110.C

ORDER ADOPTING RULES

It is hereby ordered:

That the foregoing rules, numbered 1 to 116, inclusive, be and the same are hereby adopted as the Rules of Civil Procedure governing the superior court and the magistrate courts of the State of Alaska effective at a date to be determined by further order of the court.

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Dated at Juneau, Alaska, this 9th day of October, 1959.

/s/ Buell A. Nesbett
Chief Justice

/s/ Walter H. Hodge
Associate Justice

/s/ John H. Dimond
Associate Justice

RULES OF

CIVIL PROCEDURE

STATE OF ALASKA

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RULES OF CIVIL PROCEDURE

RULES OF CIVIL PROCEDURE

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 magistrate courts, 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.

Rule 2. One Form of Action.

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

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

Rule 3. Commencement of Action.

A civil action is commenced by filing a complaint with the court.

Rule 4. Process.

(a) Summons - Issuance. Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver it for service to a peace officer or to a person specially appointed to serve it. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

(b) Summons - Form. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint.

(c) By Whom Served - Appointments to Serve Process - Definition of "Peace Officer."

(1) Subject to the provisions of paragraphs (2) and (3) of this subdivision, service of all process shall be made by a peace officer or by a person specially appointed by the court for that purpose.

(2) Service of all process relating to remedies for the seizure of persons or property pursuant to Rule 64 shall be made only by a peace officer; but service of process to enforce a judgment by writ of execution may be made by a person specially appointed by the court for that purpose.

(3) A subpoena may be served as provided in Rule 45.

(4) 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, and other officers whose duty is to enforce and preserve the public peace.

(5) Special appointments to serve summons and

other process shall be made freely when substantial savings in travel fees and costs will result. The court in its discretion may by order authorize the clerk or deputy clerk to make such special appointments.

(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 him personally, or by leaving copies thereof at his 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 his 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 he resides, or in whose service he is employed; or if 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 -

(i) To the guardian of the person or a competent adult member of his family with whom he resides, or if

he 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

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

(4) Corporations. Upon a domestic or foreign corporation, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service, by making service in the manner prescribed by statute.

(5) Partnerships. Upon a partnership, by delivering a copy of the summons and of the complaint personally to a memberof 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 agent 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 delivering a copy of the summons and the complaint personally to the attorney general or to the person in the judicial district designated by him in a writing filed with the clerk of the court, and when service is made upon such person so designated, by also sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of Alaska at Juneau, Alaska.

(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 an 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.

(e) Other Service. Whenever a statute of the state or any of these rules or an order of the court provides for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, service shall be made under the circumstances and in the manner prescribed by the statute, rule or order.

(f) Return. The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to

the process. If service is made by a person other than a peace officer, he shall make affidavit thereof. 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.

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 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.

(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 himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with

the clerk of the court. Delivery of a copy within th[illegible]le means: handing it to the attorney or to the party; or leaving it at his office with his 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 his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(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. 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.

(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, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forth-

with transmit them to the office of the clerk.

(f) Proof of Service.

(1) 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, shall be filed in the clerk's office promptly and in any event before action is to be taken thereon by the court or the parties. The proof shall show the day and manner of service and may be by written acknowledgement of service, by certificate of an attorney, by affidavit of the person who served the papers, or by any other proof satisfactory to the court.

(2) If an affidavit of mailing or of service is attached to the original pleading, it shall be attached underneath the same so that the character of the pleading is easily discernible.

(3) 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 so to do would result in material prejudice to the substantial rights of any party.

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 after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be in-

cluded, unless it is a Sunday or a legal holiday, in ch event the period runs until the end of the next day which is neither a Sunday nor a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Sundays and 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 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 25, 50 (b), 52 (b), 59 (b), (d) and (e), and 60 (b), except to the extent and under the conditions stated in them.

(c) Unaffected by Expiration of Term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action which has been pending before it.

(d) For Motions - Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing

thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59 (c), opposing affidavits may be served not later than 2 days before the hearing, unless the court permits them to be served at some other time.

(e) Additional Time After Service By Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

PART III. PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed - Form of Motions.

(a) Pleadings. There shall be a complaint and an answer; and there shall be 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 there shall be 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.

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 to which he deems himself entitled. 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 his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient

to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials 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, he 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, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but when he does so intend to controvert all its averments, he 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 he has 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 Pleadings. All pleadings shall be so construed as to do substantial justice.

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 an 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, he 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) 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.

(g) Special Damage. When items of special damage are

claimed, they shall be specifically stated.

Rule 10. Form of Pleadings.

(a) Caption - Names of Parties. Every pleading shall contain a caption setting forth the title of the court, the number of the judicial district in which the action is filed, the title of the action, the file 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 an appropriate indication of other parties.

(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) Conformity with Rule 76. All pleadings shall be prepared and filed in conformity with the provisions of Rule 76.

Rule 11. Signing of Pleadings.

Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address. Except when otherwise specifically provided by rule, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a wilful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

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 his answer within 20 days after the service of the summons and complaint upon him, unless the court directs otherwise when service of process is made pursuant to Rule 4 (e). A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 20 days after the service upon him. The

plaintiff shall serve his reply to a counterclaim in 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. 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 an indispensable party. 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 plead-

ing sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he 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.

(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 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.

(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 am-

biguous that a party cannot reasonably be required t ame a responsive pleading, he may move for a more definite statement before interposing his 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 time 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 made by a party within 20 days after the service of the pleading upon him 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. A party who makes a motion under this rule may join with it the other motions herein provided for and then available to him. If a party makes a motion under this rule and does not include therein all defenses and objections then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on any of the defenses or objections so omitted, except as provided in subdivision (h) of this rule.

(h) Waiver of Defenses. A party waives all defenses and objections which he does not present either by motion as hereinbefore provided or, if he has made no motion, in his answer or reply, except (1) that the defense of failure to state a claim upon which relief can be granted, the defense of

failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, 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. The objection or defense, if made at the trial, shall be disposed of as provided in Rule 15 (b) in the light of any evidence that may have been received.

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, except that such a claim need not be so stated if at the time the action was commenced the claim was the subject of another pending action.

(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 assert 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 his 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, he 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 asserted 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) Additional Parties May Be Brought In. When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim or cross-claim, the court shall order them to be brought in as defendants as provided in these rules, if jurisdiction of them can be obtained and their joinder will

not deprive the court of jurisdiction of the action.

(i) Separate Trials - Separate Judgment. If the court orders separate trials as providedin 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.

Rule 14. Third-Party Practice.

(a) When Defendant May Bring in Third Party. Before the service of his answer a defendant may move ex parte or, after the service of his answer, on notice to the plaintiff, for leave as a third-party plaintiff to serve a summons and complaint upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. If the motion is granted and the summons and complaint are served, the person so served, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in Rule 12 and his 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 his defenses as provided in Rule 12 and his counterclaims and cross-claims as provided in Rule 13. 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 him 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 a plaintiff, he may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

Rule 15. Amended and Supplemental Pleadings.

(a) Amendments. A party may amend his 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, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his 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 him in maintaining his 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.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him 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, whether or not the original pleading is defective in its statement of a claim for relief. If the court deems it advisable that the adverse party plead thereto, 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.

Rule 16. Pre-Trial Procedure - Formulating Issues.

(a) In General. In any action a pre-trial conference on a day certain may be ordered pursuant to the motion of any party, or by the court upon its own motion, to consider the following:

(1) The simplification of the issues.

(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.

(4) The limitation of the number of expert witnesses.

(5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury.

(6) Such other matters as may aid in the disposi-

tion of the action.

(b) Pre-Trial Calendar.

(1) The judge in whose court any action or proceeding, jury or non-jury, is pending, may place the same, whether or not at issue, on the calendar for pre-trial procedure at such time and for such purpose or purposes as he may deem proper, upon at least 20 days notice to the parties thereto or their attorneys of record.

(2) At any time after any pending action or proceeding is at issue, any party thereto may request the judge in writing to place the same upon the calendar for such pre-trial procedure as may be indicated in such request and as permitted by this rule. Upon the granting by the judge of such request, the clerk shall serve and file, not less than five days prior to the hearing, unless otherwise ordered by the court, a written notice thereof to all parties theretofore appearing in such action.

(c) Pre-Trial Memorandum. At the pre-trial conference each attorney shall be prepared to submit a typewritten memorandum covering such of the following items as are appropriate:

(1) A brief statement of what the plaintiff expects to prove in support of his claim.

(2) A brief statement of what the defendant expects to prove as a defense thereto.

(3) Similar statements as to any counterclaim or cross-claim of a defendant.

(4) Any amendments required of the pleadings.

(5) Any tender of issue in the pleadings that is to be abandoned.

(6) Any stipulation of facts, as to liability or damages, that the attorney is willing to make, or on which he requests an admission.

(7) The details of the damages claimed, or of any other relief sought, as of the date of the pre-trial conference.

(8) The documents and records to be offered in evidence at the trial which will be conceded to be genuine, or as to which a concession is requested.

(9) The names and specialties of experts to be called as witnesses.

(10) Any other pre-trial relief which the court or attorney may request.

In preparing for the pre-trial conference, attorneys are requested to discuss with each other the matters listed herein.

(d) The Conference.

(1) All pre-trial conferences shall be held before the judge in open court or in chambers. The attorneys appearing at the pre-trial conference shall be prepared to discuss the action and shall be authorized to act for their clients. If an attorney for a party fails to appear at a pre-trial conference, the pre-trial judge may act as in the case of a non-appearance for trial.

(2) The matter of a settlement may be discussed at the pre-trial conference, but the discussion shall not be made a part of the court record and shall not be mentioned in the order entered on the pre-trial conference.

(e) Pre-Trial Order. The judge shall make an order (to be drawn and submitted by counsel) which shall recite the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel. The attorneys shall affix their signatures to the order with respect to the stipulations and agreements set forth in the order. The order when entered shall control the subsequent course of the action unless modified by the judge to prevent manifest injustice. The pre-trial order shall cover such of the items in the form of order contained in the Appendix of Forms to these rules as may be appropriate, subject to such additions and modifications as the pre-trial judge may deem advisable.

(f) Continuances. All actions set for pre-trial shall be heard on the date set, unless continued by order of the court for cause shown.

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; but 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 his own name without joining with him 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.

(b) 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. If an infant or incompetent person does not have a duly appointed representative he may sue by his 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.

(c) Partnerships and Other Unincorporated Associations. A partnership or other unincorporated association may sue or be sued in its common name.

Rule 18. Joinder of Claims and Remedies.

(a) Joinder of Claims. The plaintiff in his complaint or in a reply setting forth a counterclaim and the defendant in an answer setting forth a counterclaim may join either as independent or as alternate claims as many claims either legal or equitable or both as he may have against an opposing party. There may be a like joinder of claims when there are multiple

parties if the requirements of Rules 19, 20 and 22 are satisfied. There may be a like joinder of cross-claims or third-party claims if the requirements of Rules 13 and 14 respectively are satisfied.

(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 him, without first having obtained a judgment establishing the claim for money.

Rule 19. Necessary Joinder of Parties.

(a) Necessary Joinder. Subject to the provisions of Rule 23 and of subdivision (b) of this rule, persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants. When a person who should join as a plaintiff refuses to do so, he may be made a defendant or, in proper cases, an involuntary plaintiff.

(b) Effect of Failure to Join. When persons who are not indispensable, but who ought to be made parties if complete relief is to be accorded between those already parties, have not been made parties and are subject to the jurisdiction of the court, the court shall order them summoned to appear in the action. If jurisdiction over them cannot be acquired except by their consent or voluntary appearance, the court in its discretion may proceed in the action without making them parties,

but the judgment rendered therein does not affect the ıts or liabilities of absent persons.

(c) Same - Names of Omitted Persons and Reasons for Non-Joinder to Be Pleaded. In any pleading in which relief is asked, the pleader shall set forth the names, if known to him, of persons who ought to be parties if complete relief is to be accorded between those already parties, but who are not joined, and shall state why they are omitted.

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 of them 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 he asserts no

claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

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.

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 he 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.

Rule 23. Class Actions.

(a) Representation. If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is

(1) joint, or common, or secondary in the sense that the owner of a primary right refuses to enforce that right and a member of the class thereby becomes entitled to enforce it;

(2) several, and the object of the action is the adjudication of claims which do or may affect specific property involved in the action; or

(3) several, and there is a common question of law or fact affecting the several rights and a common relief is sought.

(b) Secondary Action by Shareholders. In an action brought to enforce a secondary right on the part of one or more shareholders in an association, incorporated or unincorporated, because the association refuses to enforce rights which may properly be asserted by it, the complaint shall be verified by oath and shall aver that the plaintiff was a shareholder at the time of the transaction of which he complains or that his share thereafter devolved on him by operation of law. The complaint shall also set forth with particularity the efforts of the plaintiff to secure from the managing directors or trustees and, if necessary, from the shareholders such action as he desires, and the reasons for his failure to obtain such action or the reasons for not making such effort.

(c) Dismissal or Compromise. A class action shall not

be dismissed or compromised without the approval of the court. If the right sought to be enforced is one defined in paragraph (1) of subdivision (a) of this rule notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs. If the right is one defined in paragraphs (2) or (3) of subdivision (a) notice shall be given only if the court requires it.

Rule 24. Intervention.

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (2) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court or an officer thereof.

(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 all parties affected thereby. The motion shall state the grounds 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.

Rule 25. Substitution of Parties.

