

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 554

53-part order amending Criminal Rules 29, 32, 33, 35 and 44;

Appellate Rules 102, 204, 206, 209, 210, 215, 216, 217, 303, 403, 502, 506, 508, 514, 602, 603, 608, 611;

Civil Rules 39, 50, 52, 54, 55, 58, 59, 60, 62, 73, 74, 77, 78, 79, 84;

Probate Rule 7;

District Court Criminal Rule 1;

District Court Civil Rules 3, 7, 17, 20, 24, 32;

Administrative Rules 1, 3, 35;

and adding Criminal Rule 32.3, Civil Rule 58.1 and Administrative Rule 42.

IT IS ORDERED:

1. Paragraph (a) of Criminal Rule 29 is amended to read as follows:

(a) Motions for Judgment of Acquittal. Motions for directed verdict shall not be used and motions for judgment of acquittal shall be used in their place. The court, on motion of a defendant or on its own motion, shall enter judgment of acquittal of one or more offenses charged in the indictment or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the state's case is not granted, the defendant may offer evidence without having reserved the right.

2. Subparagraph (b)(1) of Criminal Rule 32 is amended to read as follows:

(1) Execution. The judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. At the time of imposition of sentence, the judge or magistrate shall make a statement on the record explaining his reasons for imposition of the sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge or magistrate. The clerk shall forthwith deliver to a peace officer a certified copy of the judgment for execution. The peace officer shall note on the copy of the judgment the date of its delivery to him. When the judgment has been executed, the peace officer shall promptly return the copy to the clerk with his proceedings endorsed thereon.

3. Rule 32.3 is added to the Alaska Rules of Criminal Procedure and shall read:

Rule 32.3 Judgment and Orders -- Effective Dates and Commencement of Time for Appeal, Review and Reconsideration.

(a) Effective Dates of Orders and Judgments. Orders and judgments become effective the date they are entered.

(1) Oral Orders. The date of entry of an oral order is the date the order is put on the official electronic record by the judge unless otherwise specified by the judge. At the time the judge announces an oral order, the judge shall also announce on the record whether the order shall be reduced to writing. If the oral order is reduced to writing, the effective date shall be included in the written order.

(2) Written Orders Not Preceded by Oral Orders. The date of entry of a written order not preceded by an oral order is the date the written order is signed unless otherwise specified in the order.

(3) Judgments. The date of entry of a criminal judgment is the date the judgment is put on the official electronic record by the judge unless otherwise specified by the judge. All judgments shall be reduced to writing and the effective date shall be included in the written judgment.

(b) Commencement of Time for Appeal, Review and Reconsideration. The time within which a notice of appeal may be filed and reconsideration or review of orders and judgments may be requested begins running on the date of notice as defined below.

(c) Date of Notice.

(1) Oral Orders.

(i) As to the parties present when an oral order is announced, the date of notice is the date the judge announces the order on the official electronic record, unless at that time the judge announces his intention of having the order reduced to writing in which case the date of notice is the date shown in the clerk's certificate of distribution on the written order.

(ii) As to parties not present at the announcement of an oral order, the date of notice is the date shown in the clerk's certificate of distribution of notice of the order. If, however, at the time the judge announces the oral order he announces his intention of having the order reduced to writing, the date of notice is the date shown in the clerk's certificate of distribution on the written order.

(2) Written Orders. The date of notice of a written order is the date shown in the clerk's certificate of distribution on the written order.

(3) Judgments. All judgments must be reduced to writing. The date of notice of a judgment is the date shown in the clerk's certificate of distribution on the written judgment.

(4) Other Service Requirements. These notice provisions apply to the notice of orders and judgments under Rule 44(c) and do not affect the service requirements of any other rule of criminal procedure.

(d) Clerk's Certificate of Distribution. Every written notice of an oral order and every written order and judgment shall include a clerk's certificate of distribution showing the date copies of the notice, order or judgment were distributed, to whom they were distributed, and the name or initials of the clerk who distributed them.

CROSS REFERENCE: App. R. 204

4. Criminal Rule 33 is amended to read as follows:

The court may grant a new trial to a defendant if required in the interest of justice. If trial was by the court without a jury, the court may vacate the judgment if entered, take additional testimony and enter a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgment, but if an appeal is pending the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within 5 days after verdict or finding of guilt, or within such further time as the court may fix during the 5-day period.

