IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 1153

Amending the Rules of Civil Procedure, the District Court Rules of Civil Procedure, the Rules of Criminal Procedure, the District Court Rules of Criminal Procedure, the Rules of Evidence, the Rules of Appellate Procedure, the Alaska Bar Rules and the Rules of Administration to make the language gender neutral.

IT IS ORDERED:

1. The Rules of Civil Procedure, the District Court Rules of Civil Procedure, the Rules of Criminal Procedure, the District Court Rules of Criminal Procedure, the Rules of Evidence, the Rules of Appellate Procedure, the Alaska Bar Rules and the Rules of Administration are amended as shown in the attachment to make the language gender neutral. These are technical changes which are not intended to affect the meaning of any rule.

DATED: March 4, 1994

EFFECTIVE DATE: July 15, 1994

Chief Justice Moore

Justice Rabinowitz

Justice Matthews

Justice Compton

Justice Bryner, Pro Tem

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Rule 4. Process.

. . .

(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 the defendant ~~him~~ that in case of defendant's ~~his~~ failure to do so judgment by default will be rendered against the defendant ~~him~~ for the relief demanded in the complaint.

(c) **Methods of Service — Appointments to Serve Process — Definition of Peace Officer.**

. . .

(3) Special appointments for the service of all process relating to remedies for the seizure of persons or property pursuant to Rule 64 or for the service of process to enforce a judgment by writ of execution shall only be made by the Commissioner of Public Safety after a thorough investigation of each applicant, and such appointment may be made subject to such conditions as appear proper in the discretion of the Commissioner for the protection of the public. A person so appointed must secure the assistance of a peace officer for the completion of process in each case in which the person ~~he~~ may encounter physical resistance or obstruction to the service of process.

. . .

(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 the individual ~~him~~ personally, or by leaving copies thereof at the individual's ~~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 the infant's ~~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 the infant ~~he~~ resides, or in whose service the

infant ~~he~~ is employed; or if any 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 —

[a] To the guardian of the person or a competent adult member of the person's ~~his~~ family with whom the person ~~he~~ resides, or if the person ~~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

. . .

(e) **Other Service.** When it shall appear by affidavit of a person having knowledge of the facts filed with the clerk that after diligent inquiry a party cannot be served with process under (d) of this rule, service may be made by publication or as otherwise directed by the court as provided in this subdivision. Service by publication will be allowed in adoption cases only if ordered by the court for compelling reasons.

(1) *Diligent Inquiry*. Inquiry as to the absent party's whereabouts shall be made by the party who seeks to have service made, or by the party's ~~his~~ attorney actually entrusted with the conduct of the action, or by the agent of the attorney. It shall be made of any person who the inquirer has reason to believe possesses knowledge or information as to the absent party's residence or address or the matter inquired of. The inquiry shall be undertaken in person or by letter, and the inquirer shall state that an action has been or is about to be commenced against the party inquired for, that the object of the inquiry is to give such party notice of the action in order that such party may appear and defend it. When the inquiry is made by letter, postage shall be enclosed sufficient for the return of an answer. The affidavit of inquiry shall be made by the inquirer. It shall fully specify the inquiry made and of what persons and in what manner so that by the facts stated therein it may appear that diligent inquiry has been made for the purpose of effecting actual notice.

. . .

(3) *Other Service*. In its discretion the court may allow service of process to be made upon an absent party in any other manner which is reasonably calculated to give the party ~~him~~ actual notice of the proceedings and an opportunity to be heard, if an order permitting such service is entered before service of process is made.

. . .

(h) **Service of Process by Mail.** In addition to other methods of service provided for by this rule, process may also be served within this state or the United States or any of its possessions by registered or certified mail, with return receipt requested, upon

an individual other than an infant or an incompetent person and upon a corporation, partnership, and unincorporated association. In such case, copies of the summons and complaint or other process shall be mailed for restricted delivery only to the party to whom the summons or other process is directed or to the person authorized under federal regulation to receive the party's ~~his~~ restricted delivery mail. All receipts shall be so addressed that they are returned to the party serving the summons or process or that party's ~~his~~ attorney. Service of process by mail under this paragraph is complete when the return receipt is signed.

. . .

Rule 5. Service and Filing of Pleadings and Other Papers.

. . .

(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 the attorney or party ~~him~~ or by mailing it to the attorney's or party's ~~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 this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's ~~his~~ office with a ~~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 the attorney's or party's ~~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. Service, execution and return based on a copy of any paper transmitted by telegraph or radio may be made by the person to whom directed with the same effect as if such copy were the original. In such case the original shall be filed in the court from which it was issued.

. . .

(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 at the court location where the case is filed unless otherwise directed by the court, except that the judge may permit the papers to be filed with the judge ~~him~~, in which event the judge ~~he~~ shall note thereon the filing date and forthwith transmit them to the office of the clerk.

. . .

(g) **Service After Final Judgment.**

(1) Notwithstanding the provisions of paragraph (b) of this rule requiring service upon an attorney, a party who has been

represented by an attorney in an action or proceeding shall ~~himself~~ be served rather than the attorney in accordance with the provisions of paragraph (b) with a motion or other request for relief filed in the action or proceeding where a period of one year has elapsed since the filing of any paper or the issuance of any process in the action or proceeding, and

. . .

(2) If a party is served under circumstances described in Section (1) of this paragraph, or if a party appeared in his or her own behalf in the prior action or proceeding, the paper served shall include notice to the party of the party's ~~his~~ right to file written opposition or response, the time within which such opposition or response must be filed, and the place where it must be filed.