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court within 2 years after the death may order substitution of the proper parties. If substitution is not so made, the action shall be dismissed as to the deceased party. The motion for substitution may be made by the successors or representatives of the deceased party or by any party and, together with the notice of hearing, 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.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the

surviving plaintiffs or only against the surviving defendants, the action does not abate. The fact of death shall be entered upon the record and the action shall proceed in favor of or against the surviving parties.

(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 his 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. When a public officer is a party to an action and during its pendency dies, resigns or otherwise ceases to hold office, the action may be continued and maintained by or against his successor if it is satisfactorily shown to the court that there is a substantial need for so continuing and maintaining it. Before a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to object. If substitution is not made within a reasonable time, the action may be dismissed as to such public officer.

When an officer of the class described herein sues or is sued as such officer, he may be described as a party by his official title and not by name, subject to the power of the court, upon motion or on its own initiative, to require his name to be

added. Unless his name is so added, no formal order of substitution is necessary.

PART V. DEPOSITIONS AND DISCOVERY

Rule 26. Depositions Pending Action.

(a) When Depositions May Be Taken. Any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the action or for both purposes. After commencement of the action the deposition may be taken without leave of court, except that leave, granted with or without notice, must be obtained if notice of the taking is served by the plaintiff within 20 days after commencement of the action. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. Depositions shall be taken only in accordance with these rules. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) Scope of Examination. Unless otherwise ordered by the court as provided by Rule 30 (b) or (d), the deponent may be examined 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 examining party 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 relevant

facts. It is not ground for objection that the testimony will be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) Examination and Cross-Examination. Examination and cross-examination of deponents may proceed as permitted at the trial under the provisions of Rule 43 (b).

(d) 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, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one 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.

(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 of a public or private corporation, partnership, or association 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:

(i) that the witness is dead; or

(ii) 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

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

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

(v) 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.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced and any party may introduce any other parts.

Substitution of parties does not affect the right to use depositions previously taken; and, when an action in any court of the state has been dismissed 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.

(e) Objections to Admissibility. Subject to the provisions of Rule 32 (c), 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.

(f) Effect of Taking or Using Depositions. A party shall not be deemed to make a person his own witness for any purpose by taking his 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 as described in paragraph (2) of subdivision (d) of this rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

Rule 27. Depositions Before Action or Pending Appeal.

(a) Before Action.

(1) Petition. A person who desires to perpetuate his own testimony or that of another person 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 petitioner and shall show:

(i) 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;

(ii) the subject matter of the expected action and his interest therein;

(iii) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it;

(iv) the names or a description of the persons he expects will be adverse parties and their addresses so far as known; and

(v) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each.

The petition 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 (b) apply.

(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 depositions 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 deposition 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 26 (d).

(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 or[illegible]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 such 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 he 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.

(c) Testimony for Use in Foreign Jurisdictions. When the deposition of any person is to be taken in this state pursuant to the laws of another state, of the United States or of another country, for use in proceedings in such other state, the United States or other country, the court upon motion may order issuance of subpoena in aid of taking such deposition, as provided in Rule 45 (d).

Rule 28. Persons Before Whom Depositions May Be Taken.

(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 so appointed has power to administer oaths and take testimony.

(b) Without the State But Within the United States. Without the state but within the United States, or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(c) In Foreign Countries. In a foreign state or country depositions shall be taken (1) on notice before a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or (2) before such person or officer as may be appointed by commission or under letters rogatory. A commission or letters rogatory shall be issued only when necessary or convenient, on application and notice, and on such terms and with such directions as are just and appropriate. Officers may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed "To the Appropriate Judicial Authority in (here name the country)."

(d) 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.

Rule 29. Stipulations Regarding the Taking of Depositions.

If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions.

Rule 30. Depositions Upon Oral Examination.

(a) Notice of Examination - Time and Place. 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 him or the particular class or group to which he belongs. On motion of any party upon whom the notice is served, the court may for cause shown enlarge or shorten the time.

(b) Orders for the Protection of Parties and Deponents. After notice is served for taking a deposition by oral examination, upon motion seasonably made by any party or by the person to be examined and upon notice and for good cause shown, the court in which the action is pending may make an order that the deposition shall not be taken, or that it may be taken only at some designated time or place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except

the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the court, or that secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; or the court may make any other order which justice requires to protect the party or witness from annoyance, undue expense, embarrassment, or oppression.

(c) Record of Examination - Oath - Objections. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by some one acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or by electronic recording and shall be transcribed unless the parties agree otherwise. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conductof any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Motion to Terminate or Limit Examination. At any time during the taking of the deposition, on motion of any 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 of the district in which the action is pending or the court of the 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 subdivision (b). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court of the district 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. In granting or refusing such order the court may impose upon either party or upon the witness the requirement to pay such costs or expenses as the court may deem reasonable.

(e) Submission to Witness - Changes - Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 32 (d)

the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and Filing by Officer - Copies - Notice of Filing.

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly file it with the court in which the action is pending or send it by registered mail to the clerk thereof for filing.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy 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) Depositions shall not be opened upon filing, unless ordered by the court, or upon request of counsel for either party, but shall not be opened for public inspection except by order of the court.

(5) Depositions shall not be filed by the clerk in the original file folder of the action, but shall be separately filed and noted in the docket of the action.

(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 amount of the reasonable expenses incurred by him and his attorney in so 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 him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he 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 amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.

Rule 31. Depositions of Witnesses Upon Written Interrogatories.

(a) Serving Interrogatories - Notice. A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within 10 days thereafter a party so served may serve cross interrogatories upon the party proposing to take the deposition. Within 5 days thereafter the latter may serve redirect interrogatories upon a party who has served cross interrogatories. Within 3 days after being served with redirect interrogatories, a party may

serve recross interrogatories upon the party proposing to take the deposition.

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all interrogatories 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 interrogatories and to prepare, certify and file or mail the deposition, attaching thereto the copy of the notice and the interrogatories received by him.

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

(d) Orders for the Protection of Parties and Deponents. After the service of interrogatories and prior to the taking of the testimony of the deponent, the court in which the action is pending, on motion promptly made by a party or a deponent, upon notice and good cause shown, may make any order specified in Rule 30 which is appropriate and just or an order that the deposition shall not be taken before the officer designated in the notice or that it shall not be taken except upon oral examination.

Rule 32. Effect of Errors and Irregularities in Depositions.

(a) 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.

(b) 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.

(c) As to Taking of Deposition.

(1) 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.

(2) 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.

(3) Objections to the form of written interrogatories 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 interrogatories and within 3 days after service of the last interrogatories authorized.

(d) 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, indorsed, 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.

Rule 33. Interrogatories to Parties.

Any party may serve upon any adverse party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may be served after commencement of the action and without leave of court, except that, if service is made by the plaintiff within 10 days after such commencement, leave of court granted with or without notice must first be obtained. The interrogatories shall be answered separately and fully in writing under oath. The answers shall be signed by the person making them; and the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories within 15 days after the service of the interrogatories, unless the court, on motion and notice and for good cause shown, enlarges or shortens the time. Within 10 days after service of interrogatories a party may serve written objections thereto together with a notice of hearing the objections at the earliest practicable time. Answers to interrogatories to which objection is made shall be deferred until the objections are determined.

Interrogatories may relate to any matters which can be inquired into under Rule 26 (b), and the answers may be used to the same extent as provided in Rule 26 (d) for the use of the deposition of a party. Interrogatories may be served after a deposition has been taken, and a deposition may be sought after interrogatories have been answered, but the court, on motion of the deponent or the party interrogated, may make such protective order as justice may require. The number of interrogatories or of sets of interrogatories to be served is not limited except as justice requires to protect the party from annoyance, expense, embarrassment, or oppression. The provisions of Rule 30 (b) are applicable for the protection of the party from whom answers to interrogatories are sought under this rule.

The originals of interrogatories and answers thereto shall be filed with the clerk of the court. All documents, photographs, maps or diagrams attached to interrogatories or answers shall likewise be filed with the clerk.

Rule 34. Discovery and Production of Documents and Things for Inspection, Copying, or Photographing.

Upon motion of any party showing good cause therefor and upon notice to all other parties, and subject to the provisions of Rule 30 (b), the court in which an action is pending may -

(1) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain evidence relating to

any of the matters within the scope of the examination permitted by Rule 26 (b) and which are in his possession, custody or control; or

(2) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated object or operation thereon within the scope of the examination permitted by Rule 26 (b).

The order shall specify the time, place, and manner of making the inspection and taking the copies and photographs and may prescribe such terms and conditions as are just.

Rule 35. Physical and Mental Examination of Persons.

(a) Order for Examination. In an action in which the mental or physical condition of a party is in controversy, the court in which the action is pending may order him to submit to a physical or mental examination by a physician. The order may be made only on motion for good cause shown and upon notice to the party to be examined and to all other 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 Findings.

(1) If requested by the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings and conclusions. After such request and delivery the party causing the examination to be made shall be entitled upon request to receive from the party examined a

like report of any examination, previously or thereafter made, of the same mental or physical condition. If the party examined refuses to deliver such report the court on motion and notice may make an order requiring delivery on such terms as are just, and if a physician fails or refuses to make such a report the court may exclude his testimony if offered at the 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 he 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 him in respect of the same mental or physical condition.

Rule 36. Admission of Facts and of Genuineness of Documents.

(a) Request for Admission. After commencement of an action a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth in the request. If a plaintiff desires to serve a request within 10 days after commencement of the action leave of court, granted with or without notice, must be obtained. Copies of the documents shall be served with the request unless copies have already been furnished. Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than 10 days after

service thereof or within such shorter or longer time as the court may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission either (1) a sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part, together with a notice of hearing the objections at the earliest practicable time. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder. If a request is refused because of lack of information or knowledge upon the part of the party to whom the request is directed, he shall also show in his sworn statement that the means of securing the information or knowledge are not reasonably within his power.

(b) Effect of Admission. Any admission made by a party pursuant to such request is for the purpose of the pending action only and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding.

Rule 37. Refusal to Make Discovery - Consequences.

(a) Refusal to Answer. If a party or other deponent refuses to answer any questions propounded upon oral examination, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, he may apply to the court in the judicial district where the deposition is taken for an order compelling an answer. Upon the refusal of a deponent to answer any interrogatory submitted under Rule 31 or upon the refusal of a party to answer any interrogatory submitted under Rule 33, the proponent of the question may on like notice make like application for such an order. If the motion is granted and if the court finds that the refusal was without substantial justification the court shall require the refusing party or deponent and the party or attorney advising the refusal or either of them to pay to the examining party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees. If the motion is denied and if the court finds that the motion was made without substantial justification, the court shall require the examining party or the attorney advising the motion or both of them to pay to the refusing party or witness the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney's fees.

(b) Failure to Comply With Order.

(1) Contempt. If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the court in the judicial district in which the deposition is being taken, the refusal may be consid-

ered a contempt of that court.

(2) Other Consequences. If any party or an officer or managing agent of a party refuses to obey an order made under subdivision (a) of this rule requiring him to answer designated questions, or an order made under Rule 34 to produce any document or other thing for inspection, copying or photographing or to permit it to be done, or to permit entry upon land or other property, or an order made under Rule 35 requiring him to submit to a physical or mental examination, the court may make such orders in regard to the refusal as are just, and among others the following:

(i) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental condition of the party, 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;

(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of physical or mental condition;

(iii) 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;

(iv) In lieu of any of the foregoing orders or in addition thereto, an order directing the arrest of any party or agent of a party for disobeying any of such orders except an order to submit to a physical or mental examination.

(c) Expenses on Refusal to Admit. If a party, after being served with a request under Rule 36 to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof and if the party requesting the admissions thereafter proves the genuineness of any such document or the truth of any such matter of fact, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorney's fees. Unless the court finds that there were good reasons for the denial or that the admissions sought were of no substantial importance, the order shall be made.

(d) Failure of Party to Attend or Serve Answers. If a party or an officer or managing agent of a party wilfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under Rule 33, after proper service of such interrogatories, the court on motion and notice may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party.

Rule 38. Jury Trial of Right.

(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 par-

ties 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 his attorney.

(c) Demand - Specification of Issues. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he 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 him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

Rule 39. Trial by Jury or by the Court.

(a) By Jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. 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 and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative 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 or of its own initiative 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.

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. He 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 - Setting Cases for Trial - Certificate. Cases shall be set for trial upon written motion by any party. The attorney for the moving party shall endorse upon the motion a notice of hearing thereon and his certificate that -

(1) The case is at issue for trial.

(2) All depositions needed to prepare for trial have been taken, and all other discovery procedure deemed necessary has been completed.

(3) All pre-trial conferences desired have been held.

The clerk shall place upon a trial calendar all cases ready for trial on which a party has moved for setting for trial. They shall be listed in the order requested. At the commencement of each motion day, the court shall set for trial such number of cases from the calendar as it deems advisable.

(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) Applications for Orders. Except as otherwise provided in Rule 63, application for any order in an action or proceeding, including any order in regard to appellate proceedings, shall be made to the judge to whom such action or proceeding is assigned. However, if the judge to whom such cause is assigned is not accessible, application for an order may be presented to the presiding judge, or in his absence, to any other available judge within the state, upon good cause shown; and orders may then be signed by the judge to whom such application and showing has been made. This section shall not apply to findings, judgments and orders based upon decisions theretofore announced by a judge, except in the event of the disability of such judge as provided in Rule 63.

(e) Divorce Cases. Unless otherwise ordered upon good cause shown, no divorce action shall be tried or heard on the merits within thirty days of the filing of the complaint.

(f) 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.