5. Paragraphs (e), (f), (g) and (h)(1) of Criminal Rule 35 are amended to read as follows:

(e) Commencement of Proceedings--Filing--Service.

A proceeding is commenced by filing an application with the clerk of the court in which the conviction occurred. Application forms will be furnished by the clerk of court. An application may be filed at any time. The clerk shall promptly bring it to the attention of the court and give a copy to the district attorney.

(f) Application--Contents. The application

shall (1) identify the proceedings in which the applicant was convicted, (2) state the date shown in the clerk's certificate of distribution on the judgment complained of, (3) state the sentence complained of and the date of sentencing, (4) specifically set forth the grounds upon which the application is based, and (5) clearly state the relief desired. Facts within the personal knowledge of the applicant shall be set forth separately from other allegations of facts and shall be under oath. Affidavits, records, or other evidence supporting its allegations shall be attached to the application or the application shall recite why they are not attached. The application shall identify all previous proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from his conviction or sentence. Argument, citations and discussion of authorities are unnecessary. Applications which are incomplete shall be returned to the applicant for completion.

(g) Indigent Applicant. If the applicant is indigent, filing fees, transcript and other court costs shall be borne by the state. Where the court determines that the application shall not be summarily disposed of on the pleadings and record pursuant to subdivision (h) of this rule, but that the issues raised by the application require an evidentiary hearing, counsel shall be appointed to assist indigent applicants.

(h) Pleadings and Judgment on Pleadings.

(1) Within 30 days after the filing of the application, or within such further time as the court may fix, the state shall respond by answer or by motion which may be supported by affidavits. At any time prior to entry of judgment the court may grant leave to withdraw the application. The court may make appropriate orders for amendment of the application or any pleading or motion, for pleading over, for filing further pleadings or motions, or for extending the time of the filing of any pleading. In considering the application the court shall consider substance and disregard defects of form. If the application is not accompanied by the record of the proceedings challenged therein, the respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application.



Order No. 554  
Page 9 of 67  
Effective Date: April 4, 1983

6. Paragraph (c) of Criminal Rule 44 is amended as follows:

(c) Distribution of Orders and Judgments. The clerk shall distribute to each party affected a copy of every order or judgment entered. Every order and judgment shall include a clerk's certificate of distribution as defined in Criminal Rule 32.3(d).

Order No. 554  
Page 10 of 67  
Effective Date: April 4, 1983

7. Paragraph (h) of Appellate Rule 102 is amended as follows:

(h) The clerk shall prepare and sign all judgments and orders of the appellate courts unless otherwise directed by the appropriate court.

8. Subparagraphs (a)(1), (a)(2), (a)(3), and (a)(4) of Appellate Rule 204 are amended as follows:

(a) When Taken--Appeals and Cross-Appeals.

(1) Appeals. The notice of appeal shall be filed within 30 days from the date shown in the clerk's certificate of distribution on the judgment appealed from.

(2) Subsequent Appeals. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days of the filing of any timely notice of appeal by any other party, or within 30 days from the date shown in the clerk's certificate of distribution on the judgment, whichever period expires last.

(3) Motions That Terminate Time for Filing Appeal In Civil Cases. In a civil case, the running of the time for filing an appeal is terminated by a timely motion filed in superior court pursuant to those rules of civil procedure enumerated in this section. The full time for appeal begins to run again on the date of notice, as defined in Civil Rule 58.1(c), of any of the following orders made on timely motions:

[a] Granting or denying a motion for judgment under Civil Rule 50(b);

[b] Granting or denying a motion to amend or make additional findings of fact under Civil Rule 52(b) whether or not an alteration of the judgment would be required if the motion is granted;

[c] Granting or denying a motion to alter or amend a judgment under Civil Rule 59;

[d] Denying a new trial under Civil Rule 59; or

[e] Granting or denying a motion for reconsideration under Civil Rule 77(m).