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~~ the pleader seeks ~~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 the party's ~~his~~ defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party ~~he~~ is without knowledge or information sufficient to form a belief as to the truth of an averment, the party ~~he~~ shall so state and this has the effect of a denial. Denial 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, the pleader ~~he~~ shall specify so much of it as is true and material and shall deny only the remainder. U~~,~~ ~~u~~nless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader ~~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 the pleader ~~he~~ expressly admits; but when the pleader ~~he~~ does so intend to controvert all its averments, the pleader ~~he~~ may do so by general denial subject to the obligations set forth in Rule 11.

. . .

(e) **Pleading to Be Concise and Direct — Consistency.**

. . .

(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 the party ~~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.

. . .

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 and 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, the party desiring to raise the issue ~~he~~ shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

. . .

Rule 11. Signing of Pleadings, Motions, and Other Papers; Sanctions.

Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's ~~his~~ individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's ~~his~~ pleading, motion, or other paper and state the party's ~~his~~ address. Except when otherwise specifically provided by rule or statute, 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 or party constitutes a certificate by the signer ~~him~~ that the signer ~~he~~ has read the pleading, motion, or other paper; that to the best of the signer's ~~his~~ knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless expense in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

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 an ~~his~~ answer within 20 days after the service of the summons and complaint upon that defendant ~~him~~, unless otherwise directed when service of process is made pursuant to Rule 4(e). A party served with a pleading stating a cross-claim against that party ~~him~~ shall serve an answer thereto within 20 days after the service upon that party ~~him~~. The plaintiff shall serve a ~~his~~ reply to a counterclaim in the 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. A non-governmental party shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim within 40 days after service upon an officer or agency of the state appointed, authorized or designated as agent to receive service for such party pursuant to statute. 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 a party under Rule 19. 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 pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party ~~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.

. . .

(e) **Motion for More Definite Statement.** If a pleading to which a responsive pleading is permitted is so vague or ambiguous

that a party cannot reasonably be required to frame a responsive pleading, the party ~~he~~ may move for a more definite statement before interposing a ~~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 times 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 by a party within 20 days after the service of the pleading upon the party ~~his~~ 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 in Motion.** A party who makes a motion under the rule may join with it any other motions herein provided for and then available to the party ~~him~~. If a party makes a motion under this rule, but omits therefrom any defense or objection then available to the party ~~him~~ which this rule permits to be raised by motion, the party ~~he~~ shall not thereafter make a motion based on the defense or objection so omitted, except as provided in subdivision (h) (2) hereof on any of the grounds there stated.

. . .

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. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon the ~~his~~ claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

. . .

(e) **Counterclaim Maturing or Acquired After Pleading.** A claim which either matured or was acquired by the pleader after serving a ~~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, the pleader ~~he~~ may by leave of court set up the counterclaim by amendment.

. . .

Rule 14. Third-Party Practice.

(a) **When Defendant May Bring in Third Party.** At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or maybe ~~may be~~ liable to the third-party plaintiff ~~him~~ for all or part of the plaintiff's claim against the third-party plaintiff ~~him~~. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff ~~he~~ files the third-party complaint not later than 10 days after serving the ~~he serves his~~ original answer. Otherwise the third-party plaintiff ~~he~~ must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any ~~his~~ defenses to the third-party plaintiff's claim as provided in Rule 12 and any ~~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 any ~~his~~ defenses as provided in Rule 12 and any ~~his~~ counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim or for its severance or separate trial. 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 the third-party defendant ~~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 the plaintiff, the 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 the party's ~~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, the party ~~he~~ may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's ~~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 the party ~~him~~ in maintaining the party's ~~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. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against the party ~~him, the party~~ to be brought in by amendment, that party (1) has received such notice of the institution of the action that the party ~~he~~ will not be prejudiced in maintaining a ~~his~~ defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party ~~him~~.

(d) **Supplemental Pleadings.** Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party ~~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. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

. . .

Rule 16. Pre-Trial Procedure — Formulating Issues.

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(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 the judge ~~he~~ may deem proper, upon at least 20 days' notice to the parties thereto or their attorneys of record.

. . .

(c) **Pre-Trial Memorandum.** No later than 3 days prior to the pre-trial conference each attorney shall serve and file 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 the plaintiff's ~~his~~ claim.

. . .

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

. . .

Rule 18. Joinder of Claims and Remedies.

(a) **Joinder of Claims.** A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims either legal or equitable or both as the party ~~he~~ has against an opposing party.

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

Rule 19. Joinder of Persons Needed for Just Adjudication.

(a) **Persons to Be Joined if Feasible.** A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's ~~his~~ absence complete relief cannot be accorded among those already parties, or (2) the person ~~he~~ claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's ~~his~~ absence may (i) as a practical matter impair or impede the person's ~~his~~ ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of

incurring double, multiple, or otherwise inconsistent obligations by reason of the ~~his~~ claimed interest. If the person ~~he~~ has not been joined, the court shall order that the person ~~he~~ be made a party. If the person ~~he~~ should join as a plaintiff but refuses to do so, the person ~~he~~ may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and ~~his~~ joinder of that party would render the venue of the action improper, that party ~~he~~ shall be dismissed from the action.

(b) **Determination by Court Whenever Joinder Not Feasible.** If a person as described in subsection (a)(1) — (2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person ~~him~~ or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

. . .

Rule 20. Permissive Joinder of Parties.

. . .