(2) Unless otherwise permitted by the court, ap-

plication for the continuance of the trial of the case shall be made to the court at least 5 days before the day 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.

Rule 4. Dismissal of Actions.

(a) Voluntary Dismissal - Effect Thereof.

(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 order of court (i) 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 (ii) 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, 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 him 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.

(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 him. After the plaintiff has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the 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. In an action tried by the court without a jury the court as trier of the facts may then determine them and render judgment against the plaintiff or 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). A dismissal for lack of jurisdiction or for improper venue or for lack of an indispensable party does not operate as an adjudication upon

the merits. Any other dismissal not provided for in this rule and a dismissal under this subdivision operates as an adjudication upon the merits, unless the court in its order for dismissal otherwise specifies.

(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. Actions which have been pending in a court for more than one year without any proceedings having been taken therein may be dismissed as of course, for want of prosecution, by the court or on motion at a call of the calendar. Such cases may also be dismissed for want of prosecution at any time on motion of any party upon notice to other parties.

Rule 42. Consolidation - Separate Trials.

(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.

(b) Separate Trials. The court in furtherance of convenience or to avoid prejudice 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.

Rule 43. Evidence.

(a) Form and Admissibility. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules. The admissibility of evidence shall be governed, except when these rules otherwise provide, by statute and by the principles of the common law as they may be interpreted by the courts of the state in the light of reason and experience. In any case, the statute or common law principle which favors the reception of the evidence governs, and the evidence shall be presented according to the most convenient method prescribed by any of the statutes or common law principles. The competency and privileges of witnesses shall be governed by statute, or in the absence of statute, by such common law principles.

(b) Scope of Examination and Cross-Examination. A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and

interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of his examination in chief.

(c) Record of Excluded Evidence. In an action tried by a jury, if an objection to a question propounded to a witness is sustained by the court, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness. The court may require the offer to be made out of the hearing of the jury. The court may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made and the ruling thereon. In actions tried without a jury the same procedure may be followed, except that the court upon request shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.

(d) Affirmation in Lieu of Oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) Evidence on Motions. 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 oral testimony or depositions. Affidavits need not be authenticated as heretofore required by

section 58-4-1 ACLA 1949.

(f) Divorce Actions - Corroborating Witnesses Not Required. No corroborating witness 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 any pertinent facts in the knowledge of the party tending to corroborate such residence.

Rule 44. Proof of Official Record.

(a) Authentication of Copy. An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country

in which the record is kept, and authenticated by the seal of his office.

(b) Proof of Lack of Record. A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry.

(c) Other Proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any method authorized by any applicable statute or by the rules of evidence at common law.

(d) When Copies to Be Used. Unless otherwise ordered upon good cause shown, the parties will be limited to certified copies of originals in making proof of instruments recorded in the office of the recorder of any recording district in the state, and of instruments forming part of the official files or records of a public office or court in the state other than the court in which the action is pending; provided, that if an original instrument is no longer a part of the records and files of such recorder, public office or court, such original instrument may be used in evidence.

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 the title of

the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) For Production of Documentary Evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, 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.

(c) Service. A subpoena may be served by a peace officer, or by 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 him the fees for one day's attendance and the mileage prescribed by rule. When the subpoena is issued on behalf of the state or an officer or agency thereof, fees and mileage need not be tendered.

(d) Subpoena for Taking Depositions - Place of Examination.

(1) Proof of service of a notice to take a deposition as provided in Rules 30 (a) 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 designated books, papers, documents, or tangible things which constitute or contain evidence relating to any of the 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 subdivision (b) of Rule 30 and subdivision (b) of this Rule 45.

(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 he is served with a subpoena, unless otherwise ordered by the court.

(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 him 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.

Rule 46. 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 he desires the court to take or his objection to the action of the court and his 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 him.

Rule 47. Jurors.

(a) Examination of Jurors. 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.

(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. The additional peremptory challenge may be used only against an alternate juror, and the other peremptory challenges allowed by law shall not be used against the alternates.

Rule 48. 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.

Rule 49. Special Verdicts and Interrogatories.

(a) 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 his right to a trial by jury of the issue so omitted unless before the jury retires he 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.

(b) 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 court shall direct the entry of the appropriate judgment upon the verdict and answers. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict or 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, the court shall not direct the entry of judgment but may

return the jury for further consideration of its answers and verdict or may order a new trial.

Rule 50. Motion for A Directed Verdict and for Judgment.

(a) 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.

(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 moving party may move not later than 10 days after the entry of judgment to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his 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 his 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 reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

Rule 51. Instructions to Jury - Objection.

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury, by excusing the jury or hearing objections in chambers.

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 direct the entry of the appropriate judgment; 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 of 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 entry of 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 a 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.

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 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 his report as security for his 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 his powers and may direct him 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 him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He 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 himself 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

Rule 43 (c) 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 his report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in his 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, he may be punished as 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, he 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 he directs.

(d) Report.

(1) Contents and Filing. The master shall prepare a report upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. He 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 a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

(2) In Non-Jury Actions. In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. 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 action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6 (d). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or 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. His findings upon the issues submitted to him 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 his report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

(6) Report of Magistrate or Deputy Magistrate. Where a magistrate or deputy magistrate has been appointed a standing or special master for any purpose, his 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.

PART VII. JUDGMENT

Rule 54. Judgments - Costs.

(a) Definition - Form - Preparation and Submission. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master or the record of

prior proceedings. The procedure for the preparat and submission of forms of judgments and orders shall be governed by Rule 78.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When multiple claims for relief or multiple parties are involved in an action, 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 less than all of the claims or the rights and liabilities of less 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 judgment by default 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 judgment is entered by default, 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 his 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 his action by the court shall be

governed by Rule 79.

Rule 55. Default.

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.

(b) Judgment by the Clerk. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon the request of the plaintiff and upon affidavit of the amount due shall enter judgment by default for that amount and costs against the defendant, if he has been defaulted for failure to appear and if he is not an infant or incompetent person, and upon the proof required by Rule 73 (c) (2).

(c) Judgment By the Court.

(1) In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default 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 judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. 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, the clerk shall furnish the judge with a memorandum of the default, showing when and against what parties it was entered and the pleadings to which no defense has been made. If any party against whom judgment by default is sought is shown by the record to be an infant or incompetent person, or in the military service of the United States, the clerk shall also furnish the court with 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 judgment by default 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 judgment by default 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.

(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 judgment by default 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 judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54 (c).

(g) Judgment Against the State. No judgment by default shall be entered against the state or an officer or agency thereof unless the claimant establishes his claim or right to relief by evidence satisfactory to the court.

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 his 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 his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing, 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 not later than two days prior to the hearing 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 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.

(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 his pleading, but his 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 he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his 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 ot. party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Rule 57. Declaratory Judgments - Judgments by Confession.

(a) Declaratory Judgments. The procedure for obtaining a declaratory judgment pursuant to statute (Sec. 17 (1) (b), Ch. 50 SLA 1959) 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) Judgments By Confession. Judgments by confession shall be governed by statute.

Rule 58. Entry of Judgment.

Unless the court otherwise directs and subject to the provisions of Rule 54 (b), judgment upon the verdict of a jury shall be entered forthwith by the clerk; but the court shall direct the appropriate judgment to be entered upon a special verdict or upon a general verdict accompanied by answers to interrogatories returned by a jury pursuant to Rule 49. When the court directs that a party recover only money or costs or that all relief be denied, the clerk shall enter judgment forth-

with upon receipt by him of the direction; but when the court directs entry of judgment for other relief, the judge shall promptly settle or approve the form of the judgment and direct that it be entered by the clerk. The notation of a judgment in the civil docket as provided by Rule 74 constitutes the entry of the judgment; and the judgment is not effective before such entry. In all cases the notation of the judgment in the civil docket shall be made at the earliest practicable time. The entry of the judgment shall not be delayed for the taxing of costs, but a blank space may be left in the form of judgment for insertion of costs by the clerk after they have been taxed.

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 open the judgment if one has been entered, 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 entry of 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 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 his agent or an officer within whose charge or knowledge the facts are, and also by the affidavit of his 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 he or they 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, and in the order 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 entry of the judgment.

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.

(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 his 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 judgment, order or proceeding was entered or taken. 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.

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.

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 its entry. 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. When a court has ordered a final judgment on some but not all of the claims presented in the action 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.

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 familiarize himself 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 such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

PART VIII. 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.

Rule 65. Injunctions.

(a) Preliminary - Notice. No preliminary injunction shall be issued without notice to the adverse party.

(b) Temporary Restraining Order - Notice - Hearing - Duration. No temporary restraining order shall be granted without notice to the adverse party unless 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 notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be indorsed 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 he does not do so, the court shall dissolve the temporary restraining order. On 2 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 of an officer or agency thereof.

A surety upon a bond or undertaking under this rule submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His 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 partici-

pation with them who receive actual notice of the order by personal service or otherwise.

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 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.

Rule 67. Deposit in Court.

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 court under this rule shall be deposited and withdrawn in accordance with the provisions of rules governing the administration of the courts.

Rule 68. Offer of Judgment.

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the 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 thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer.

Rule 69. Execution.

Process to enforce a judgment for the payment of money shall be 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 statutes existing at the time the remedy is sought. In aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for taking depositions or in the manner provided by statute.

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.

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, he may enforce obedience to the order by the same process as if he were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party.

Rule 72. Condemnation of Property.

The procedure for the condemnation of property under the power of eminent domain shall be governed by statute and, where no conflict in basic procedure results, by these rules.

PART IX. 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 Saturday afternoons.

(b) Orders by Clerk. The clerk is authorized to sign and enter the following orders 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) Order 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 for 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 his 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 forthwith without further direction from the court:

(1) Judgments on the verdict of a jury in the circumstances specified in Rule 58, unless the court directs otherwise.

(2) Judgments by default 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.

(3) 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 serve a notice of the entry by mail in the manner provided for in Rule 5 upon every party affected thereby who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these rules; but any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or seek review or relieve or authorize the court to relieve a party for failure to appeal or seek review within the time allowed, except as permitted in Rule 7 (a) of the supreme court rules.

Rule 74. Books and Records Kept by Clerk and Entries Therein.

(a) Civil Docket. The clerk shall keep a book known as "civil docket" of such form and style as may be prescribed by the administrative director of courts, and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts and judgments shall be noted chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These notations shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The notation of an order or judgment shall show the date the notation is made. When in an action trial by jury has been properly demanded or ordered the clerk shall enter the word "jury" on the folio assigned to that action.

(b) Civil Judgments and Orders. The clerk shall keep, in such form and manner as the administrative director of courts may prescribe, a correct copy of every final judgment or order affecting title to or lien upon real or personal property, and any other order which the court may direct to be kept.

(c) Indices - Calendars. Suitable indices of the civil docket and of every civil judgment and order referred to in subdivision (b) of this rule shall be kept by the clerk under the

direction of the court. There shall be prepared under the direction of the court calendars of all actions ready for trial, which shall distinguish "jury actions" from "court actions."

(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 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 him 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 and exhibits, heretofore or hereafter filed in any action, shall be returned to the party or person to whom they belong, 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, and exhibits may be withdrawn from the clerk's office by the party or persons to whom the same belong, without the necessity of filing any copies thereof.

(3) If such models, diagrams and exhibits 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 and exhibits 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 his secretary desires to retain any such document in chambers for delivery by such judge or his secretary to the clerk.

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 the judge may direct, or as may be required by order of the court, or as may be requested by any party to the action or proceeding.

(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.

Rule 76. Form of Pleadings and Other Papers - Filing.

(a) Form In General. All pleadings, motions, affidavits, briefs, memoranda, instructions and other papers and documents, including exhibits thereto, presented for filing with the clerk or intended for use of the judge, (1) shall be upon legal size white paper of good quality, of at least sixteen-pound weight, and not onionskin except where ripple finish or other opaque paper is used, in which event the weight shall be at least thirteen-pound; (2) shall be either in original clear and legible typewriting with black ribbon, or in clear and legible printing; and (3) shall be in double-spaced typewriting or printing, except that quotations shall be single-spaced and indented.

(b) Exhibits. All exhibits to pleadings shall be numbered progressively according to the number of the page of the exhibit followed by the number or identification of the exhibit, as, for example, page 1 - Ex. A. All exhibits shall be so permanently attached to the pleadings to which they belong as to be easily accessible and easily readable without detaching them

from the principal document. Exceptions to progressive paging of exhibits and double spacing in exhibits may be permitted by the court where acceptable copies of original documents make it impracticable to comply with such requirements.

(c) Interlineations - One Side of Paper to Be Used. All pleadings and other papers shall be without interlineations unless noted by the court, and shall be printed or written upon only one side of the paper.

(d) Information to Be Placed on First Page. The first page of each pleading, motion, affidavit, brief, memorandum, judgment, order and instructions shall be prepared as follows:

(1) 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 persona, shall be typewritten or printed in the space to the left of center of the paper and beginning at least 1½ inches below the top edge, or the attorney's name, address and telephone number may be printed on the left-hand margin of the paper.

(2) The title of the court shall be centered on the paper and shall commence not less than 1½ inches below the top edge, and in any event not less than 1/2 inch below the name, address and telephone number of the attorney or person appearing in propria persona if this appears at the top of the page as provided in paragraph (1).

(3) A space below the title of the court and to the right of center on the page shall be reserved for the filing marks of the clerk. Below that shall be inserted the file number of the action or proceeding.

(4) Below the title of the court and to the left of center of the page the title of the action or proceeding shall be inserted. In the event all defendants cannot be named on the first page, the names of defendants only may appear on the second page.