(4) Motions That Terminate Time for Filing Appeal in Criminal Cases. In a criminal case, if a motion for a new trial or in arrest of judgment or a motion for reduction, correction, or suspension of sentence under Criminal Rule 35 has been made within the 30-day period following the date shown in the clerk's certificate of distribution on the judgment, an appeal from a judgment of conviction may be filed within 30 days after the date of notice of the order deciding the motion. Date of notice is defined in Criminal Rule 32.3(c).

Order No. 554  
Page 13 of 67  
Effective Date: April 4, 1983

9. Subparagraph (b)(1) of Appellate Rule 206 is amended  
as follows:

(1) The full name of the appellant, the trial court case number, the offenses of which the appellant was convicted, the date of sentencing, and the complete terms of the sentence;

Order No. 554  
Page 14 of 67  
Effective Date: April 4, 1983

10. Subparagraph (a)(4)[b] of Appellate Rule 209 is amended as follows:

[b] The party who made the original motion has 10 days from the date shown in the clerk's certificate of distribution on the order denying the motion to file with the supreme court a motion to appeal or to petition for review at public expense. The motion shall be accompanied by copies of the affidavits and statement of points filed in superior court, and by a copy of the reasons given by the superior court for its action.

11. Subparagraph (f)(1) of Appellate Rule 210 is amended  
as follows:

(f) Record to be Prepared by Clerk--Necessary  
Parts.

(1) The clerk of the trial courts shall prepare the record on appeal which shall consist of original papers, exhibits and transcript as designated by the parties, and which shall always include, whether or not designated, the following: the material pleadings, without unnecessary duplication; the verdict or the findings of fact and conclusions of law; in an action tried without a jury, the referee's or master's report, if any; the opinion, if any; the judgment or part thereof appealed from; the notice of appeal with date of filing; the designations or stipulations of the parties as to matter to be included in the record; and the statement by the appellant of the points on which he intends to rely.

Order No. 554  
Page 16 of 67  
Effective Date: April 4, 1983

12. Paragraph (b) of Appellate Rule 215 is amended as follows:

(b) Notice of Appeal. Written notice of appeal from a sentence by the prosecution, or by a defendant appealing solely on the ground that the sentence is excessive, shall be filed with the clerk of the court which imposed the sentence not later than 30 days after the date shown in the clerk's certificate of distribution on the written judgment. The notice of appeal need only state that the sentence which is being appealed is too lenient or excessive. Whether or not the defendant is represented by counsel, the notice of appeal shall state the mailing address of the defendant. No fee shall be collected for filing a notice of sentence appeal.



13. Paragraph (d) of Appellate Rule 216 is amended as follows:

(d) Notice of Appeal.

(1) The notice of appeal in an appeal under this rule shall be filed with the clerk of the court which entered the order or judgment being appealed, within 10 days after the date shown in the clerk's certificate of distribution on the order or judgment.

(2) The notice shall identify the appeal as an appeal under this rule, but the court of appeals will apply this rule to cases within its scope whether they are so identified or not.

Order No. 554  
Page 18 of 67  
Effective Date: April 4, 1983

14. Paragraph (b) of Appellate Rule 217 is amended as follows:

(b) The notice of appeal, and the items required by Rules 204 and 210 to be filed therewith, shall be filed with the clerk of the court from which the appeal is taken, within 15 days after the date shown in the clerk's certificate of distribution on the judgment being appealed.

15. Paragraph (a) of Appellate Rule 303 is amended as follows:

(a) Filing.

(1) The petition for hearing shall be filed within 15 days after the date of notice of the opinion, order, or memorandum opinion and judgment of the intermediate appellate court. Date of notice is defined in Civil Rule 58.1(c) and Criminal Rule 32.3(c). The original alone of the petition shall be filed, together with proof of service.

(2) If a timely petition for rehearing is filed in the intermediate appellate court the full 15-day period for filing a petition for hearing begins to run upon the date of notice of the final order of the intermediate appellate court resolving the matter on rehearing. Date of notice is defined in Civil Rule 58.1(c) and Criminal Rule 32.3(c). Any petition for hearing filed prior to that time will not be entertained.