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

Rule 22. Interpleader.

Persons having claims against the plaintiff may be joined as defendants and required~~ing~~ 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 the plaintiff ~~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.

. . .

(c) **Determination by Order Whether Class Action to Be Maintained — Notice — Judgment — Actions Conducted Partially as Class Actions.**

. . .

(2) In any class action maintained under subdivision (b) (3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude the member ~~him~~ from the class if the member ~~he~~ so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member ~~he~~ desires, enter an appearance through ~~his~~ counsel.

. . .

Rule 24. Intervention.

(a) **Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant ~~he~~ is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ~~his~~ ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

. . .

Rule 25. Substitution of 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 the party's ~~his~~ representative.

. . .

(d) **Public Officers — Death or Separation From Office.**

(1) When a public officer is a party to an action in an ~~his~~ official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's ~~his~~ successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer sues or is sued in an ~~his~~ official capacity, the officer ~~he~~ may be described as a party by ~~his~~ official title rather than by name; but the court may require the officer's ~~his~~ name to be added.

Rule 26. General Provisions Governing Discovery.

. . .

(b) **Scope of Discovery.** Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

. . .

(3) *Trial Preparation: Materials.* Subject to the provisions of subdivision (b) (4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b) (1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's ~~his~~ attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's ~~his~~ case and that the party ~~he~~ is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation.

. . .

(e) **Supplementation of Responses.** A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the ~~his~~ response to include information thereafter acquiring, except as follows:

(1) A party is under a duty seasonably to supplement the ~~his~~ response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person ~~he~~ is expected to testify, and the substance of the person's ~~his~~ testimony.

(2) A party is under a duty seasonably to amend a prior response if the party ~~he~~ obtains information upon the basis of which (A) the party ~~he~~ knows that the response was incorrect when made, or (B) the party ~~he~~ knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

. . .

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 the petitioner and shall show: (1) 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, (2) the subject matter of the expected action and petitioner's ~~his~~ interest therein, (3) the facts which the petitioner ~~he~~ desires to establish by the proposed testimony and the ~~his~~ reasons for desiring a perpetuate it, (4) the names or description of the persons the petitioner ~~he~~ expects will be adverse parties and their addresses so far as known, and (5) the names and addresses of the persons to be examined and the substance of the testimony which the petitioner ~~he~~ expects to elicit from each, and 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.

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(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:

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In any 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 the party ~~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.

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Rule 28. Persons Before Whom Depositions May be Taken.

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(c) **In Foreign Countries.** In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the

law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the ~~his~~ commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [here name the country] ." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

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Rule 30. Depositions Upon Oral Examination.

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(b) **Notice of Examination: General Requirements; Special Notice; Nonstenographic Recording; Production of Documents and Things; Deposition of Organization.**

(1) 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 the person ~~him~~ or the particular class or group to which the person ~~he~~ belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the judicial district where the action is pending and more than 100 miles from the place of trial, or is about to go out of the state, or is bound on a voyage to sea, and will be unavailable for examination unless the person's ~~his~~ deposition is taken before expiration of the 30-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's ~~his~~ signature constitutes a certification by the attorney ~~him~~ that to the best of the attorney's ~~his~~ knowledge, information, and belief the statement and supporting facts are true.

If a party shows that when the party ~~he~~ was served with notice under this subdivision (b) (2) the party ~~he~~ was unable through the exercise of diligence to obtain counsel to represent the party ~~him~~ at the taking of the deposition, the deposition may not be used against the party ~~him~~.

. . .

(5) A party may in the party's ~~his~~ notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person ~~he~~ will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subparagraph (b) (5) does not preclude taking a deposition by any other procedure authorized in these rules.

. . .

(c) **Examination and Cross-Examination; Record on Examination; Oath; Objections.** Examination and cross-examination of witnesses may proceed as permitted at the trial under the Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's ~~his~~ direction and in the officer's ~~his~~ presence, record the testimony of the witness. For an audio or audio-visual deposition, any officer authorized by the laws of this state to administer oaths shall swear the witness. The recording machinery may be operated by such officer, or someone acting under the officer's ~~his~~ direction and in the officer's ~~his~~ presence, even where such officer is also an attorney in the case. The testimony shall be taken stenographically or recorded by audio or audio-visual means. A party may arrange at the party's ~~his own~~ expense to have any portion of the record typewritten.

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 conduct of 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 may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition ~~he~~ shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

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(e) **Submission to Witness; Changes; Signing.** When a stenographic deposition is taken and the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by the witness ~~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 within 30 days of its submission to the witness ~~him~~, 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)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

. . .

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

Rule 30.1. Audio and Audio-Visual Depositions.

(a) **Authorization of Audio-Visual Depositions.**

(1) Any deposition upon oral examination may be recorded by audio or audio-visual means without a stenographic record. Any party may make at the party's ~~his own~~ expense a simultaneous stenographic or audio record of the deposition. Upon ~~his~~ request and at ~~his own~~ the expense of the requesting party, any party is entitled to an audio or audio-visual copy of the audio-visual recording.

. . .

(3) On motion for good cause the court may order the party taking, or who took, a deposition by audio or audio-visual recording to furnish at that party's ~~his~~ expense a transcript of the deposition.

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Rule 31. Depositions on Written Questions.

(a) **Serving Questions; Notice.** After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person ~~him~~ or the particular class or group to which the person ~~he~~ belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b) (5).

. . .

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

Rule 32. Use of Depositions in Court Proceedings.

(a) **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 applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

. . .