(5) Below the title of the court and file number, and either centered or to the right of center of the page, there shall be inserted a brief designation of the nature of the paper and, where relief is sought, the nature thereof.

(6) Names shall be typed beneath signatures to all pleadings and other papers.

(e) Conformed Copies to Be Filed. An unexecuted but conformed copy of all briefs, memoranda and requested instructions shall be furnished for the use of the judge. The original and copy shall be filed with the clerk. He shall note on the original at the time of filing "copy received", and shall deliver the copy to the judge to whom the action or proceeding is assigned. The copy need not be retained as part of the original file.

(f) 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, giving the volume and page where the statute may be found in the official edition.

(g) Reference to Other Parts of Pleading. Where practicable, reference to other portions of the same pleadings or other papers should be made to avoid repetition. In any action brought upon or any proceeding involving serial notes, bonds,

coupons or obligations for the payment of money which are of the same form, tenor and effect, and are issued under the same law, or by the same authority, and differing only in number, date of maturity or amount, it will be sufficient for the plaintiff to set forth in one claim of his complaint one of such notes, bonds, coupons, or obligations, either verbatim or according to legal effect. The remaining notes, bonds, coupons or obligations may be pleaded, in the same or another claim of the complaint, by a general reference or description sufficient to identify them with like effect as if they had been set forth verbatim. Similar practice may be followed in any pleading where any two or more documents of similar form, tenor or effect are set forth. Any such document referred to in any pleading may be set forth either in the body of the pleading or in an exhibit attached thereto.

(h) Compliance With Rule. No paper or document shall be accepted for filing or filed by the clerk which 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.

(i) Use of Original File By Court. At the trial of any issue of law or fact, or upon the hearing of any motion, the original file shall be for the use of the court, except as may appear otherwise necessary.

Rule 77. Motions - Submission and Hearing.

(a) Notice. Where there has been an adverse appearance, there shall be served with every written motion, other than one which may be heard ex parte, a notice of hearing there-

on. A motion which is not accompanied by a notice of hearing shall not be placed on a motion calendar.

(b) Motion Day. The presiding judge in each judicial district shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but any judge, at any time and on such notice if any as he considers reasonable, may make orders for the hearing of motions at times other than on motions days.

(c) Motion Calendar. The clerk shall prepare for the court and counsel sufficient copies of a calendar for each motion day. The calendar shall contain the number and abbreviated title of the action or proceeding, the names of counsel of record, and a brief description of the relief sought by each motion. Except as otherwise provided in these rules, and unless otherwise ordered by the court, each motion requiring notice and hearing which has been on file with the clerk for seven days or more (excluding the day of filing, but including the motion day) shall be placed upon the motion calendar.

(d) Hearing of Motions. Motions shall be called and heard in the order in which they appear on the calendar, unless otherwise ordered by the court. Absence of a party or his counsel at the time for hearing shall not preclude the opposing party or his counsel from submitting the motion when it is called and having it decided by the court. All motions appearing on a calendar and remaining undisposed of at the end of a motion day shall be placed on the calendar for the next motion day, unless set for hearing at a specified date.

(e) Supporting Papers.

(1) The Moving Party. There shall be served with each motion and notice of hearing thereof the following:

(i) Copies of all photographs, affidavits and other documentary evidence which the moving party intends to submit in support of his motion.

(ii) 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.

(2) The Opposing Party. Not less than 2 days prior to the hearing of a motion, the opposing party shall serve the following:

(i) Copies of all photographs, affidavits and other documentary evidence upon which he intends to rely, together with a brief, complete written statement of reasons in opposition to the motion, which shall include a memorandum of points and authorities in support of such statement; or

(ii) A written statement that he will not oppose the motion.

(3) Reply or Supplemental Memoranda. Timely reply or supplemental memoranda will be considered, but hearing of a motion shall not be delayed pending the filing of such memoranda.

(f) Waiver.

(1) By Moving Party. A motion may be considered by the court to have been waived by the moving party in the following circumstances:

(i) At the end of the fourth motion day when a motion has appeared on four consecutive calendars, with the court ready to hear the motion but the moving party not bringing the same on for hearing; or

(ii) When the moving party has failed to comply with subdivision (e) (1) of this rule.

(2) By Opposing Party. When a party opposing a motion fails to comply with the provisions of subdivision (e) (2) of this rule, the court may consider this as a consent to the granting of the motion.

(g) Continuance. If the parties intend to request that the hearing of a motion be continued, they shall give prompt notice to the clerk and to the secretary of the judge before whom the matter is pending, in order that time need not be devoted to an immediate consideration of a motion which may not be considered at the time set for hearing.

(h) Submission Without Oral Hearing. To expedite its business, the court may make provision by order for the submission and determination of motions upon the motions and supporting papers provided by subdivision (e) of this rule, and without oral hearing.

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 serve on each of the other parties all findings of fact, conclusions of

law, judgments and orders. Counsel for each of the parties so served shall promptly endorse on the original of each document either (1) an approval as to form, (2) a disapproval as to form, or (3) an acknowledgement of the date and hour of service.

(b) Objections. Within 5 days after service of any of the documents mentioned in subdivision (a), a party may serve a written detailed statement of objections to any such document and the reasons therefor. If objections are 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) Order Upon Stipulation. When a party desires an order of court pursuant to stipulation, he 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. A stipulation extending time or providing for a continuance shall state the grounds therefor.

(d) Instruments on Which Judgment Entered. In all cases in which a judgment upon a written instrument is entered, such instrument shall be admitted in evidence and marked as an exhibit, and unless the court otherwise orders, it shall be cancelled by marks and writing upon its face. The clerk shall retain the same in the files unless otherwise directed by the court.

(e) Computation of Interest. The party preparing a form of judgment or order shall compute any interest allowed, to and including a specified date. He shall also show in an attached memorandum the amount of daily interest which will accrue if the judgment or order is not signed on the date so specified.

Rule 79. Costs - Taxation and Review.

(a) Cost Bill - Notice - Waiver. Within 10 days after the entry of judgment, a party entitled to costs shall serve on each of the other parties to the action or proceeding a cost bill, together with a notice when application will be made to the clerk to tax costs. The cost bill shall distinctly set forth each item claimed in order that the nature of the charge can be readily understood. It shall be verified by the oath of the party, of his agent or attorney or of the clerk of such attorney, stating that the items are correct, that the services have been actually and necessarily performed, and that the disbursements have been necessarily incurred in the action or proceeding. The notice shall specify the date and hour at which application for the taxing of such costs will be made to the clerk, which date shall be not less than 3 nor more than 7 days from the date of the notice. Failure of a party to serve a cost bill and notice as required by this subdivision shall be construed as a waiver of his right to recover costs.

(b) Items Allowed As Costs. In addition to the items

allowed as costs by law or by these rules, a party entitled to costs shall ordinarily be allowed premiums paid on undertakings, bonds or security stipulations, where the same have been furnished by reason of express requirement of law or on order of the court, or where the same have been necessarily required in order to enable a party to secure some right accorded him in the action or proceeding.

(c) Taxing of Costs By Clerk.

(1) At the time specified in the notice, any party may present his objections to the cost bill, either orally or in writing. He shall specify each item to which objection is made and the ground of the objection. The parties may file affidavits or other documentary evidence to support their respective positions.

(2) The clerk shall thereupon proceed to tax the costs, and shall allow the items specified in the cost bill which are proper. Within 2 days after the costs have been taxed, the clerk shall insert the amount of the same in a blank space left in the judgment or order for that purpose, and shall make a similar insertion in the copies and docket of the judgment or order. The taxing of costs by the clerk shall be final, unless modified on review as provided in this rule.

(d) Review By Court. The action of the clerk in taxing costs may be reviewed by the court at the instance of any party upon motion and notice served not later than 5 days after the costs have

been taxed by the clerk. When notice is served, the motion shall particularly designate each ruling of the clerk to which objection is made. Matters not so designated will not be considered by the court. The motion will be heard upon the same papers, affidavits and other documentary evidence used before the clerk, and upon such memoranda as the court may require.

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) Affidavits of Sureties. Except as to approved corporate sureties, no bond or undertaking will in any case be approved by the court or clerk unless it is accompanied by the affidavits of sureties justifying in the manner and amount required of sureties upon attachment bonds. An attorney, clerk or peace officer will not be accepted as surety on any bond. Bonds of corporate sureties shall be accompanied by affidavits showing the authority of the agent and compliance with all statutory requirements.

(c) Justification of Sureties.

(1) In all cases where sureties on any bond or undertaking shall be required by law or rule or order of the court to justify as to their qualifications, evidence relating to such justification may be taken before the nearest magistrate who shall have authority to approve or reject the same and en-

dorse his findings upon the bond.

(2) Sureties on any such bond or undertaking shall furnish such information as may be required by the judge or other officer approving the same, upon forms provided by the clerk of court for such purpose.

(d) 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 he knows the contents thereof; that he knows the purposes for which it is executed; and that in his 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)"

(e) Enforcement Against Sureties. By entering into a bond or undertaking, the surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of court

as his agent upon whom any papers affecting his liability on the bond may be served. His 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 his 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.

(f) 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 his attorney or his 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 (e) of this rule.

Rule 81. Attorneys.

(a) Who May Practice.

(1) Members of 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 without notice, to appear and participate in a particular action or proceeding in a court of this state. Before such permission may be granted, the applicant must file with the court the following:

(i) His motion showing the name, address and telephone number of a member of the Alaska Bar Association with whom the applicant will be associated, who maintains an office in the judicial district where the action or proceeding is pending and who is authorized to practice in the courts of this state.

(ii) A written consent to the motion, signed by such member of the Alaska Bar Association.

(iii) A certificate of the presiding judge or clerk of the court where he has been admitted to practice, executed not later than 60 days prior to the filing of the motion, showing that he has been so admitted in such court, that he is in good standing therein and that his professional character appears to be good.

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 he is associated.

(3) Authority and Duties of Attorneys. The authority of localcounsel shall be subordinate only in the

event of disagreement. In all other circumstances the authority and duties of local counsel and of the attorney thus permitted to appear in a particular action or proceeding shall be equal and co-extensive, to the end that there may be full amenability to the authority of the court, not only in the preliminary, trial and final stages, but also in the appellate stage of the action or proceeding.

(b) Ex Parte Applications. All motions for ex parte orders must be made by an attorney or in propria persona.

(c) Appearance By Party. Except as otherwise ordered by the court, a party who has appeared by an attorney may not thereafter appear or act in his own behalf in any action or proceeding, unless order of substitution shall have been made by the court after notice to such attorney.

(d) Withdrawal of Attorney. 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:

(1) For good cause shown, upon motion and notice of hearing served on the party not less than 10 days before the time specified for the hearing; or

(2) Where the party has other counsel ready to be substituted for the attorney who wishes to withdraw; or

(3) Where the party expressly consents in open court or writing to the withdrawal of his attorney.

(e) 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.

(f) Examination of Witness - Argument. Unless otherwise permitted by the court, only one attorney on each side may examine or cross-examine a witness, and not more than two attorneys on each side may argue the merits of an action.

(g) Attorney as Witness. If counsel for either party offers himself as a witness on behalf of his client and gives evidence on the merits of the case, he shall not argue the case to the jury, unless by permission of the court.

(h) 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; and no more than one hour on each side for argument on a final hearing or jury trial. Such time may be divided between counsel by agreement.

(i) 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, he shall not be permitted to practice before the court until he is thereafter reinstated according to existing statutes and rules.

Whenever any proceeding for disbarment is filed in the court involving an issue of fact for trial by the court, the presiding judge of the judicial district in which the proceeding is filed may assign such cause for trial to another judge of the same district or a different district.

Rule 82. Attorney's Fees.

(a) Allowance to Prevailing Party as Costs.

(1) Unless the court, in its discretion, otherwise directs, the following schedule of attorney's fees will be adhered to in fixing such fees for the party recovering any money judgment therein, as part of the costs of the action allowed by law:

ATTORNEY'S FEES IN AVERAGE CASES

	Liens		
	Contested	Partly Contested	Non-Contested
First $ 1,000	30%	25%	20%
Next $ 4,000	15%	12.5%	10%
Next $ 5,000	5%	4%	3%
Next $ 5,000	2%	1%	1%
Next $10,000	1%	.5%	.5%
Next $25,000	.5%	.25%	.25%

	Non-Liens		
	Contested	Partly Contested	Non-Contested
First $ 1,000	25%	20%	14%
Next $ 1,000	15%	12.5%	10%
Next $ 1,000	10%	9%	7.5%
Next $ 2,000	5%	3%	1%
Next $10,000	2%	2%	.5%
Next $10,000	1%	1%	.5%
Next $25,000	.5%	.5%	.25%

Should no recovery be had, attorney's fees for the prevailing party may be fixed by the court as a part of the costs of the action, in its discretion, in a reasonable amount.

(2) In quiet title, ejectment, replevin and specific performance actions, fees will be similar to those of liens, subject to the discretion of the court, based upon the value of the property involved.

(3) In contested divorce actions a minimum fee of $325.00 may be allowed, with further allowance in the discretion of the court where a lengthy trial is had or where extraordinary work is done. In uncontested cases a fee of

$225.00 may be allowed.

The allowance of attorney fees by the court in conformance with the foregoing schedule is not to be construed as fixing the fees between attorney and client.

