 69 ch. 64 SLA 1996.