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror ~~him~~ to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

. . .

(c) **Effect of Taking or Using Depositions.** A party does not make a person the party's ~~his own~~ witness for any purpose by taking the person's ~~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 under subdivision (a)(2) of this rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by that party ~~him~~ or by any other party.

. . .

Rule 34. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes.

(a) **Scope.** Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's ~~his~~ behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

. . .

Rule 36. Requests for Admission.

(a) **Request for Admission.** A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time

as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's ~~his~~ attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon that defendant ~~him~~. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an ~~his~~ answer or deny only a part of the matter of which an admission is requested, the party ~~he~~ shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party ~~he~~ states that the party ~~he~~ has made reasonable inquiry and that the information known or readily obtainable by the party ~~him~~ is insufficient to enable the party ~~him~~ to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party ~~he~~ may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party ~~he~~ cannot admit or deny it.

. . .

(b) **Effect of Admission.** Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party ~~him~~ in maintaining the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission ~~by him~~ for any other purpose nor may it be used against the party ~~him~~ in any other proceeding.

Rule 37. Failure to Make Discovery: Sanctions.

(a) **Motion for Order Compelling Discovery.** A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

. . .

(2) *Motion.* If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(5) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested,

the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before ~~he~~ applying~~ies~~ for an order.

. . .

(b) **Failure to Comply With Order.**

. . .

(2) *Sanctions By Court in Which Action is Pending.* If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

. . .

(B) An order refusing to allow the disobedient party to support or oppose designated claim or defenses, or prohibiting that party ~~him~~ from introducing designated matters in evidence;

. . .

(E) Where a party has failed to comply with an order under Rule 35(a) requiring that party ~~him~~ to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that that party ~~he~~ is unable to produce such person for examination.

In lieu of any of the foregoing orders in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party ~~him~~ or both to pay the reasonable expenses including the attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) **Expenses on Failure to Admit.** If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party ~~he~~ may apply to the court for an order requiring the other party to pay ~~him~~ the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that the party ~~he~~ might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) **Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection.** If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(5) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized~~ing~~ under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party ~~him~~ or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

. . .

Rule 38. Jury Trial.

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(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 the party's ~~his~~ attorney.

(c) **Demand — Specification of Issues.** In the ~~his~~ demand a party may specify the issues which the party ~~he~~ wishes so tried; otherwise the party ~~he~~ shall be deemed to have demanded trial by jury for all the issues so triable. If the party ~~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 the party ~~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. A party's consent to withdraw the jury trial demand may be implied by a failure to appear at trial.

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. The clerk ~~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.

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(b) **Trial Calendar — Memorandum to Set Civil Case for Trial.**

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(2) Any party not in agreement with the information or estimates given in the memorandum to set civil case for trial shall within ten days after the service thereof serve and file a memorandum on that party's ~~his~~ behalf.

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(d) **Applications for Orders.** Except as provided in Rule 63, application for any order in an action or proceeding, including appellate proceedings, shall be made to, and ruled upon, by the judge to whom the action or proceeding is assigned. However, application may be made to and signed by another judge if the judge who is assigned the case is not available and the application concerns a stipulation or uncontested motion; a petition for emergency domestic violence injunction; a motion for temporary restraining order or other emergency motion; findings, judgments and orders based upon decisions previously announced by the judge assigned to the case; or other matters when the application is presented to the presiding judge, or in the presiding judge's ~~his~~ absence, to any other available judge within the state, upon good cause shown.

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Rule 41. Dismissal of Actions.

(a) **Voluntary Dismissal — Effect Thereof.**

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(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 the defendant ~~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.

. . .

Rule 42. Consolidation — Separate Trials — Change of Judge.

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(c) **Change of Judge as a Matter of Right.** In all courts of the state, a judge or master may be peremptorily challenged as follows:

(1) *Nature of Proceedings.* In an action pending in the Superior or District Courts, each side is entitled as a matter of right to a change of one judge and of one master. Two or more parties aligned on the same side of an action, whether or not consolidated, shall be treated as one side for purposes of the right to a change of judge, but the presiding judge may allow an additional change of judge to a party whose interests in the action are hostile or adverse to the interests of another party on the same side. A party wishing to exercise the ~~his~~ right to change of judge shall file a pleading entitled "Notice of Change of Judge." The notice may be signed by an attorney, it shall state the name of the judge to be changed, and it shall neither specify grounds nor be accompanied by an affidavit.

. . .

(5) *Assignment or Action.* After a notice of change of judge is timely filed, the presiding judge shall immediately assign the matter to a new judge within that judicial district. Should that judge be challenged, the presiding judge shall continue to assign the case to new judges within the judicial district until all parties have exercised or waived their right to change of judge or until all superior court judges, or all district court judges, within the judicial district have been challenged peremptorily or for cause. Should all such judges in the district be disqualified, the presiding judge shall immediately notify the administrative director in writing and request that the administrative director ~~he~~ obtain from the Chief Justice an order assigning the case to another judge.

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Rule 45. Subpoena.

. . .

(c) **Service.** A subpoena may be served by a peace officer, or 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 that person ~~him~~ the fees for one day's attendance and the mileage prescribed by rule. When the subpoena is issued on behalf of the state, a municipality, a borough, a city, or an officer or agency thereof, fees and mileage need not be tendered. A subpoena may also be served by registered or certified mail. In such case the clerk shall mail the subpoena for delivery only to the person subpoenaed and, unless not required under this rule, shall enclose a warrant or postal money order in the amount of the fees for one day's attendance and of the mileage prescribed by rule. The returned delivery receipt shall be so addressed that it is returned to the party requesting the subpoena or that party's ~~his~~ attorney. Proof of service shall be made by affidavit.