(b) Allowance in Mental Cases. In proceedings under the provisions of the Mental Health Act (Chap. 87, SLA 1957) the attorney appointed to represent the patient shall be allowed and paid a fee of $25.00, unless the judge, in his discretion, orders otherwise. A lay advisor appointed in such proceedings shall be allowed and paid a fee of $10.00, unless the judge, in his discretion, orders otherwise.

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.

Rule 84. 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 by the court.

PART X. GENERAL PROVISIONS

Rule 85. Applicability in General.

(a) Probate - Adoption - Mentally Ill. In probate and adoption proceedings and in proceedings involving the mentally ill these rules are not applicable except to the extent that the practice in such proceedings is not set forth in the statutes of the state, and except that all such proceedings may be made the subject of an order of reference to a master under Rule 53. The term "probate" as used herein includes the administration of decedents' estates, guardian and ward, and dower.

(b) 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.

(c) 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.

(d) 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.

Rule 86. Procedure Not Otherwise Specified - Construction of Statutes.

These rules are designed to provide for the efficient

operation of the courts of the State of Alaska. [illegible]no specific procedure is prescribed by rule or statute, the court may proceed in any lawful manner not inconsistent with these rules, the constitution, and the common law. Where official designations or titles are used or functions prescribed by statutes in force at the time of adoption of these rules, they shall be construed to relate to corresponding state titles, designations and functions existing after the transition of Alaska from the status of a territory to that of a state.

Rule 87. 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 statute shall supersede such statute to the extent of such inconsistency. The statutes designated in Appendix A to these rules are considered superseded by these rules and no longer applicable. The designation in Appendix A is not exclusive, and where there may be a conflict between a statute and a rule, the applicable rule governs to the extent of such conflict.

Rule 88. 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.

Rule 89. Penalties.

For any infraction of these rules, the court may with-

hold 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.

Rule 90. Forms.

The forms contained in the appendix of forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

Rule 91. Title.

These rules may be known and cited as the Rules of Civil Procedure.

Rule 92. 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.

PART XI. DISTRICT MAGISTRATES

Rule 93. Scope of Rules - Construction.

(a) Scope of Rules.

(1) The procedure in civil actions and proceedings before a district magistrate shall be governed by the rules governing the procedure in the superior court to the extent that such rules are applicable.

(2) The following rules are inapplicable in their entirety to proceedings before a district magistrate:

Rule	Title
Rule 27	Depositions Before Action or Pending Appeal.
Rule 57	Declaratory Judgments.
Rule 65	Injunctions.
Rule 66	Receivers.
Rule 70	Judgment for Specific Acts - Vesting Title.
Rule 72	Condemnation of Property.

(3) The following proceedings before a district magistrate shall not be governed by these rules:

(i) Proceedings for establishing the fact of death of any person as prescribed by law (Ch. 89 SLA 1953).

(ii) Proceedings under the Village Incorporation Act of 1957 (Ch. 150 SLA 1957).

(iii) Proceedings concerning minors under the age of 18 years under statutes relating to juvenile courts (Ch. 145 SLA 1957).

(4) These rules are not applicable to proceedings relating to forceable entry and detainer except to the extent that the practice in such proceedings is not set forth in the statutes relating to that subject.

(b) Construction. Where the words "court" or "judge" are used in these rules, they shall be construed to include a district magistrate, and where functions and duties are prescribed for the clerk, they shall be performed by the magistrate or his clerk.

Rule 94. Record of Proceedings.

In actions and proceedings before a district magistrate the provisions for keeping a stenographic or electronic record as required by Rule 75 (a) shall be permissive rather than mandatory.

Rule 95. Notice of Orders or Judgments.

Notice of the entry of an order or judgment shall be given by the magistrate as provided by Rule 73 (d). Lack of notice of the entry by the magistrate does not affect the time to appeal or to petition for review or relieve or authorize the magistrate to relieve a party for failure to appeal or petition for review within the time allowed, except as permitted in Rules 101 and 113.

PART XII. DEPUTY MAGISTRATES

Rule 96. Scope of Rules.

(a) In General. The procedure in civil actions and proceedings before a deputy magistrate shall be governed by the rules governing the procedure in the superior court and before a district magistrate to the extent that such rules are applicable.

(b) Action By District Magistrate. If in any action or proceeding a deputy magistrate finds it impracticable to proceed or finds himself at a disadvantage because of the application of any of such rules, he may hold the action or proceeding in abeyance, without prejudice to the rights of the parties, for further action by the district magistrate.

Rule 97. Pleadings.

(a) Claims for Relief. An action before a deputy magistrate is commenced by filing a claim for relief. If such a claim is based upon a written instrument and the nature and extent of the claim is shown by such instrument, then it is sufficient if the instrument alone is filed with the deputy magistrate. In other cases there must be filed a short and plain written statement showing the nature of the claim for relief.

(b) Defenses. A party defending against a claim may follow the same procedure - by either filing a written instrument which shows the nature and extent of his defense, or by filing a short and plain statement in writing showing the nature of his defense.

(c) Affidavits. If any such written instrument has been lost or destroyed, a party may file an affidavit stating the facts of such loss or destruction and stating what the instrument contained.

(d) Formality Not Required. Formal pleadings and motions are not required.

Rule 98. Summons.

(a) Delivery to Peace Officer for Service. When a claim for relief has been filed, the deputy magistrate shall promptly sign a summons and deliver it to a peace officer or other person appointed to serve it for service on the defendant.

(b) Form. The summons shall state -

(1) That the defendant must appear before the deputy magistrate at a definite time and place to be named in the summons.

(2) That at such time and place the defendant must answer the plaintiff's claim for relief and present whatever defenses that he has.

(3) That if the defendant does not appear at the time and place stated, or if he does not answer the claim for relief or present any defense thereto, that a judgment by default will be given against him for the relief asked for by the plaintiff.

(c) Time of Service. The summons must be served on the defendant at least 5 days before the time that the defendant is required to appear before the deputy magistrate.

(d) Time for Appearance. The defendant shall have one hour after the time stated in the summons in which to appear before the deputy magistrate. If he does not appear within that time, then at the request of the plaintiff the deputy magistrate shall give judgment for the plaintiff for the relief asked for in the claim for relief.

Rule 99. Trial By Jury or By Deputy Magistrate.

(a) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by either (1) serving upon the magistrate and other parties a demand therefor in writing, or (2) by making an oral demand therefor in the presence of the deputy magistrate. If the demand is oral, the deputy magistrate shall promptly make a notation of the same in his docket. A demand for a trial by jury may be made at any time after the commencement of the action and not later than 2 days prior to the day set for trial. If a demand is in writing it may be written upon a pleading of the party, or may be by separate written instrument.

(b) Payment of Fees. The party demanding a trial by jury at the time of demand must pay such fees as may be required by the rules for the administration of the courts.

(c) Waiver. The failure of a party to demand a trial by jury as required by this rule, or to pay all of the fees provided by subdivision (b) of this rule, constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

(d) Trial By Deputy Magistrate. If trial by jury is

waived as herein provided, the action must be tried by the deputy magistrate without a jury, unless the parties stipulate orally or in writing that the action be tried by a jury despite the waiver. If the stipulation is oral, a notation of the same must be made in the deputy magistrate's docket.

(e) Instructions. If an action is tried by a jury, the deputy magistrate shall not instruct the jury other than to define the nature of the action and the issues of fact to be determined by the jury. Instructions may be given orally and do not have to be in writing.

(f) Jurors. The procedure for the selection, summoning and impanelling of jurors shall be as provided by statute (Sec. 68-6-8 ACLA 1949). The procedure for the examination of jurors shall be governed by Rule 47.

Rule 100. Findings - Judgment.

If an action is tried by the deputy magistrate without a jury, it is not necessary that the deputy magistrate make any special findings of fact or conclusions of law. It is sufficient for the deputy magistrate to give judgment generally as the law and evidence might require, setting forth in the judgment the exact relief given. It is not necessary to comply with the provisions of Rule 78.

PART XIII. APPEALS FROM MAGISTRATE COURTS

Rule 101. Appeal: Time - Notice - Cost Bond.

(a) When Taken. The time within which an appeal may be

taken from a judgment of a magistrate court to the superior court shall be 30 days from the date of entry of the judgment appealed from, except that upon a showing of excusable neglect based on a failure of a party to learn of the entry of the judgment the court from which the appeal is taken may, in any action, extend the time for appeal not exceeding 30 days from the expiration of the original time herein prescribed.

(b) Designation of Parties. The party appealing shall be known as the appellant and the adverse party as the appellee.

(c) Notice of Appeal.

(1) Written Notice. A party may appeal from a judgment by filing with the magistrate a notice of appeal in duplicate, with sufficient additional copies for all parties. The notice of appeal shall contain the following:

(i) The title of the action.

(ii) The names of the parties taking the appeal.

(iii) The judgment or part thereof appealed from and the date of its entry.

(iv) The name of the court to which the appeal is taken.

(v) A concise statement of the grounds of appeal.

Notification of the filing of the notice of appeal shall be given by the magistrate by mailing copies thereof to all the parties to the judgment other than the party or parties

taking the appeal, but his failure so to do does not affect the validity of the appeal. The notification to a party shall be given by mailing a copy of the notice of appeal to his attorney of record or, if the party is not represented by an attorney, then to the party at his last known address.

(2) Oral Notice. A written notice of appeal may be dispensed with if at the time the decision is rendered or judgment entered a party gives oral notice of appeal in open court when the other parties to the action are present or represented.

(d) Docket Entries. A notice of appeal, whether in writing or oral, shall be entered in the magistrate's docket at the time the notice is filed or given, as the case may be.

(e) Cost Bond on Appeal. A bond on appeal shall be filed with the magistrate not later than 30 days after entry of the judgment appealed from. The bond shall be in an amount to be fixed by the magistrate. It shall have sufficient surety and shall be conditioned to secure the payment of costs if the appeal is dismissed or the judgment affirmed, or such costs as the superior court may award if the judgment is modified. After a bond on appeal is filed, an appellee may by motion raise objections to the form or amount of the bond or to the sufficiency of the surety which shall be determined by the superior court. If a supersedeas bond is filed, no separate cost bond on appeal is required.

Rule 102. Stay of Proceedings to Enforce Judgment - Supersedeas Bond.

(a) Automatic Stay. Except as to judgments entered on default or by consent or on confession, no execution shall issue upon a judgment of a magistrate court nor shall proceedings be taken for the enforcement of such judgment until the expiration of 2 days after its entry.

(b) Stay Upon Appeal - Supersedeas Bond. When an appeal is taken, the appellant may obtain a stay of proceedings to enforce the judgment by filing a supersedeas bond with the magistrate not later than 30 days after entry of the judgment appealed from. The bond shall be conditioned for the satisfaction in full of any judgment (including interest and costs) which may be given against the appellant by the superior court, or for satisfaction in full of the judgment (including interest and costs) of the magistrate court if the appeal is dismissed.

(c) Proceedings on Stay. When an appeal is taken the magistrate shall enter in the docket whether or not the proceedings to enforce a judgment have been stayed. If the proceedings are stayed and process has been issued to enforce the judgment, the magistrate must recall the same by written notice to the officer holding the process. Thereupon the process must be returned to the magistrate, and all property seized or levied upon by virtue of such process must be released if it has not been sold, and in cases of civil arrest, the person arrested must be released from custody. This subdivision of this rule shall not be construed as making any stay retroactive or as invalidating any proceedings or levies prior to the time the stay becomes effective.

Rule 103. Cost and Supersedeas Bonds: Failure to File - Insufficiency - Application of Rule 80.

(a) Failure to File or Insufficiency of Bond. If a st bond on appeal or supersedeas bond is not filed within 30 ys after entry of the judgment appealed from, or if the bond iled is found insufficient, application for leave to file any ich bond may be made only in the superior court.

(b) Applicability of Rule 80. The provisions of Rule O relating to bonds and undertakings shall be applicable to ost and supersedeas bonds on appeals from a magistrate court.

Rule 104. Record on Appeal.

(a) Contents of Record. After an appeal has been taken, the magistrate shall prepare under his hand and seal and transmit to the clerk of the superior court of the judicial district where the magistrate's court is situated the record on appeal, which shall consist of the following:

(1) The duplicate notice of appeal, if the notice is in writing.

(2) All docket entries.

(3) All pleadings and motions.

(4) All orders, judgments and opinions.

(5) All exhibits received in evidence.

(6) All other original papers relating to the action and which have been filed with the magistrate.

(7) A record of any evidence or proceedings which may have been electronically recorded or stenographically reported.

(b) Time for Filing Record in Superior Court. The record on appeal shall be forwarded by the magistrate to the clerk of the superior court promptly upon the expiration of 30 days from the entry of the judgment appealed from.

(c) Power of Court to Correct or Modify Record. If any difference arises as to whether the record on appeal truly discloses what occurred in the magistrate court, the difference shall be submitted to and settled by the superior court and the record made to conform to it. If anything material to either party is omitted from the record on appeal by error or accident or is misstated therein, the parties by stipulation, or the superior court on motion or of its own initiative may direct that the omission or misstatement shall be corrected, and if necessary that a supplemental record shall be certified and transmitted by the magistrate court.

Rule 105. Supervision By Superior Court - Trial De Novo.

(a) Supervision By Superior Court. The supervision and control of the proceedings on appeal shall be in the superior court from the time the record on appeal is filed with that court. The court may at any time, upon notice, entertain appropriate motions which shall include motions to dismiss the appeal, for directions to the magistrate, or to modify or vacate any order or action of the magistrate in relation to the appeal.