16. Subparagraphs (a)(1) and (b)(2) of Appellate Rule 403 are amended as follows:

(a)(1) Petitions. A petition for review may be instituted by filing an original petition and five legible copies with the clerk of the appellate courts within 10 days after the date of notice, as defined in Civil Rule 58.1(c) and Criminal Rule 32.3(c), of the order or decision of which review is sought, along with proof of service on all parties to the action in the trial court. The court may require that additional copies be furnished. A judge or justice, for good cause shown, may extend the time for filing. The party seeking review shall be known as the petitioner. All other parties to the proceeding shall be named as respondents. A notice of review need not be filed with the trial court.

The running of the time for filing a petition for review is terminated by a timely motion filed in the trial court for reconsideration pursuant to Civil Rule 77(m). The full time for petitioning for review of the order sought to be reconsidered is computed from the date of notice, as defined in Civil Rule 58.1(c) and Criminal Rule 32.3(c), of the trial court order granting or denying the motion for reconsideration. A motion for reconsideration which is not ruled upon within 20 days shall be considered denied.

(b)(2) The petition or cross-petition shall not exceed 15 pages in length, exclusive of appendices, and shall include or have annexed thereto:

[a] A copy of the order or decision of which review is sought or a statement of the substance of the order or decision, if it was rendered orally, showing the date of notice as defined in Civil Rule 58.1(c) and Criminal Rule 32.3(c); and

[b] Copies of any findings of fact, conclusions of law and opinions related to the order or decision.

17. Paragraph (c) of Appellate Rule 502 is amended as follows:

(c) 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, three days shall be added to the prescribed period. This paragraph does not extend any time period calculated from a date under Civil Rule 58.1 or Criminal Rule 32.3.

18. Paragraph (b) of Appellate Rule 506 is amended as follows:

(b) Time for Filing--Form of Petition. An original of a petition for a rehearing must be filed within 10 days after the date of notice of the opinion or other decision. Date of notice is defined in Civil Rule 58.1(c) and Criminal Rule 32.3(c). The petition must be supported by certificate of counsel that in his judgment it is well founded and that it is not interposed for delay. The petitioner shall specifically state which of the grounds for rehearing specified in paragraph (a) exists, and shall specifically designate that portion of the opinion, the brief, or the record, or that particular authority, which the petitioner wishes the court to consider. The petition shall be prepared in conformity with Rule 503(b) and when filed shall be accompanied by proof of service on all parties. No petition for rehearing shall exceed three typewritten pages. No memoranda or briefs in support of or in opposition to a petition for rehearing shall be received unless requested by the court.

19. Subparagraph (f)(1) of Appellate Rule 508 is amended as follows:

(f) Procedure.

(1) At the time an opinion or an order under Rule 214 is filed, the clerk shall notify the party or parties entitled to recover costs under subsections (b) and (c) of this rule. That party or parties shall serve and file an itemized and verified bill of costs within 10 days after the date of notice of the opinion or order. Date of notice is defined in Civil Rule 58.1(c). The bill of costs shall be limited to the items specified in subsection (d) of this rule, and shall not include attorney's fees unless the party is directed to do so by the clerk. Failure to file a timely bill of costs is a waiver of the right to recover costs and attorney's fees. Objections to the bill of costs may be filed within 7 days after service of the bill.



Order No. 554  
Page 25 of 67  
Effective Date: April 4, 1983

20. Paragraph (e) of Appellate Rule 514 is amended as follows:

(e) Entry of Appearance. Any document filed with the clerk by or on behalf of counsel whose appearance has not previously been filed must be accompanied by an entry of appearance.

21. Paragraph (a)(1) of Appellate Rule 602 is amended as follows:

(a)(1) The time within which an appeal may be taken to the superior court from the district court shall be 30 days from the date shown in the clerk's certificate of distribution on the judgment appealed from. The running of the time for appeal shall be as set forth in Rule 204(a).

22. Paragraph (b)(2) of Appellate Rule 602 is deleted and paragraph (b)(3) is renumbered as follows:

(b)(2) The grounds for appeal stated in the statement of points on appeal shall constitute the sole basis for review by the superior court.

23. Paragraph (a) of Appellate Rule 603 is amended as follows:

(a) Civil Appeals.

(1) Automatic Stay. Stays of execution or enforcement of district court judgments shall be as set forth in District Court Civil Rule 24(a).

(2) 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 district court, or with the superior court in administrative appeals, not later than 30 days after the date shown in the clerk's certificate of distribution on the judgment or the date of mailing or delivery of the administrative order 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 district court if the appeal is dismissed. The bond shall comply with the provisions of Civil Rule 80.