(d) **Subpoena for Taking Depositions — Place of Examination.**

. . .

(2) A resident of the judicial district in which the deposition is to be taken may be required to attend an examination at any place within the district, unless otherwise ordered by the court. A nonresident of the judicial district in which the deposition is to be taken, and a nonresident of the state subpoenaed within the state, may be required to attend at any place within the district wherein the nonresident ~~he~~ is served with a subpoena, unless otherwise ordered by the court.

. . .

(f) **Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon that person ~~him~~ may be deemed a contempt of the court from which the subpoena issued.

. . .

Rule 46. Conduct of Trials.

(a) **Statement of Case.** Before the introduction of any evidence, the plaintiff shall state briefly the ~~his~~ claim for relief and the issues to be tried. The defendant shall then state the ~~his~~ defense or counterclaim.

(b) **Introduction of Evidence.** Unless otherwise ordered by the court, which may regulate the order of proof in the exercise of sound discretion, the plaintiff shall then introduce evidence ~~on his part~~, and when the plaintiff ~~he~~ has concluded the defendant shall do the same.

. . .

(e) **Attorney as Witness.** If counsel for either party is ~~offers himself as~~ a witness on behalf of that counsel's ~~his~~ client

and gives evidence on the merits of the case, that counsel ~~he~~ shall not argue the case to the jury unless by permission of the court.

(f) **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 the party ~~he~~ desires the court to take or the party's ~~his~~ objection to the action of the court and the ~~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 the party ~~him~~.

(g) **Argument of Counsel.** When the evidence is concluded, and unless the case is submitted to the jury by mutual agreement of both sides without argument, the plaintiff shall open with the plaintiff's ~~his~~ argument; the defendant shall follow with the defendant's ~~his~~ argument and the plaintiff may conclude the argument. Not more than two counsel shall be allowed to address the jury on behalf of either party, unless otherwise allowed by the court. If the plaintiff waives the opening argument and the defendant then argues the case to the jury, the plaintiff shall not be permitted to reply to the defendant's argument.

. . .

Rule 47. Jurors.

. . .

(c) **Challenges for Cause.** After the examination of prospective jurors is completed and before any juror is sworn, the parties may challenge any juror for cause. A juror challenged for cause may be directed to answer every question pertinent to the inquiry. Every challenge for cause shall be determined by the court. The following are grounds for challenge for cause:

. . .

(3) That the person shows a state of mind which will prevent the person ~~him~~ from rendering a just verdict, or has formed a positive opinion on the facts of the case or as to what the outcome should be, and cannot disregard such opinion and try the issue impartially.

(4) That the person has opinions or conscientious scruples which would improperly influence the person's ~~his~~ verdict.

. . .

(11) That the person is or has been a party adverse to the challenging party or attorney in a civil action, or has complained of or been accused by the challenging party or attorney ~~him~~ in a criminal prosecution.

. . .

Rule 48. Order of Trial Proceedings — Management of Juries.

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(d) **Separation of Jury — Admonition — Manner of Keeping Jury Before Submission of Case.** If any juror is permitted to separate from the jury during the trial the juror ~~he~~ must be admonished by the court that it is the juror's ~~his~~ duty not to converse with any person, including another juror, on any subject connected with the trial, nor to form or express any opinion thereon until the case is finally submitted to the jury. If any juror is permitted to separate from the jury after the case is submitted the juror ~~he~~ must be admonished by the court that it is the juror's ~~his~~ duty not to converse with any person on any subject connected with the trial, and that the juror ~~he~~ is to discuss the case only with other jurors in the jury room.

(e) **Juror Unable to Continue.** If, prior to the time the jury retires to consider its verdict, a juror is unable or disqualified to perform the juror's ~~his~~ duty, the court may order the juror ~~him~~to be discharged. If an alternate juror has not been impanelled as provided in the rules, the trial may proceed with the other jurors with the consent of the parties, or another juror may be sworn and the trial may begin anew; or the jury may be discharged and a new jury then or afterwards formed.

(f) **Jury — Deliberation — Communications.** After hearing the charge the jury shall retire for deliberation. It shall be and remain under the charge of an officer until it agrees upon its verdict or is discharged by the court. Unless otherwise ordered by the court, the officer having charge of the jury ~~it under his charge~~ must keep the jury together, separate from other persons; and the officer ~~he~~ must not suffer any communication to be made to it, nor make any ~~himself~~ except to ask it if it has agreed upon its verdict, and the officer ~~he~~ must not, before the verdict is rendered, communicate to any person the state of its deliberations or the verdict agreed upon. Such officer shall be sworn to act ~~conduct himself~~ according to the provisions of this section.

. . .

Rule 49. Special Verdicts and Interrogatories.

(a) **Returning a Verdict — Polling a Jury — Filing and Entering Verdict.** When the jury, or such a majority of it as may be required by the law or stipulation of the parties, have agreed upon a verdict, they shall be conducted into court, their names called, and the verdict shall be given by the foreperson~~man~~. The verdict shall be in writing and signed by the foreperson~~man~~. The court may permit the foreperson~~man~~ of the jury to date, sign and seal in an envelope a verdict reached after the usual business hours. The jury may then separate, but all must be in the jury box to deliver the verdict when the court next convenes or as instructed by the court.