(b) Trial De Novo. At the time the record on appeal is filed with the superior court, the action shall be considered as having been commenced in that court. All further proceedings in such action shall be governed by the rules governing procedure in the superior court, except (1) no summons nor any amended or additional pleadings shall be served unless authorized or required by the court, and (2) a demand for trial by jury as provided by Rule 38 of any issue triable of right by a jury must be served not later than 10 days after the date of filing the record on appeal. The hearing or trial of the action shall be upon the record thus filed and upon such evidence as the parties shall produce in the superior court.

Rule 106. Dismissal of Appeal.

(a) Dismissal By Agreement - Magistrate Court. If the record on appeal has not been filed with the superior court the parties, with the approval of the magistrate, may dismiss the appeal by stipulation filed with the magistrate, or the magistrate may dismiss the appeal upon the motion and notice by the appellant.

(b) Dismissal By Agreement - Superior Court. Whenever the parties shall file with the clerk of the superior court an agreement in writing that an appeal be dismissed, specifying the terms with respect to costs, and shall pay to the clerk of that court any fees that may be due him, the clerk shall enter an order of dismissal of the appeal without further reference to the court.

(c) Dismissal By Appellant. Whenever an appellant shall file with the clerk of the superior court a motion to dismiss an

appeal, with proof of service as prescribed by these rules, and shall tender to the clerk any fees and costs that may be due, the adverse party, within 10 days after service thereof, may file an objection. Within 5 days thereafter the party moving for dismissal may file a reply, after which time the matter shall be presented to the superior court for its determination. If no objection is filed, the clerk shall enter an order of dismissal without further reference to the court.

(d) Dismissal In Other Cases. At any time the superior court may entertain a motion to dismiss an appeal for failure to prosecute the same or for failure to comply with these rules.

(e) Costs. If an appeal is dismissed by order of the superior court, the court may make such order for the payment of costs as it may deem proper.

Rule 107. Hearing Without Trial De Novo.

When the questions presented by an appeal to the superior court can be determined without a trial de novo, the parties may sign a statement of the case waiving a trial de novo, and setting forth the questions for decision by the superior court and how they were decided by the magistrate court. The statement may also contain so many of the facts averred and proved or sought to be proved as are essential to a decision of the questions by the superior court. The statement shall include a copy of the judgment appealed from, a copy of the notice of appeal, and such other papers and documents as the parties may deem appropriate. If the statement conforms to the truth it, together with such additions as the superior court may consider necessary to fully present the questions raised by

the appeal, shall be approved by the superior court as the record on appeal.

Upon consideration of such appeal, the superior court may affirm, modify, vacate, set aside or reverse the judgment of the magistrate court, and may remand the action and direct the entry of such appropriate judgment or order, or require further proceedings to be had, as may be just under the circumstances.

Rule 108. Death of a Party.

(a) Substitution. The death of a party shall not affect any appeal taken or the right to take an appeal, except as limited by subdivision (b) of this rule. The proper representatives of the estate, or in the personalty or realty, of the deceased party, according to the nature of the case, may voluntarily appear and be substituted as parties for the decedent, or substitution may be effected as in the case of death of a party pending an action in the superior court. Thereupon proceedings shall be had as in other cases.

(b) Time. The times specified in these rules for taking an appeal, or for taking any of the further steps to secure a review of the judgment appealed from, shall be extended for the time necessary to enable such representatives to be substituted for the deceased party; provided, that such time shall not extend for more than sixty (60) days after the date of death of such party. If substitution is not effected within such period, the rules relating to the time for taking an appeal, or for taking such further steps to secure review of the judgment appealed from, shall be as fully applicable as in other cases.

PART XIV. SUPPLEMENTARY REMEDIES IN AID OF SUPERIOR COURT JURISDICTION

Rule 109. Petition for Review.

An aggrieved party may petition the superior court for review of any order or decision of a magistrate court or an administrative agency where there is no appeal or other plain, speedy or adequate remedy, and where the magistrate or administrative agency appears to have exercised his or its functions erroneously or to have exceeded his or its jurisdiction, to the injury of some substantial right of such party.

Relief heretofore available by writs of review, certiorari, mandamus, prohibition, and other writs may be obtained by petition for review under the practice prescribed in these rules.

Rule 110. Considerations Governing Review.

A review shall not be a matter of right, but will be granted only:

(1) Where the order or decision sought to be reviewed is of such substance and importance as to justify deviation from the normal appellate procedure by way of appeal and to require the immediate attention of the superior court;

(2) Where the sound policy behind the general rule of requiring appeals to be taken only from final judgments is outweighed by the claim of the individual case that justice demands a present and immediate review of a particular non-appealable order or decision; or

(3) Where the magistrate court or administrative agency has so far departed from the accepted and usual course of

udicial or administrative proceedings, as to call for the superior court's power of supervision and review.

Rule 111. How to Seek Review.

(a) The Petition. A party may seek review of any such order or decision by filing with the superior court a petition which shall show the following:

(1) The order or decision sought to be reviewed, described with convenient certainty.

(2) The errors alleged to have been committed by the magistrate or administrative agency.

(3) The relief sought by the petitioner.

Service of the petition shall be made in conformity with Rule 5 and when filed shall be accompanied by proof of service on all parties.

(b) Cost Bond. There shall be filed with the petition, or at such other time as the court may allow, a cost bond in an amount to be fixed by the superior court. It shall be conditioned to secure the payment of costs if the petition is denied or if the order or decision sought to be reviewed is affirmed, or such costs as the superior court may award if the order or decision is modified. After a cost bond has been filed, a respondent may by motion raise objections to the form or amount of the bond or to the sufficiency of the surety which shall be determined by the superior court. If a supersedeas bond is filed, no separate cost bond is required.

(c) Designation of Parties. The party seeking review

shall be known as the petitioner. All other parties to the proceedings shall be named as respondents.

Rule 112. Order for Filing of Record.

(a) Issuance of Order. At any time after the filing of the petition, the superior court, with or without notice or hearing, may enter an order directed to the magistrate or administrative agency whose order or decision is sought to be reviewed, requiring that there be forwarded to the superior court, within a time specified in such order, the originals or copies of such of the record and proceedings of the magistrate or administrative agency as the court may direct, in order that the same may be reviewed by the superior court.

(b) Service of Order. Certified copies of the order referred to in subdivision (a) shall be served forthwith (1) upon the magistrate or administrative agency in the manner provided for service of summons in Rule 4, and (2) upon each of the parties affected thereby, in the manner provided in Rule 5.

(c) Stay. When a petition for review has been filed, the superior court in its discretion may stay further proceedings by the magistrate or administrative agency and the operation or enforcement of the order or decision sought to be reviewed upon such terms as to bond or otherwise as the court considers proper for the security of the rights of the adverse party.

Rule 113. Time for Seeking Review.

The time within which a petition for review may be filed

ıall be 10 days from the date of the order or decision sought
› be reviewed, except that upon a showing of excusable neglect
ased on a failure of a party to learn of the order or decision
he superior court may extend the time for filing the petition
ıot exceeding 10 days from the expiration of the original time
ıerein prescribed.

Rule 114. Hearing on Review.

A hearing on review shall be on the record unless the superior court, in its discretion, shall direct that the matter be heard wholly or partly on oral testimony or depositions or that other evidence be submitted.

Rule 115. Authority of Superior Court.

Upon consideration of a petition for review, the superior court may affirm, modify, vacate, set aside or reverse any order or decision of a magistrate court or administrative agency, and may remand the action or proceeding and direct the entry of such appropriate judgment or order, or require such further proceedings to be had as may be just under the circumstances.

Rule 116. Applicability of Rules Governing Appeals.

Rules 106 and 108 shall apply to petitions for review.

ORDER ADOPTING RULES

It is hereby ordered:

That the foregoing rules, numbered 1 to 116, inclusive, be and the same are hereby adopted as the Rules of Civil Procedure governing the superior court and the magistrate courts of the State of Alaska effective at a date to be determined by further order of the court.

Dated at Juneau, Alaska, this 9th day of October, 1959.

/s/ Buell A. Nesbett
Chief Justice

/s/ Walter H. Hodge
Associate Justice

/s/ John H. Dimond
Associate Justice

APPENDIX A

STATUTES CONSIDERED SUPERSEDED BY THE RULES OF CIVIL PROCEDURE

(All references are to the Alaska Compiled Laws Annotated 1949, and the 1957 Cumulative Supplement)

Secs. 53-3-1 through 53-3-7
Secs. 53-3-10 and 53-3-11
Sec. 54-2-2
Secs. 54-3-1 and 54-3-2
Sec. 54-4-4
Secs. 54-6-5 and 54-6-6
Sec. 55-1-1
Sec. 55-1-1a Cum. Supp.
Secs. 55-1-2 and 55-1-3
Sec. 55-2-13
Sec. 55-3-1
Sec. 55-3-3
Sec. 55-3-5
Sec. 55-3-7
Sec. 55-3-11
Secs. 55-3-15 through 55-3-18
Sec. 55-4-1
Secs. 55-4-3 through 55-4-7
Sec. 55-4-13
Secs. 55-5-1 through 55-5-8
Secs. 55-5-16 through 55-5-19
Secs. 55-5-31 and 55-5-32
Secs. 55-5-41 through 55-5-46
Secs. 55-5-51 through 55-5-55
Secs. 55-5-61 through 55-5-64
Secs. 55-5-71 through 55-5-82
Secs. 55-6-51 through 55-6-53
Secs. 55-6-55 and 55-6-56
Secs. 55-7-1 through 55-7-10
Sec. 55-7-81
Sec. 55-7-85
Sec. 55-7-87
Secs. 55-7-91 through 55-7-93
Secs. 55-7-101 through 55-7-109
Secs. 55-7-121 through 55-7-127
Secs. 55-7-133 through 55-7-136
Secs. 55-8-1 through 55-8-5
Secs. 55-9-1 through 55-9-3
Sec. 55-9-11
Sec. 55-9-13
Sec. 55-9-41
Secs. 55-9-44 through 55-9-49
Secs. 55-9-64 and 55-9-65
Sec. 55-9-71
Secs. 55-10-1 through 55-10-7
Sec. 55-11-1
Sec. 55-11-3
Secs. 55-11-11 and 55-11-12
Secs. 55-11-21 through 55-11-24
Secs. 55-11-31 through 55-11-39
Secs. 55-11-58 through 55-11-61
Sec. 55-11-66
Sec. 55-11-71
Sec. 56-2-3
Sec. 56-4-1
Secs. 57-2-1 through 57-2-10
Secs. 57-5-1 through 57-5-3
Sec. 58-1-3
Secs. 58-3-1 through 58-3-4
Secs. 58-3-6 and 58-3-7
Sec. 58-4-1
Secs. 58-4-11 through 58-4-13
Secs. 58-4-21 through 58-4-27
Secs. 58-4-31 through 58-4-40
Sec. 58-7-7
Secs. 58-8-1 through 58-8-8
Sec. 67-1-3
Sec. 68-1-1
Secs. 68-3-1 through 68-3-3
Secs. 68-4-1 through 68-4-6
Secs. 68-5-1 and 68-5-2
Sec. 68-6-3
Secs. 68-6-5 through 68-6-7
Sec. 68-7-1
Secs. 68-7-16 through 68-7-18
Secs. 68-9-1 through 68-9-15

APPENDIX OF FORMS

INTRODUCTORY STATEMENT

1. The following forms are intended for illustration only. They are limited in number. No attempt is made to furnish a manual of forms. With the exception of Forms 2, 3 and 29, each form assumes the action to be brought in the superior court. As indicated in footnote 1 of Form 1, the number of the judicial district should be indicated in the caption.

2. Forms 2 and 3 assume the action to be brought before a district magistrate and a deputy magistrate, respectively. Whether the action is brought before a district magistrate or a deputy magistrate, in each case the first line in the caption should state "District Magistrate Court for the State of Alaska." As indicated in Form 3, when an action is brought before a deputy magistrate, there should be indicated not only the number of the judicial district, but also the city, town or village where the office of the deputy magistrate is located.

3. In the caption of the summons and in the caption of the complaint all parties must be named, but in other pleadings and papers it is sufficient to state the name of the first party on either side, with an appropriate indication of other parties. See Rule 4 (b), 7 (b)(2) and 10(a). For more specific provisions relating to the form of pleadings and other papers see Rule 76.

4. Each pleading, motion and other paper is to be signed in his individual name by at least one attorney of record (Rule 11). The attorney's name is to be followed by his address as indicated in the forms. For additional requirements relating to the name, address and telephone number of attorneys, see Rule 76(d)(1).

5. If a party is not represented by an attorney, the signature and address of the party are required in place of those of the attorney.

Form 1

Summons (Superior Court)

SUPERIOR COURT FOR THE STATE OF ALASKA

1 _____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant.

Civil Action No. _____

SUMMONS

To the above-named Defendant:

You are hereby summoned and required to serve upon ____ _____, plaintiff's attorney, whose address is _____, an answer to the complaint which is herewith served upon you within 20[2] days after the service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

_____
Clerk of Court

By _____
Deputy

(Seal of Superior Court)

Dated: _____.

(This summons is issued pursuant to Rule 4 of the Rules of Civil Procedure)

N O T E S

1 Insert number of judicial district where action filed, viz., "First", "Second", "Third" or "Fourth".

2 If the state or an office or agency thereof is a defendant, the time to be inserted as to it is 40 days.

Form 2

Summons (Magistrate Court - District Magistrate)

DISTRICT MAGISTRATE COURT FOR THE STATE OF ALASKA

1 _____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant.

