

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 465

Eleven-Part Order Providing Technical Amendments Only to Various Alaska Rules of Civil Procedure.

IT IS ORDERED:

1. Subparagraph (12) of Paragraph (d) of Rule 4, Alaska Rules of Civil Procedure, is amended to read:

(12) Personal Service Outside the State. Upon a party outside the state in the same manner as if service [was] 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.

2. Paragraph (d) of Rule 17, Alaska Rules of Civil Procedure, is rescinded. Paragraph (e) of that rule is redesignated as paragraph (d).

3. Paragraph (a) of Rule 33, Alaska Rules of Civil Procedure, is amended to read:

(a) Availability; Procedures for Use. 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, [or] a partnership, an association, or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. There shall be sufficient space provided so that answers to the interrogatories propounded may be inserted thereon.

Each interrogatory shall be answered separately and fully in writing, under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. 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, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. 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.

4. The title of Rule 38, Alaska Rules of Civil Procedure, is amended to read:

RULE 38. JURY TRIAL [OF RIGHT - SECURING COSTS OF JURY].

5. Subparagraph (1) of paragraph (a) of Rule 41, Alaska Rules of Civil Procedure, is amended to read:

(1) By Plaintiff--By Stipulation. Subject to the provisions of Rule 23(c), 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. 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.

6. Subparagraph (5) of paragraph (c) of Rule 42, Alaska Rules of Civil Procedure, is amended to read:

(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 he 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 [incapacities] incapacity, the parties shall be restored to their several positions and rights [of] under this rule as they existed immediately before the assignment of the action to such judge.

7. Subparagraph (1) of paragraph (d) of Rule 45, Alaska Rules of Civil Procedure, is amended to read:

(1) Proof of service of a notice to take a deposition as provided in Rules 30 [(a)] (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 [SUBDIVISION] 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.

8. Paragraph (b) of Rules 47, Alaska Rules of Civil Procedure, is amended to read:

(b) Alternate Jurors. The court may direct that one or two jurors in addition to the regular panel be called and impanelled 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. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, 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. An alternate juror who does not replace a principal juror shall be discharged after the jury retires to consider its verdict.

If one or two alternate jurors are called, each party is entitled to one peremptory challenge in addition to those otherwise allowed by [law] paragraph (d) of this rule. The additional peremptory challenge may be used only against an alternate juror, and the other peremptory challenges allowed by [law] paragraph (d) of this rule shall not be used against the alternates.

9. Paragraph (a) of Rule 67, Alaska Rules of Civil Procedure, is amended to read:

(a) In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing. Money paid into the court under this [order] rule shall be deposited and withdrawn in accordance with the provisions of Rules Governing the Administration of [the] All Courts.

10. The title of paragraph (a) of Rule 69, Alaska Rules of Civil Procedure, is amended to read:

(a) Execution--[DEPOSITION OF JUDGMENT DEBTOR] Discovery

11. Subparagraph (2) of paragraph (a) of Rule 75, Alaska Rules of Civil Procedure, is amended to read:

(2) Such other proceedings [AS THE JUDGE MAY DIRECT,] as may be required by court rule or order of the court[, OR AS MAY BE REQUIRED BY ANY PARTY TO THE ACTION OR PROCEEDING].

DATED: May 7, 1981

EFFECTIVE DATE: June 1, 1981

/s/ Jay A. Rabinowitz  
Chief Justice

/s/ Roger G. Connor  
Justice

/s/ Edmond W. Burke  
Justice

/s/ Warren W. Matthews  
Justice

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/s/ Allen T. Compton  
Justice