When the court authorizes a sealed verdict, it shall admonish the jurors not to make any disclosure concerning it nor speak with other persons concerning the case until the verdict has been returned and the jury discharged. Any party may require the jury to be polled as to any verdict, which is done by asking each juror if it is that juror's ~~his~~ verdict. If upon such polling it appears that a verdict has not been agreed upon, the jury shall be sent out for further deliberation. After a verdict has been agreed upon, the jury shall be discharged from the case. The verdict shall be filed and an entry thereof made in the minutes of the court. The word "verdict" shall include, where applicable, answers to questions or interrogatories.

(b) **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 the ~~his~~ right to a trial by jury of the issue so omitted unless before the jury retires the party ~~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.

. . .

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

. . .

(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 the party's ~~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 the party's ~~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.

. . .

(d) **Same — Denial of Motion.** If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party ~~him~~ to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

Rule 51. Instructions to Jury.

. . .

(b) **Instructions to be Given.** The court shall instruct the jury that they are the exclusive judges of all questions of fact and of the effect and value of evidence presented in the action. The court shall instruct the jury on all matters of law which it considers necessary for their information in giving their verdict. On all proper occasions they shall also be instructed:

. . .

(2) That a witness wilfully false in one part of the witness' ~~his~~ testimony may be distrusted in other parts.

. . .

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 the master's ~~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 the master's ~~his~~ powers and may direct the master ~~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 the master ~~him~~ and to do all acts and take all measures necessary or proper for the efficient performance of the master's ~~his~~ duties under the order. The master ~~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. The master ~~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 Evidence Rule 103(b) 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 the ~~his~~ report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in the master's ~~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, the witness ~~he~~ may be punished 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, 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 the master ~~he~~ directs.

(d) **Report.**

(1) *Contents and Filing.* The master shall prepare a report upon the matters submitted to the master ~~him~~ by the order of reference and, if required to make findings of fact and conclusions of law, the master ~~he~~ shall set them forth in the report. The master ~~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.

. . .

(3) *In Jury Actions.* In an action to be tried by a jury the master shall not be directed to report the evidence. The master's ~~His~~ findings upon the issues submitted to the master ~~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.

. . .

(5) *Draft Report.* Before filing the master's ~~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 a deputy magistrate has been appointed a standing or special master for any purpose, the master's ~~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.

Rule 54. Judgments — Costs.

. . .

(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 the ~~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 the clerk's ~~his~~ action by the court shall be governed by Rule 79.

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 the party's ~~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 the party's ~~his~~ favor as to all or any part thereof.

. . .

(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 the adverse party's ~~his~~ pleading, but the adverse party's ~~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 the adverse party ~~he~~ does not so respond, summary judgment, if appropriate, shall be entered against the adverse party ~~him~~.

(f) **When Affidavits Are Unavailable.** Should it appear from the affidavits of a party opposing the motion that the party ~~he~~ cannot for reasons stated present by affidavit facts essential to justify the party's ~~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 other party the amount of the reasonable expenses which the filing of the affidavits caused the other party ~~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.

. . .

(b) **Confession Judgments — After Commencement of Action.**

(1) On the confession of the defendant, with the assent of the plaintiff or the plaintiff's ~~his~~ attorney, a judgment may be given against the defendant in any action, for any amount not exceeding or relief different from that demanded in the complaint.

. . .

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

. . .

(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~~ that the order will be 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 the judge ~~he~~ announces ~~his intention of having~~ that the order will be reduced to writing, the date of notice is the date shown in the clerk's certificate of distribution on the written order.

. . .

Rule 59. New Trials — Amendment of Judgments.

. . .

(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 the party's ~~his~~ agent or any officer within whose charge or knowledge the facts are, and also by the affidavit of the party's ~~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 the witness or witnesses ~~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.

. . .

Rule 60. Relief From Judgment or Order.

(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 a party's ~~his~~ legal representative from a final judgment, order, or proceeding for the following reasons:

. . .

Rule 63. Disability of a Judge.

. . .

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

Rule 65. Injunctions.

. . .

(b) **Temporary Restraining Order — Notice — Hearing — Duration.** A temporary restraining order may be granted without written or oral notice to the adverse party or that party's ~~his~~ attorney only if (1) 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 the adverse party or that party's ~~his~~ attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give

the notice and the reasons supporting the ~~his~~ claim that notice should not be required. Every temporary restraining order granted without notice shall be endorsed 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 the party ~~he~~ does not do so, the court shall dissolve the temporary restraining order. On two 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 a municipality or of an officer or agency thereof, or unless otherwise ordered by the court, in domestic relations actions or proceedings.

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 the surety's ~~his~~ agent upon whom any papers affecting the surety's ~~his~~ liability on the bond or undertaking may be served. The surety's ~~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.

. . .

Rule 69. Execution — Examination of Judgment Debtor — Restraining Disposition of Property — Execution After Five Years.

(a) **Execution — Discovery.** Process to enforce a judgment shall be by 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 these rules and applicable

statutes. In aid of the judgment or execution, the judgment creditor or a ~~his~~ successor in interest, when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules.

(b) **Examination of Judgment Debtor in Court.**

. . .

(2) The examination may be reduced to writing and filed with the clerk by whom the execution was issued. Either party may examine witnesses in that party's ~~his~~ behalf. If by such examination it appears that the judgment debtor has any property liable to execution the court shall make an order requiring the judgment debtor to apply the same in satisfaction of the judgment, or that such property be levied on by execution, or both, as may seem most likely to effect the object of the proceeding.