Civil Action No. _____

SUMMONS

To the above-named Defendant:

You are hereby summoned and required to serve upon ____ _____, plaintiff's attorney, whose address is _____, an answer to the complaint which is herewith served upon you within 20[2] days after the service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

_____
District Magistrate

(Seal of District Magistrate Court)

Dated: _____.

N O T E S

1 Insert number of judicial district where action filed, viz., "First", "Second", "Third" or "Fourth".

2 If the state or an office or agency thereof is a defendant, the time to be inserted as to it is 40 days.

Summons (Magistrate Court - Deputy Magistrate)[1]

DISTRICT MAGISTRATE COURT FOR THE STATE OF ALASKA

2 _____ JUDICIAL DISTRICT, AT _____3_____

_____,
Plaintiff,

vs.

Civil Action No. _____

_____,
Defendant.

SUMMONS

To the above-named Defendant:

You are hereby summoned and required to appear before the undersigned Deputy Magistrate at 4 _____, on _____, 19___, at the hour of _____M., and answer and present any defense you might have to a claim for relief against you which has been filed by the above-named plaintiff. The plaintiff asks for relief against you as follows: 5 _____

_____

_____

If you fail to appear at the time stated herein, a judgment by default will be given against you for the relief asked for in plaintiff's claim.

_____
Deputy Magistrate

(Seal of District Magistrate Court)

Dated: _____.

(This summons is issued pursuant to Rule 98 of the Rules of Civil Procedure)

N O T E S

1 This form of summons is sufficient under the informal procedure allowed in actions before a deputy magistrate as provided by Rules 97 and 98. However, a plaintiff may, if he so chooses, file a formal complaint in an action before a deputy magistrate, and use the form of summons for issuance by a district magistrate (Form 2), with a change of designation of the person who signs the summons from "District Magistrate" to "Deputy Magistrate."

2 Insert number of Judicial District, such as, "First", "Second", "Third" or "Fourth".

3 Insert name of city, town or village where magistrate's office is located.

4 Insert address of office of deputy magistrate.

5 Insert brief description of plaintiff's claim, such as: "For the sum of $_____ for groceries sold by plaintiff to you between approximately _____, 19___ and _____, 19____."

Form 4

Complaint On A Promissory Note

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant.

Civil Action No. _____

COMPLAINT ON A PROMISSORY NOTE

1. On or about _____, 19___, defendant executed and delivered to plaintiff a promissory note /In the following words and figures: (here set out the note verbatim)/; /a copy of which is hereto annexed as Exhibit A/; /whereby defendant promised to pay to plaintiff or order on _____, 19___, the sum of _____ dollars with interest thereon at the rate of _____ percent per annum/.

2. Defendant owes to plaintiff the amount of said note and interest.

Wherefore, plaintiff demands judgment against defendant for the sum of _____dollars, interest and costs.

Dated: _____.

_____
Attorney for Plaintiff

Address: _____

Form 4

NOTES

The pleader may use the material in one of the three sets of brackets. His choice will depend upon whether he desires to plead the document verbatim, or by exhibit, or according to its legal effect.

Under the rules free joinder of claims is permitted. See Rules 8 (e) and 18. Consequently the claims set forth in each and all of the following forms may be joined with this complaint or with each other. Ordinarily each claim should be stated in a separate division of the complaint, and the divisions should be designated as counts successively numbered. In particular the rules permit alternative and inconsistent pleading. See Form 11.

Form 5

Complaint On An Account

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant.

Civil Action No. _____

COMPLAINT ON AN ACCOUNT

Defendant owes plaintiff _____ dollars according to the account hereto annexed as Exhibit A.

Wherefore, plaintiff demands judgment against defendant for the sum of _____ dollars, interest and costs.

Dated: _____.

_____
Attorney for Plaintiff

Address: _____

Form 6

Complaint for Goods Sold and Delivered

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant.

Civil Action No. _____

COMPLAINT FOR GOODS SOLD AND DELIVERED

Defendant owes plaintiff _____ dollars for goods sold and delivered by plaintiff to defendant between _____, 19____ and _____, 19____.

Wherefore, plaintiff demands judgment against defendant for the sum of _____ dollars, interest and costs.

Dated: _____.

_____
Attorney for Plaintiff

Address: _____

N O T E

This form may be used where the action is for an agreed price or for the reasonable value of the goods.

Form 7

Complaint for Money Lent

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant.

Civil Action No. _____
COMPLAINT FOR MONEY LENT

Defendant owes plaintiff _____ dollars for money lent by plaintiff to defendant on _____, 19____.

Wherefore, plaintiff demands judgment against defendant for the sum of _____ dollars, interest and costs.

Dated: _____.

_____
Attorney for Plaintiff

Address: _____

Form 8

Complaint for Money Paid By Mistake

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant.

Civil Action No. _____
COMPLAINT FOR MONEY PAID BY MISTAKE

Defendant owes plaintiff _____ dollars for money paid by plaintiff to defendant by mistake on _____, 19____, under the following circumstances: (here state the circumstances with particularity - see Rule 9 (b)).

Wherefore, plaintiff demands judgment against defendant for the sum of _____ dollars, interest and costs.

Dated: _____.

_____
Attorney for Plaintiff

Address: _____

Form 9

Complaint for Money Had and Received

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant.

Civil Action No. _____

COMPLAINT FOR MONEY HAD AND RECEIVED

Defendant owes plaintiff _____ dollars for money had and received from 1 _____ on _____, 19___, to be paid by defendant to plaintiff.

Wherefore, plaintiff demands judgment against defendant for the sum of _____ dollars, interest and costs.

Dated: _____,

_____
Attorney for Plaintiff

Address: _____

N O T E

1 Insert name of person from whom defendant received the money.

Form 10

Complaint for Negligence

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant.

Civil Action No. _____

COMPLAINT FOR NEGLIGENCE

1. On _____, 19___, at 1 _____, defendant negligently drove a motor vehicle against plaintiff who was then crossing said street.

2. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore, plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

Dated: _____.

_____
Attorney for Plaintiff

Address: _____

N O T E

1 Insert description of place where accident occurred, such as the name of the street or highway and its location by city, town, village or otherwise.

Form 11

Complaint for Negligence Where Plaintiff Is Unable to Determine Definitely Whether One or the Other of Two Persons is Responsible or Whether Both Are Responsible and Where His Evidence May Justify a Finding of Wilfulness or of Recklessness or of Negligence.

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendants.

Civil Action No. _____

COMPLAINT FOR NEGLIGENCE

1. On _____, 19___, at _____ _____, defendant X or defendant Y, or both defendants X and Y, wilfully or recklessly or negligently drove or caused to be driven a motor vehicle against plaintiff who was then crossing said street.

2. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore, plaintiff demands judgment against X or against Y or against both in the sum of _____ _____ dollars and costs.

Dated: _____.

_____
Attorney for Plaintiff

Address: _____

Form 12

Complaint for Conversion

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant.

Civil Action No. _____

COMPLAINT FOR CONVERSION

On or about _____, 19___, defendant converted to his own use [1] _____ _____ of the value of _____ _____ dollars, the property of plaintiff.

Wherefore, plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.

Dated: _____.

_____
Attorney for Plaintiff

Address: _____

N O T E

[1] Insert here a description sufficient to identify the property converted.

Form 13

Complaint for Specific Performance of Contract to Convey Land.

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,

vs.

_____,
Defendant.

Civil Action No. _____

COMPLAINT FOR SPECIFIC PERFORMANCE

1. On or about _____, 19___, plaintiff and defendant entered into an agreement in writing a copy of which is hereto annexed as Exhibit A.

2. In accord with the provisions of said agreement plaintiff tendered to defendant the purchase price and requested a conveyance of the land, but defendant refused to accept the tender and refused to make the conveyance.

3. Plaintiff now offers to pay the purchase price.

Wherefore, plaintiff demands (1) that defendant be required specifically to perform said agreement, (2) damages in the sum of _____ dollars, and (3) that if specific performance is not granted plaintiff have judgment against defendant in the sum of _____ _____ dollars.

Dated: _____.

_____
Attorney for Plaintiff

Address: _____

Form 13

N O T E

Here, as in Form 4, plaintiff may set forth the contract verbatim in the complaint or plead it, as indicated, by exhibit, or plead it according to its legal effect. Furthermore, plaintiff may seek legal or equitable relief or both.

Form 14

Complaint on Claim for Debt and to Set Aside Fraudulent Conveyance Under Rule 18 (b).

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant.

Civil Action No. _____

COMPLAINT FOR DEBT AND TO SET ASIDE FRAUDULENT CONVEYANCE

1. Defendant X on or about _____, 19____ executed and delivered to plaintiff a promissory note /in the following words and figures: (here set out the note verbatim)/; /a copy of which is hereto annexed as Exhibit A/; /whereby defendant X promised to pay to plaintiff or order on _____, 19___, the sum of _____ dollars, with interest thereon at the rate of _____ percent per annum/.

2. Defendant X owes to plaintiff the amount of said note and interest.

3. Defendant X on or about _____, 19___, conveyed all his property, real and personal (or specify and describe particular property) to defendant Y for the purpose of defrauding plaintiff and hindering and delaying the collection of the indebtedness evidenced by the note above referred to.

Wherefore, plaintiff demands:

(1) That plaintiff have judgment against defendant X for _____ dollars and interest; (2) that the aforesaid conveyance to defendant Y be declared

void and judgment herein be declared a lien on said property; and (3) that plaintiff have judgment against the defendants for costs.

Dated: _____.

_____
Attorney for Plaintiff

Address: _____

Complaint for Interpleader and Declaratory Relief

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,

Plaintiff,

vs.

_____,

Defendant.

Civil Action No. _____

COMPLAINT FOR INTERPLEADER AND DECLARATORY RELIEF

1. On or about _____, 19___, plaintiff issued to A. B. a policy of life insurance whereby plaintiff promised to pay to C. D. as beneficiary, the sum of _____ _____ dollars upon the death of A. B. The policy required the payment by A. B. of a stipulated premium on _____, 19___, and annually thereafter as a condition precedent to its continuance in force.

2. No part of the premium due on _____, 19___, was ever paid and the policy ceased to have any force or effect on _____, 19___.

3. Thereafter, on _____, 19___, A. B. and C. D. died as a result of a collision between a truck and the automobile in which A. B. and C. D. were riding.

4. Defendant E. F. is the duly appointed and acting executor of the will of A. B.; defendant G. H. is the duly appointed and acting executor of the will of C. D.; and defendant I. K. claims to have been duly designated as beneficiary of said policy in place of C. D.

5. Each of the defendants, E. F., G. H. and I. K. is

claiming that the above mentioned policy was in full force and effect at the time of the death of A. B.; each of them is claiming to be the only person entitled to receive payment of the amount of the policy and has made demand for payment thereof.

6. By reason of these conflicting claims of the defendants, plaintiff is in great doubt as to which defendant is entitled to be paid the amount of the policy, if it was in force at the death of A. B.

Wherefore, plaintiff demands that the court adjudge:

(1) That none of the defendants is entitled to recover from plaintiff the amount of said policy or any part thereof.

(2) That each of the defendants be restrained from instituting any action against plaintiff for the recovery of the amount of said policy or any part thereof.

(3) That, if the court shall determine that said policy was in force at the death of A. B., the defendants be required to interplead and settle between themselves their rights to the money due under said policy, and that plaintiff be discharged from all liability in the premises except to the person whom the court shall adjudge entitled to the amount of said policy.

(4) That plaintiff recover its costs.

Dated _____.

_____

Attorney for Plaintiff

Address: _____

Form 16

Motion to Dismiss Under Rule 12 (b) Presenting Defenses of Failure to State A Claim, of Lack of Service of Process, and of Improper Venue.

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant.

Civil Action No. _____

MOTION TO DISMISS ACTION

The defendant moves the court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

2. To dismiss the action or in lieu thereof to void the return of service of summons on the ground that the defendant has not been properly served with process in this action, all of which more clearly appears in the affidavits of _____ and _____, hereto annexed as Exhibit A and Exhibit B respectively.

3. To dismiss the action on the ground that it has been filed in the wrong judicial district because it involves the enforcement of a lien upon real property situated in another judicial district.

Dated: _____.

_____
Attorney for Defendant

Address: _____

Form 16

NOTICE OF MOTION

To: _____
Attorney for Plaintiff.

[1] _____

Please take notice that the undersigned will bring the above motion to dismiss on for hearing before this court at [2] _____, on the _____ day of _____, 19__, at _____M., or as soon thereafter as counsel can be heard.

_____
Attorney for Defendant

Address: _____

N O T E S

[1] Insert address of plaintiff's attorney.

[2] Insert address and location of courtroom, such as: "Room _____, Federal and Post Office Building, Anchorage, Alaska."

The above motion and notice of motion may be combined and denominated Notice of Motion. See Rule 7 (b).

Form 17

Answer Presenting Defenses Under Rule 12 (b)

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant.

Civil Action No. _____

ANSWER TO COMPLAINT

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

If defendant is indebted to plaintiff as alleged in the complaint, he is indebted to plaintiff jointly with X. X is alive; is a resident of the State of Alaska, and is subject to the jurisdiction of this court as to service of process; and has not been made a party.

Third Defense

1. Defendant admits the allegations contained in paragraphs _____ and _____ of the complaint.

2. Defendant alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph _____ of the complaint.

3. Defendant denies each and every other allegation contained in the complaint.

Fourth Defense

[illegible] set forth in the complaint did not

accrue within _____ years next before the commencement of this action.