(3) Proceedings on Stay. When an appeal is taken, the district court judge or magistrate shall enter a written order indicating 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 judge or 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.

Order No. 554  
Page 29 of 67  
Effective Date: April 4, 1983

24. Appellate Rule 608 is amended as follows:

A sentence appeal to the superior court shall be governed by Rule 215, and that rule shall in case of inconsistency prevail over Part Six of these rules.

25. Paragraph (a) of Appellate Rule 611 is amended as follows:

(a) Filing.

(1) A petition for review of a district court order or decision must be filed with the clerk of the superior court within 10 days after the date of notice of the challenged order or decision, along with proof of service on all parties. Date of notice is defined in Civil Rule 58.1(c) and Criminal Rule 32.3(c). The clerk of the superior court shall proceed in accordance with Rule 403(a)(4).

(2) A petition for review of an order or decision of an administrative agency must be filed with the clerk of the superior court within 10 days after the date of mailing or delivery of the order or decision. A copy of the notice of appeal shall be served on the administrative agency.

(3) A judge of the superior court, for good cause shown, may extend the time for filing. The party seeking review shall be known as the petitioner. All other parties to the proceeding shall be named as respondents.

26. Paragraphs (a) and (c) of Civil Rule 39 are amended to read as follows:

(a) By Jury. When trial by jury has been demanded as provided in Rule 38, 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, consent to trial by the court sitting without a jury or (2) the court upon motion by a party or upon its own motion 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.

(c) Advisory Jury and Trial by Consent. In all actions not triable of right by a jury the court upon motion by a party or upon its own motion 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.

27. Paragraph (b) of Civil Rule 50 is amended to read as follows:

(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 court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Not later than 10 days after the date shown in the clerk's certificate of distribution on the judgment, a party who has moved for a directed verdict may move 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 set aside the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.



28. Paragraph (b) of Civil Rule 52 is amended to read as follows:

(b) Amendment. Upon motion of a party made not later than 10 days after [the date shown in the clerk's certificate of distribution on the 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.

29. Paragraphs (b) and (c) of Civil Rule 54 are amended to read as follows:

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, 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 fewer than all of the claims or the rights and liabilities of fewer 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 default judgment 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 default judgment is entered, 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.

30. Civil Rule 55 is amended to read as follows:

(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[S] 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 default judgment for that amount, costs and attorney fees 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 default judgment shall apply to the court therefor; but no default judgment 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 default judgment 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, counsel shall file 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 default judgment is sought is shown by the record to be an infant or incompetent person, or in the military service of the United States, counsel shall also file 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 default judgment 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 default judgment 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 default judgment 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 default judgment is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a default judgment is subject to the limitations of Rule 54(c).

(g) Judgment Against the State. No default judgment 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.

31. Civil Rule 58 is amended to read as follows:

Rule 58. Entry of Judgment.

Subject to the provisions of Rule 54(b): (1) upon a general verdict of a jury, or upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the court or the clerk, upon direction of the court, shall forthwith enter the judgment; (2) upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly enter judgment. Every judgment shall be set forth on a separate document. 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.

32. Rule 58.1 is added to the Alaska Rules of Civil Procedure and shall read:

Rule 58.1. Judgments and Orders -- Effective Dates and Commencement of Time for Appeal, Review and Reconsideration.

(a) Effective Dates of Orders and Judgments. Orders and judgments become effective the date they are entered.

(1) Oral Orders. The date of entry of an oral order is the date the order is put on the official electronic record by the judge unless otherwise specified by the judge. At the time the judge announces an oral order, the judge shall also announce on the record whether the order shall be reduced to writing. If the oral order is reduced to writing, the effective date shall be included in the written order.

(2) Written Orders Not Preceded by Oral Orders. The date of entry of a written order not preceded by an oral order is the date the written order is signed unless otherwise specified in the order.

(3) Judgments. The date of entry of a civil judgment is the date it is signed unless otherwise specified in the judgment. All judgments shall be reduced to writing.

(b) Commencement of Time for Appeal, Review and Reconsideration. The time within which a notice of appeal may be filed and reconsideration or review of orders and judgments may be requested begins running on the date of notice as defined below.