(c) **Order Restraining Disposition of Property.** At the time of allowing the order prescribed in subdivision (b)(1) of this rule or at any time thereafter pending the proceeding, the court may make an order restraining the judgment debtor from selling, transferring, or in any manner disposing of any ~~of his~~ property liable to execution pending the proceeding. For disobeying any order or requirement authorized by this rule the judgment debtor may be punished as for a contempt.

(d) **Execution After Five Years.** Whenever a period of five years shall elapse without an execution being issued on a judgment, no execution shall issue except on order of the court in the following manner:

. . .

(2) Upon filing such motion and affidavit the judgment creditor shall cause a summons to be served on the judgment debtor in accordance with the provisions of Rule 4. In the event the judgment debtor is deceased, the summons may be served upon the judgment debtor's ~~his~~ representative. The summons shall state the amount claimed or the property sought to be recovered under the judgment.

(3) The judgment debtor, or, in the event of the judgment debtor's ~~his~~ death, the judgment debtor's ~~his~~ representative, may file and serve a verified answer to such motion within the time allowed to answer a complaint, alleging any defense to such motion which may exist. The judgment creditor may file and serve a verified reply to such answer. The judgment debtor waives all defenses and objections which the judgment debtor ~~he~~ does not present by answer as herein provided.

. . .

(5) At the time of filing the motion for leave to issue execution or at any time thereafter before the final order is

entered, the judgment creditor may cause the property of the judgment debtor to be attached and held during the time said motion is pending and until the final order is entered. Such attachment shall be made in accordance with these rules and applicable statutes, and for the purpose of such attachment the judgment shall be deemed an implied contract for the direct payment of money. In the event that the court shall order that execution be issued, it shall further order that any property of the judgment debtor attached hereunder shall be sold for the satisfaction of such execution and the peace officer shall apply the property attached by the peace officer ~~him~~ or the proceeds thereof upon the execution.

. . .

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, that person ~~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, that person ~~he~~ is liable to the same process for enforcing obedience to the order as ~~if he were~~ a party.

Rule 72. Eminent Domain.

. . .

(d) **Process.**

. . .

(2) *Form.* Each notice shall state the court, the title of the action, the name of the defendant to whom it is directed, that the action is to condemn property, a description of the ~~his~~ property sufficient for its identification, the interest to be taken, the authority and necessity for the taking, and the use for which the property is to be taken. The notice must show the location, route and termini of any easement or right-of-way sought to be condemned.

The notice shall also state that the defendant may serve upon the plaintiff's attorney an answer within twenty (20) days after service of the notice, that a failure to serve an answer constitutes a consent to the taking and to the authority of the court to proceed to hear the action and to fix the compensation, and that at a designated time and place the court will conduct a hearing to determine the authority and necessity for the taking.

The notice shall further state that the defendant, without filing an answer, may serve on plaintiff's attorney a notice of appearance designating the property in which the defendant ~~he~~ claims to be interested; that thereafter the defendant ~~he~~ will receive notice of all proceedings affecting it; that regardless of whether the defendant appears or answers, the defendant ~~he~~ may present evidence as to the amount of compensation to be paid for

the ~~his~~ property at the hearing or trial of the issue of just compensation; that regardless of whether the defendant ~~he~~ appears or answers the defendant ~~he~~ may share in the distribution of the award; that if neither an appearance nor an answer is filed the court will proceed to hear the action and to fix the compensation without further notice; and that if neither an appearance nor an answer is filed before ten (10) days after the jury's verdict is returned or the master's report is filed, judgment by default will be taken against the defendant for the relief demanded in the complaint.

. . .

(e) **Appearance or Answer.**

(1) *No Objection or Defense.* If a defendant has no objection or defense to the taking of the ~~his~~ property, the defendant ~~he~~ may serve a notice of appearance designating the property in which the defendant ~~he~~ claims to be interested. Thereafter the defendant ~~he~~ shall receive notice of all proceedings affecting it.

(2) *Objection or Defense — Answer.* If a defendant has any objection or defense to the taking of the ~~his~~ property, the defendant ~~he~~ shall serve an ~~his~~ answer within twenty (20) days after the service of notice upon the defendant ~~him~~. The answer shall identify the property in which the defendant ~~he~~ claims to have an interest, state the nature and extent of the interest claimed, and state all the defendant's ~~his~~ objections and defenses to the taking of the ~~his~~ property.

. . .

(4) *Waiver of Defenses and Objections.* A defendant waives all defenses and objections not presented as provided in this subdivision (e), but at the hearing or trial of the issue of just compensation, whether or not the defendant ~~he~~ has previously appeared or answered, and even though a default judgment may have been entered against the defendant ~~him~~, the defendant ~~he~~ may present evidence as to the amount of compensation to be paid for the ~~his~~ property, and ~~he~~ also may share in the distribution of the award if the defendant's ~~his~~ claim for compensation is filed before the award is ordered distributed by the court.

. . .

(f) **Amendment of Pleadings.** Without leave of court, the plaintiff may amend the complaint at any time before the trial of the issue of compensation and as many times as desired, but no amendment shall be made which will result in a dismissal forbidden by subdivision (i) of this rule. The plaintiff need not serve a copy of an amendment, but shall serve notice of the filing, as provided in Rule 5(b), upon any party affected thereby who has appeared and, in the manner provided in subdivision (d) of this rule, upon any party affected thereby who has not appeared. The plaintiff shall furnish to the clerk of the court for the use of

the defendants at least one copy of each amendment, and ~~he~~ shall furnish additional copies on the request of the clerk or of a defendant. Within the time allowed by subdivision (e) of this rule a defendant may serve an ~~his~~ answer to the amended pleading, in the form and manner and with the same effect as there provided.