Counterclaim

(Here set forth any claim as a counterclaim in the manner in which a claim is pleaded in a complaint.)

Cross-Claim Against Defendant Y

(Here set forth the claim constituting a cross-claim against defendant Y in the manner in which a claim is pleaded in a complaint.)

Dated: _____.

_____
Attorney for Defendant
[1]

N O T E S

[1] Insert name of defendant on whose behalf the answer is filed.

This form contains examples of certain defenses provided for in Rule 12 (b). The first defense challenges the legal sufficiency of the complaint, and is a substitute for a general demurrer or a motion to dismiss.

The second defense embodies the old plea in abatement; the decision thereon, however, may well provide under Rules 19 and 21 for the citing in of the party rather than an abatement of the action.

The third defense is an answer on the merits.

The fourth defense is one of the affirmative defenses provided for in Rule 8 (c).

The answer also includes a counterclaim and a cross-claim.

Answer to Complaint Set Forth in Form 9, With Counterclaim For Interpleader

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant.

Civil Action No. ____

ANSWER TO COMPLAINT AND COUNTERCLAIM

Defense

Defendant denies the allegations stated in the complaint to the extent set forth in the counterclaim herein.

Counterclaim for Interpleader

1. Defendant received the sum of _____ dollars as a deposit from X.

2. Plaintiff has demanded the payment of such deposit to him by virtue of an assignment of it which he claims to have received from X.

3. X has notified the defendant that he claims such deposit, that the purported assignment is not valid, and that he holds the defendant responsible for the deposit.

Wherefore, defendant demands:

(1) That the court order X to be made a party defendant to respond to the complaint and to this counterclaim.[1]

(2) That the court order the plaintiff and X to interplead their respective claims.

(3) That the court adjudge whether the plaintiff or X is entitled to the sum of money.

(4) That the court discharge defendant from all liability in the premises except to the person it shall adjudge entitled to the sum of money.

(5) That the court award to the defendant its costs and attorney's fees.

Dated: _____.

_____
Attorney for Defendant

Address: _____

N O T E

[1] Rule 13 (h) provides for the court ordering parties to a counterclaim, but who are not parties to the original action, to be brought in as defendants.

Motion to Bring In Third-Party Defendant

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant.

Civil Action No. _____

MOTION TO BRING IN THIRD-PARTY DEFENDANT

Defendant moves for leave to make X a party to this action and that there be served upon him summons and third-party complaint as set forth in Exhibit A hereto attached.

Dated: _____.

_____
Attorney for Defendant

Address: _____

NOTICE OF MOTION

(Contents the same as in Form 16. No notice is necessary if the motion is made before the moving defendant has served his answer. See Rule 14 (a))

Form 19

EXHIBIT A

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant and
third-party Plaintiff,
vs.
_____,
Third-party Defendant.

Civil Action No. _____

S U M M O N S

To the above-named Third-Party Defendant:

You are hereby summoned and required to serve upon _____, plaintiff's attorney, whose address is _____, and upon _____, who is attorney for _____, defendant and third-party plaintiff, and whose address is _____, an answer to the third-party complaint which is herewith served upon you and an answer to the complaint of the plaintiff, a copy of which is herewith served upon you, within 20 days after the service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third-party complaint.

(Seal of Superior Court)

_____
Clerk of Court

Dated: _____. By _____
Deputy

Exhibit A - p. 1

Form 19

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant and
Third-party Plaintiff,
vs.
_____,
Third-party Defendant.

Civil Action No. _____

THIRD-PARTY COMPLAINT

1. Plaintiff _____ has filed against defendant _____ a complaint, a copy of which is hereto attached as "Exhibit C".

2. (Here state the grounds upon which the defendant and third-party plaintiff is entitled to recover from the third-party defendant all or part of what plaintiff may recover from the defendant and third-party plaintiff.)

Wherefore, plaintiff demands judgment against third-party defendant _____ for all sums that may be adjudged against defendant _____ in favor of plaintiff.

Dated: _____.

_____
Attorney for Defendant and Third-Party Plaintiff.

Address: _____

Form 20

Motion to Intervene As A Defendant Under Rule 24

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant,
_____,
Applicant for Intervention.

Civil Action No. _____

MOTION TO INTERVENE AS A DEFENDANT

_____ moves for leave to intervene as a defendant in this action, in order to assert the defenses set forth in his proposed answer, of which a copy is hereto attached, on the grounds [1] _____ and has a defense to plaintiff's claim presenting both questions of law and of fact which are common to the main action.[2]

Dated: _____.

_____
Attorney for _____,
Applicant for Intervention.

Address: _____

N O T E S

1 State facts upon which applicant bases his right to intervene.

2 For other grounds of intervention, either of right or in the discretion of the court, see Rule 24 (a) and (b).

NOTICE OF MOTION

(Contents the same as in Form 16.)

Form 21

Intervenor's Answer

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant,
_____,
Intervenor.

Civil Action No. _____

INTERVENER'S ANSWER

First Defense

Intervenor admits the allegations stated in paragraphs _____ and _____ of the complaint; denies the allegations in paragraph _____; and denies the allegations in paragraph _____ insofar as I _____.

Second Defense

(Insert other defenses that intervenor may have, such as in Form 17.)

Dated: _____.

_____
Attorney for _____,
Intervenor.

Address: _____

NOTES

[1] Insert appropriate wording where the intervenor intends to deny only a part or a qualification of the averment contained in this paragraph of the complaint. See Rule 8 (b).

Form 22

Motion for Production of Documents, Etc., Under Rule 34

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant.

Civil Action No. _____

MOTION FOR PRODUCTION UNDER RULE 34

Plaintiff moves the court for an order requiring defendant:

1. To produce and permit plaintiff to inspect and to copy each of the following documents:

(Here list the documents and describe each of them).

2. To produce and permit plaintiff to inspect and to photograph each of the following objects:

(Here list the objects and describe each of them).

3. To permit plaintiff to enter (here describe property to be entered) and to inspect and to photograph (here describe the portion of the real property and the objects to be inspected and photographed).

Defendant has the possession, custody, or control of each of the foregoing documents and objects and of the above mentioned real estate. Each of them constitutes or contains evidence relevant and material to a matter involved in this action, as is more fully shown in Exhibit A hereto attached.

Dated: _____.

_____
Attorney for Plaintiff.

Form 22

Address: _____

NOTICE OF MOTION

(Contents the same as in Form 16)

EXHIBIT A

STATE OF ALASKA)
_____ JUDICIAL DISTRICT) ss.

_____, being first duly sworn upon oath, deposes and says:

(1) (Here set forth all that plaintiff knows which shows that defendant has the papers or objects in his possession or control.)

(2) (Here set forth all that plaintiff knows which shows that each of the above mentioned items is relevant to some issue in the action.)

_____

Subscribed and sworn to before me this _____ day of _____, 19____.

_____
Notary Public for Alaska. My commission expires:

Form 23

Request for Admission Under Rule 36

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant.

Civil Action No. _____

REQUEST FOR ADMISSION UNDER RULE 36

Plaintiff requests defendant, within _____ days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, exhibited with this request, is genuine.

(Here list the documents and describe each document.)

2. That each of the following statements is true.

(Here list the statements).

Dated: _____.

_____
Attorney for Plaintiff

Address: _____

N O T E

Under Rule 36 the time limit within which to comply with the request must be fixed in the request, and may extend for any length of time desired not less than 10 days after service thereof or within such shorter or longer time as the court may allow on motion and notice.

Allegation of Reason For Omitting Party

When it is necessary, under Rule 19 (c), for the pleader to set forth in his pleading the names of persons who ought to be made parties, but who are not so made, there should be an allegation such as the one set out below:

_____ named in this complaint is not made a party to this action (because he is not subject to the jurisdiction of this court); (because he cannot be made a party to this action without depriving this court of jurisdiction).

N O T E

Use either of the material in the first set of parentheses or that in the second, as the case requires.

Form 25

Pre-Trial Order

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant.

Civil Action No. _____

PRE-TRIAL ORDER

A pre-trial conference was held in the above entitled cause before _____, Judge, on the _____ day of _____, 19___. _____ appeared as counsel for plaintiff; _____,as counsel for defendant.

(1) The following jurisdictional questions were raised and disposed of as hereinafter indicated: (Set out)

(2) The following disposition was made of pending motions or other similar matters preliminary to trial: (set out)

(3) The case was ordered set down on the (non-jury) (jury) calendar.

(4) In general, the plaintiff claims: (Set out)

(5) In general, the defendant claims: (Set out)

(6) The following facts are established by the pleadings or are established by the stipulations or admissions of counsel: (Set out)

(7) The contested issues of fact are: (Set out)

(8) The contested issues of law are: (Set out)

(9) The following exhibits were marked for identification:

Plaintiff's exhibits Nos. (List)

Defendant's exhibits Nos. (List)

After an exhibit has been produced and marked for identification, opposing counsel will be called upon to indicate whether: (a) the exhibit may be admitted in evidence without objection; (b) the identity and authenticity of the exhibit is admitted, but the right to object on the grounds of competency, relevancy and materiality is reserved; or (c) the right to object to the exhibit on all grounds is reserved and an appropriate notation will be made in the pre-trial order.

(10) The following possible instructions to the jury were suggested: (Set out)

(11) The following amendments of the pleadings were allowed: (Set out)

(12) The following additional matters to aid in the disposition of the action were determined: (Set out)

(13) The probable length of the trial of this case is _____ days. (The trial was set for _____.) (No definite setting was made but it is estimated that it will be reached for trial about _____.)

It is hereby ordered that the foregoing constitutes the pre-trial order in the above entitled cause, that it supplements the pleadings, which are to be considered as amended to conform hereto, and that said pre-trial order shall not be amended during the trial except by consent, or by order of the court to prevent manifest injustice.

Dated at _____, Alaska this _____ day of _____, 19___.

_____
Judge

The foregoing form of pre-trial order is hereby approved:

_____
Attorney for Plaintiff

_____
Attorney for Defendant

N O T E S

See Rule 16 (e) where this form of order is specifically mentioned.

Judgment on Jury Verdict

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant.

Civil Action No. _____

JUDGMENT ON A VERDICT

This action was tried before the court and a jury, Honorable _____ presiding. /The jury returned its answers to the interrogatories propounded by the court/ or /The jury on _____, 19___, rendered a verdict (for the plaintiff to recover of the defendant damages in the amount of $_____.) (for the defendant.)/

It is therefore ordered that (plaintiff recover of the defendant[1] the sum of $_____ with interest thereon at the rate of _____ per cent per annum from the date hereof until paid, and his costs of action.) (plaintiff take nothing, that the action is dismissed on the merits, and that the defendant recover of the plaintiff[1] his costs of action.)

Dated at _____, Alaska, this _____ day of _____, 19___.

_____
Judge

NOTES

[1] The judgment should properly state the full name and either the residence or the business address of the judgment debtor in order to assist identification in searches of the judgment roll.

The rules contemplate a simple judgment promptly entered. Rule 54 (a) provides that a judgment "shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings." Rule 58 provides for judgment "forthwith" by the clerk on a jury verdict, "unless the court otherwise directs", or on a direction by the court for the recovery of only money or costs or that all relief be denied; "but when the court directs entry of judgment for other relief, the judge shall promptly settle or approve the form of the judgment and direct that it be entered by the clerk."

Appropriate choice of material in brackets and in parentheses should be made as the case requires.

Judgment on Trial to the Court

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant.

Civil Action No. _____

JUDGMENT

This action was tried by the court without a jury, Honorable _____ presiding. On _____, 19___, the court ordered that judgment be entered (for the plaintiff to recover of the defendant damages in the amount of $_____.[1]) (for the defendant.)

It is ordered that (plaintiff recover of the defendant[2] damages in the amount of $_____ with interest thereon at the rate of _____ per cent per annum from the date hereof until paid and his costs of action[1].) (plaintiff take nothing, that the action is dismissed on the merits, and that the defendant recover of the plaintiff[2] his costs of action.)

Dated at _____, Alaska, this _____ day of _____, 19___.

_____
Judge

N O T E S

[1] There may be substituted here direction for such specific relief as may have been ordered by the court.

[2] The judgment should properly state the full name and either the residence or the business address of the judgment debtor.

Form 28

Notice of Appeal to Supreme Court of Alaska

SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant.

Civil Action No. _____

NOTICE OF APPEAL

Notice is hereby given that _____, defendant above named, hereby appeals to the Supreme Court of Alaska from the final judgment entered in this action on _____, 19___.

Dated: _____.

_____
Attorney for Appellant

Address: _____

N O T E

Supreme Court Rule 7 (b) does not require the appellee to be named. It does require the clerk of the Superior Court to notify all other parties than appellant, and also requires the clerk to immediately send a duplicate notice of appeal to the clerk of the Supreme Court.

Form 29

Notice of Appeal From Magistrate Court to Superior Court

DISTRICT MAGISTRATE COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant.

Civil Action No. _____

NOTICE OF APPEAL

Notice is hereby given that _____, the above-named defendant, hereby appeals to the Superior Court for the _____ Judicial District, at _____, Alaska, from the judgment entered in this action on _____, 19___.

The grounds for this appeal are:

(Insert concise statement of grounds for appeal.)

Dated: _____, 19___.

_____
(Attorney for Appellant, 1 _____)
(Appellant)2

Address: _____

N O T E S

1 Insert name of party taking appeal.

2 If the appellant is not represented by counsel, then he should sign the notice of appeal and state his address.

See Rule 101.

I N D E X