

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1325

Adopting Civil Rule 26.1 and amending Civil Rule 26, Civil Rule 37, and Civil Rule 90.1 to address discovery and disclosure in divorce cases.

IT IS ORDERED:

1. The Civil Rules are amended to include new Civil Rule 26.1 which reads:

**Rule 26.1. Discovery and Disclosure in Divorce Actions.**

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

(b) Initial Disclosures. (1) In all divorce 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 release 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 release 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 release authorizing the other party to obtain all information regarding such accounts, and copies of account statements for the past three months for all such accounts;

(E) 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;

(F) 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;;

(G) 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);

(H) 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;

(I) 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, Aid to Families with Dependent Children (AFDC), 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;

(J) an itemized list by description and location of all items listed above in (A) through (G) which the party considers non-marital and the basis for the non-marital designation; and

(K) 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 paragraph (b) are intended to provide minimum base information. Paragraph (b) does not limit the scope or amount of discovery parties may properly request in a divorce action.

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

2. Paragraph (e) of Civil Rule 26 is amended to read:

(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:

\* \* \* \*

3. Paragraph (a) of Civil Rule 37 is amended to read:

(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:

\* \* \* \*

(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.

\* \* \* \*

4. Paragraph (c) of Civil Rule 37 is amended to read:

**(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), ~~or~~ 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.

\* \* \* \*

5. Civil Rule 90.1 is amended to include new paragraph (d) to read:

(d) Divorce Actions - Discovery and Disclosure. Discovery and disclosure in divorce actions is governed by Civil Rule 26.1.

6. Existing paragraph (d) of Civil Rule 90.1 is redesignated as paragraph (e).

DATED: April 30, 1998

EFFECTIVE DATE: July 15, 1998

/s/  
Chief Justice Matthews

/s/  
Justice Compton

/s/  
Justice Eastaugh

/s/  
Justice Fabe

/s/  
Justice Bryner