(c) Date of Notice.

(1) Oral Orders.

(i) As to the parties present when an oral order is announced, the date of notice is the date the judge announces the order on the official electronic record, unless at that time the judge announces his intention of having the order reduced to writing in which case the date of notice is the date shown in the clerk's certificate of distribution on the written order.

(ii) As to parties not present at the announcement of an oral order, the date of notice is the date shown in the clerk's certificate of distribution of notice of the order. If, however, at the time the judge announces the oral order he announces his intention of having the order reduced to writing, the date of notice is the date shown in the clerk's certificate of distribution on the written order.

(2) Written Orders. The date of notice of a written order is the date shown in the clerk's certificate of distribution on the written order.



(3) Judgments. All judgments must be reduced to writing. The date of notice of a judgment is the date shown in the clerk's certificate of distribution on the written judgment.

(4) Other Service Requirements. These notice provisions apply to the notice of orders and judgments under Rule 73(d) and do not affect the service requirements of any other rule of civil procedure.

(d) Clerk's Certificate of Distribution. Every written notice of an oral order and every written order and judgment shall include a clerk's certificate of distribution showing the date copies of the notice, order or judgment were distributed, to whom they were distributed, and the name or initials of the clerk who distributed them.

CROSS REFERENCE: App. R. 204

April 4, 1983

33. Paragraphs (a) and (b) of Civil Rule 59 are amended to read as follows:

(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 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 date shown in the clerk's certificate of distribution on 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.

34. Paragraph (b) of Civil Rule 60 is amended to read as follows:

(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 date of notice of the judgment or order as defined in Civil Rule 58.1(c). 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.

35. Paragraph (a) of Civil Rule 62 is amended to read as follows:

(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 the date shown in the clerk's certificate of distribution on the judgment. 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.

36. Paragraphs (b), (c) and (c) [which should be (d)] of Civil Rule 73 are amended to read as follows:

(b) Orders by Clerk. The clerk is authorized to enter the following orders of the superior or district court 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) Orders 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 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 of the superior or district court forthwith without further direction from the court:

(1) Default judgments 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.

(2) 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 give notice by distributing a copy to each party who is not in default for failure to appear.

36. Paragraphs (a), (b) and (c) of Civil Rule 74 are amended to read as follows:

(a) Civil Case File and Index. All papers filed with the clerk shall be marked with the case number and the date of filing and shall be placed in the case file in chronological order. The clerk shall maintain an alphabetical index of every civil case filed. All parties in each case shall be included in the index.

(b) Civil Judgments and Orders. The clerk shall keep, in such form and manner as the administrative director of courts may prescribe, a record of every final judgment or order.

(c) Civil Calendar. The clerk shall prepare a calendar listing all cases scheduled for hearings and trials. The calendar shall indicate the type of proceeding and shall distinguish jury actions from non-jury actions. A copy of the calendar shall be posted in a public place within the court building.



38. Paragraph (m) of Civil Rule 77 is amended to read as follows:

(m) A motion to reconsider the ruling must be made within 10 days after the date of notice of the ruling as defined in Civil Rule 58.1(c) and shall be governed by Rule 506, Alaska Rules of Appellate Procedure, except as otherwise provided herein. The motion for reconsideration shall be decided by the court without oral argument within 10 days of the date of filing of the motion. If the motion for reconsideration has not been ruled upon by the court within 20 days from the date of the filing of the motion, it shall be taken as denied for the purposes of the record.

39. Paragraphs (a) and (d) of Civil Rule 78 are amended to read as follows:

(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 proposed 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 acknowledgment of the date and hour of service.

(d) Instruments on Which Judgment Entered. In all cases in which a judgment upon a written instrument is entered, such instrument shall be filed with the court, 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.

40. Paragraph (a) of Civil Rule 79 is amended to read as follows:

(a) Cost Bill--Notice--Waiver. Within 10 days after the date shown in the clerk's certificate of distribution on the 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 of the date and time of the cost bill hearing at which the clerk will tax costs. The date and time of the hearing shall be scheduled with the clerk's office and shall be not less than 3 nor more than 7 days from the date of the notice. 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. 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.

