

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1556

Implementing 2004 legislation affecting court rules as follows:

Amending and adding a note to District Court Civil Rule 11 to implement Chapter 65 SLA 04 (HB 227);

Amending and adding a note to Evidence Rule 412 to implement Chapter 16 SLA 04 (HB 349);

Adding a note to Evidence Rule 402 to implement Chapter 110 SLA 04 (HB 285);

Adding a note to Administrative Rule 15 to implement 104 SLA 04 (HB 353);

Adding notes to Civil Rule 17(c) and Probate Rules 16(f) and 17(e) to implement 84 SLA 04 (HB 427); and

Adding a note to Civil Rule 90.3 to implement Chapter 108 SLA 04 (HB 514).

IT IS ORDERED:

I. District Court Civil Rule 11(a) is amended to read as follows, *effective September 14, 2004*:

Rule 11. Process.

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

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

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

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

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

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

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

(C) as otherwise permitted under Civil Rule 4.

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

II. The following note is added to the end of District Court Civil Rule 11:

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

III. The Note at the end of District Court Civil Rule 8 is amended to read as follows, *effective September 14, 2004*:

Note: The maximum amount of a small claim under AS 22.15.040 is \$10,000.

IV. Evidence Rule 412 is amended to read as follows, *effective July 22, 2004*:

Rule 412. Evidence Illegally Obtained.

Evidence illegally obtained shall not be used over proper objection by the defendant in a criminal prosecution for any purpose except:

(1) a statement illegally obtained in violation of the right to warnings under *Miranda v. Arizona*, 384 U.S. 436 (1966), may be used in

(A) a prosecution for perjury if the statement is relevant to the issue of guilt or innocence and if the prosecution shows that the statement was otherwise voluntary and not coerced; or

(B) any prosecution, to impeach the defendant, codefendant, or a former defendant in the case who made the statement if the prosecution shows that the statement was

(i) otherwise voluntary and not coerced; and

(ii) recorded, if required by law, or has been determined to be covered by one of the recognized exceptions to the recording requirement; and

(2) other evidence illegally obtained may be admitted in

(A) a prosecution for perjury if it is relevant to the issue of guilt or innocence and if the prosecution shows that the evidence was not obtained in substantial violation of rights of the defendant; or

(B) any criminal action, to impeach the defendant, codefendant, or a former defendant in the case, if the prosecution shows that the evidence

(i) was the product of a statement illegally obtained in violation of the right to warnings under *Miranda v. Arizona*, 384 US 436 (1966); and

(ii) was not obtained in substantial violation of the rights of the defendant, codefendant, or a former defendant in the case, as appropriate.

V. The following note is added to the end of Evidence Rule 412:

Note to SCO 1556: Chapter 16 § 1 SLA 2004 amended Evidence Rule 412 to allow evidence illegally obtained to be used to impeach a defendant, codefendant, or former defendant in a case, under specified circumstances. Section IV of this order is adopted for the sole reason that the legislature has mandated the amendments.

VI. The following note is added to the end of Evidence Rule 402:

NOTE: Chapter 110 SLA 04 (HB 285) adopts the Uniform Electronic Transactions Act. According to Section 3 of the Act, AS 09.80.100, enacted in Section 1, has the effect of

amending Evidence Rule 402 by adding a provision that prevents electronic evidence of a record or signature from being inadmissible as evidence just because it is in electronic form.

VII. The following note is added at the end of Administrative Rule 15:

NOTE: Chapter 104 SLA 04 (HB 353) exempts teachers from jury service if they are teaching at a school that is designated as failing to make adequate yearly progress under P.L. 107-110. According to Section 2 of the Act, this has the effect of changing Administrative Rule 15(k) by establishing an additional cause for exemption from jury service.

VIII. The following note is added to the end of Civil Rule 17:

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.

IX. The following note is added at the end of Probate Rule 16:

NOTE: Chapter 84 SLA 04 (HB 427) enacted extensive changes to the guardianship and conservatorship statutes. According to Section 32 of the Act, AS 13.26.120(b), enacted in Section 11, has the effect of changing Probate Rule 16(f) by giving guardians additional authority to perform certain acts for a deceased ward.

X. The following note is added at the end of Probate Rule 17:

NOTE: Chapter 84 SLA 04 (HB 427) enacted extensive changes to the guardianship and conservatorship statutes. According to Section 32 of the Act, AS 13.26.250, amended by Section 22, has the effect of amending Probate Rule 17(e) by changing when a report is due and adding additional material to be included in the report.

XI. The following note is added at the end of Civil Rule 90.3:

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.

DATED: July 22, 2004

EFFECTIVE DATES: October 15, 2004, Except As Noted

Chief Justice Bryner

Justice Matthews

Justice Eastaugh

Justice Fabe

Justice Carpeneti