

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1853

Amending Civil Rules 28 and
45(d) and adopting new Civil Rule
45.1 to implement the Uniform
Interstate Depositions and
Discovery Act.

IT IS ORDERED:

Civil Rule 28 and Civil Rule 45(d) are amended and a new Civil Rule 45.1 adopted to read as follows:

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

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(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.

Rule 45. Subpoena.

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(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.

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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.

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.

DATED: April 2, 2015

EFFECTIVE DATE: October 15, 2015

/s/
Chief Justice Fabe

/s/
Justice Winfree

/s/
Justice Stowers

/s/
Justice Maassen

/s/
Justice Bolger