41. Paragraphs (b) and (c) of Civil Rule 84 are amended to read as follows:

(b) Notice of Application. The court by order shall set a date for hearing not less than 40 days after the date of the order. Notice of the filing of the petition with a statement of the relief sought therein and the date of hearing thereon shall be published in a newspaper designated by the court as being the publication most likely to give appropriate notice under the circumstances. Publication of the notice shall be made once each week for 4 consecutive calendar weeks prior to the date of the hearing. In its discretion, the court by order may also require the posting of the notice at such place or places, in designated communities as may be appropriate. Proof of publication shall be made as prescribed in Rule 4(e)(6). Proof of posting shall be made by affidavit.

(c) Judgment--Notice--Filing. If satisfied that there is no reasonable objection to the assumption of another name by petitioner, the court shall by judgment authorize petitioner to assume such other name after a time to be fixed in the judgment, which shall not be less than 30 days after the date shown in the clerk's certificate of distribution on the judgment. Within 10 days after the date shown in the clerk's certificate of distribution on the judgment, a copy thereof shall be published once in the newspaper designated

Order No. 554  
Page 53 of 67  
Effective Date: April 4, 1983

by the court under the provisions of subdivision (b).  
The court may also require the posting of a copy of  
the judgment as provided in subdivision (b). Within  
20 days after the date shown in the clerk's  
certificate of distribution on the judgment, proof of  
publication and of posting shall be filed with the  
clerk. The petitioner may then submit a certificate  
to be issued by the clerk stating that the judgment  
has been entered and that all requirements for  
posting a copy of the judgment have been met.

Order No. 554  
Page 54 of 67  
Effective Date: April 4, 1983

42. Probate Rule 7 is amended to read as follows:

Rule 7. Probate Index.

There shall be kept an alphabetical index of all probate cases under the name of the person to whose estate or business they relate.

Order No. 554  
Page 55 of 67  
Effective Date: April 4, 1983

43. Paragraph (h) of District Court Criminal Rule 1 is amended to read as follows:

(h) Record of Proceedings. Whenever practicable there shall be kept an electronic record of all criminal actions and proceedings in the district court.





Order No. 554  
Page 57 of 67  
Effective Date: April 4, 1983

44. District Court Civil Rule 3 is amended as follows:

Notice of the entry of an order or judgment shall be given as provided by Civil Rule 73(d). Every order and judgment shall include a clerk's certificate of distribution as defined in Civil Rule 58.1(d).

45. District Court Civil Rule 7 is amended as follows:

In court locations where there is no superior court judge regularly sitting, a district judge may by order appoint a clerk authorized to issue process and to enter the orders and judgments set forth in Civil Rule 73(b) and (c). In the absence of an order appointing a clerk, process shall be issued and orders and judgments shall be entered by the district judge or by a magistrate.

46. Paragraphs (a), (d) and (i) of District Court Civil Rule 17 are amended as follows:

(a) If the defendant fails to answer the complaint within 20 days after service of process or fails to attend trial, he is in default. Default judgment shall be entered only upon proof under oath made upon personal knowledge that the defendant is not an infant or otherwise incompetent, and that he is not in the active military service of the United States. The court shall also require proof under oath, made upon personal knowledge or based on business records, of the truth of every essential element of the claim for relief. If the defendant answers but fails to appear at trial, the court may nevertheless consider any relevant and material evidence filed with the answer.

(d) A claim may be dismissed with or without prejudice and without court order at any time by agreement of the parties, or upon written notice by the plaintiff at any time before the defendant has filed an answer. A dismissal with prejudice bars action in any court based on the claim dismissed.

(i) The clerk shall distribute a copy of every order or judgment entered to all parties to the action. Every order and judgment shall include a clerk's certificate of distribution as defined in Civil Rule 58.1(d).

Order No. 554

Page 60 of 67

Effective Date: April 4, 1983

47. Paragraph (a) of District Court Civil Rule 20 is amended as follows:

(a) A small claims judgment may be enforced in the same manner as other judgments. No execution shall issue for two days after the date shown in the clerk's certificate of distribution on the judgment

48. District Court Civil Rule 24 is amended by adding paragraphs (a) and (b) as follows:

Rule 24. Stay of Proceedings to Enforce Judgment.

(a) Automatic Stay. Except as to judgments entered on default or by consent or on confession, no execution shall issue upon a judgment of the district court nor shall proceedings be taken for the enforcement of such judgment until the expiration of two days after the date shown in the clerk's certificate of distribution on the judgment.

(b) Stay Upon Appeal. When an appeal is taken, the appellant may obtain a stay of proceedings to enforce the judgment by following the procedure set forth in Appellate Rule 603(a).

49. Paragraphs (a), (b), (d) and (f) of District Court Civil Rule 32 are amended as follows:

(a) Petition. Any interested person desiring to establish the presumption of death of a missing person in cases authorized by statute may file a verified petition in a district court in the district where it is believed the missing person has suffered death or in the district where such person last resided prior to his disappearance. The petition shall show the following:

- (1) The name of the person believed to have suffered death.
- (2) The circumstances leading to such belief.
- (3) That after due and diligent search such person cannot be found.

(b) Jury. If the court is satisfied that the circumstances surrounding the disappearance of the missing person afford reasonable grounds for believing that such person has suffered death, the court shall summon and impanel a jury of qualified persons. The members of the jury, before beginning their duties, shall be sworn to diligently inquire into and justly consider all the facts and circumstances concerning the disappearance of the missing person, and from a fair consideration thereof to determine whether the court is justified in

entering an order declaring that such person is presumed to be dead.

(d) Verdict--Approval by Court--Order. After having heard all of the evidence presented, the jury shall retire for deliberation. If by its unanimous verdict in writing the jury finds that it may be fairly presumed that the missing person has suffered death, the court must endorse upon the verdict its approval or disapproval of such findings. If approval is given, the court shall enter an order declaring that the missing person is presumed to be dead. The order shall take effect at the expiration of six months from the date that the jury's findings and verdict are approved, except that in cases where there is clear and convincing evidence of the presumed death the order will take effect at such earlier time as the court shall specify therein.

(f) Correction of Presumptive Death Order and Certificate. If the body of the missing person is found, or such person is discovered to be alive after an order of presumptive death has been entered, the court shall conduct a hearing, with or without a jury, to determine the facts, and shall enter an appropriate order for the correction, substitution or removal by the Bureau of Vital Statistics of the presumptive death certificate in accordance with the findings made if additional facts are brought to light.

Order No. 554  
Page 64 of 67  
Effective Date: April 4, 1983

50. Paragraph (e) of Administrative Rule 1 is amended as follows:

(e) Examine the state of the calendars of all courts, determine the need for assistance by any court and confer with the justices and judges on the status of their calendars and administrative matters;



Order No. 554  
Page 65 of 67  
Effective Date: April 4, 1983

51. Paragraph (a) of Administrative Rule 3 is amended as follows:

(a) Justices, judges, masters, magistrates, clerks of the courts, and all other officers and employees of the court system shall comply with all requests made by the administrative director for information and statistical data concerning cases of such courts and such other information as may reflect the business transacted by them.

Order No. 554  
Page 66 of 67  
Effective Date: April 4, 1983

52. Paragraph (a) of Administrative Rule 35 is amended  
as follows:

(a) Electronic recording equipment shall be installed in all courts for the purpose of recording all official court hearings. Such electronic recordings shall constitute the official court record. It shall be the responsibility of each judge or magistrate to require that the electronic recording equipment in his court be operated only by qualified personnel in such manner and under such conditions as to insure the production of a readable record of all proceedings.

Order No. 554  
Page 67 of 67  
Effective Date: April 4, 1983

53. Rule 42 is added to the Alaska Rules Governing the Administration of All Courts and shall read:

Rule 42. Docketing.

There shall be no court docket kept on any case filed in the district or superior court. Any dockets prepared prior to the effective date of this rule shall continue to be maintained until a final disposition has been entered in the case. No rule of court shall be interpreted to require docketing of documents or hearings.

DATED: March 4, 1983

EFFECTIVE DATE: April 4, 1983

/s/ Edmond W. Burke  
Chief Justice Burke

/s/ Jay A. Rabinowitz  
Justice Rabinowitz

Justice Connor

/s/ Warren W. Matthews, Jr.  
Justice Matthews

/s/ Allen T. Compton  
Justice Compton