(g) **Substitution of Parties.** If a defendant dies or becomes incompetent or transfers the defendant's ~~his~~ interest after the defendant's ~~his~~ joinder, the court may order substitution of the proper party upon motion and notice of hearing. If the motion and notice of hearing are to be served upon a person not already a party, service shall be made as provided in subdivision (d) (3) of this rule.

(h) **Hearing and Trial.**

. . .

(4) *Appeal and Trial De Novo*. The plaintiff may appeal within ten (10) days after being served with notice of the filing of the master's report. Any defendant who has appeared or answered before the filing of a master's report may appeal within fifteen (15) days after being served with notice of the filing of the master's report. Any other interested person desiring to appeal from a master's report must take an ~~his~~ appeal within fifteen (15) days after the filing of such report.

(5) *Notice of Appeals*. A party or other interested person may appeal from the master's report by filing with the clerk a notice of appeal in duplicate, with sufficient additional copies for all parties who have appeared or answered. The notice of appeal shall contain the following:

. . .

[e] A concise statement of the grounds of appeal.

Notification of the filing of the notice shall be given by the clerk by mailing copies thereof to all parties who have appeared or answered other than the party or parties taking the appeal, but the clerk's ~~his~~ failure to do so 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 the party's ~~his~~ attorney of record, or if the party is not represented by an attorney, then to the party at the party's ~~his~~ last known address.

. . .

(j) **Deposit and Its Distribution.** The plaintiff shall deposit with the court any money required by law as a condition to the exercise of the power of eminent domain, and although not so required, may make such deposit. In such case the court and attorneys shall expedite the proceedings for the distribution of the money so deposited and for the ascertainment and payment of just compensation. If the compensation finally awarded to any

defendant exceeds the amount which has been paid to the defendant ~~him~~ on distribution of the deposit, the court shall enter judgment against the plaintiff and in favor of that defendant for the deficiency. If the compensation finally awarded to any defendant is less than the amount which has been paid to the defendant ~~him~~, the court shall enter judgment against the defendant ~~him~~ and in favor of the plaintiff for the over-payment.

. . .

Rule 73. The Clerk.

. . .

(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:

. . .

(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 the clerk's ~~his~~ action in entering any such order. Any order so entered may be suspended, altered or rescinded by the court for cause shown.

. . .

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

. . .

(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 the clerk ~~him~~ of a receipt signed by the officer who desires the use of said papers.

. . .

(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 the judge's ~~his~~ secretary desires to retain any such document in chambers for delivery by such judge or the judge's ~~his~~ secretary to the clerk.

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

. . .

(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 the ~~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.

. . .

Rule 77. Motions.

. . .

(b) There shall be served and filed with the motion:

(1) Legible copies of all photographs, affidavits and other documentary evidence which the moving party intends to submit in support of the ~~his~~ motion;

. . .

(c) Each party opposing the motion or other application shall, within 10 days after service of the motion or other application upon that party ~~him~~, unless otherwise ordered by the court, or otherwise stipulated to by the parties with court approval, either:

. . .

(4) Serve and file a written statement that the party ~~he~~ will not oppose the motion.

. . .

Rule 78. Findings, Conclusions, Judgments and Orders — Preparation and Submission.

. . .

(c) **Order Upon Stipulation.** When a party desires an order of court pursuant to stipulation, the party ~~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. The name of the judge, if known, shall be typed immediately under the signature line prior to presentation for signature. A stipulation extending time or providing for a continuance shall state the grounds therefor.

. . .

(e) **Computation of Interest.** The party preparing a form of judgment shall show on the proposed judgment the date prejudgment interest should begin. The party ~~He~~ shall also attach to the proposed judgment a completed prejudgment computation on a form to be provided by the clerk of court.

Rule 79. Costs — Taxation and Review.

(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, or the party's ~~his~~ agent or attorney or ~~of~~ the ~~clerk of such~~ attorney's agent, 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 the party's ~~his~~ right to recover costs.

. . .

(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. The party ~~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.

. . .

Rule 80. Bonds and Undertakings.

. . .

(c) **Affidavits of Sureties.**

(1) *Individuals*. The undertaking must contain an affidavit of each surety which shall state that the surety ~~he~~ possesses the qualifications prescribed by subdivision (b) of this rule.

. . .

(d) **Justification of Sureties.**

. . .

(2) *Examination as to Sureties Qualifications*. Upon three days' notice to a party, an adverse party may require an individual surety or the agent of a corporate surety to be examined under oath concerning the surety's ~~his~~ qualifications. Evidence as to such qualifications shall be taken before any judge or magistrate who shall have the authority to approve or reject the bond or undertaking.

. . .

(e) **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 the attorney ~~he~~ knows the contents thereof; that the attorney ~~he~~ knows the purposes for which it is executed; and that in the attorney's ~~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)"

(f) **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 the surety's ~~his~~ agent upon whom any papers affecting the surety's ~~his~~ liability on the bond may be served. The surety's ~~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 the surety's ~~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.

(g) **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 the owner's ~~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 (f) of this rule.

Rule 81. Attorneys.

(a) **Who May Practice.**

. . .

(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 payment of the required fee to the Alaska Bar Association, to appear and participate in a particular action or proceeding in a court of this state. The motion, and the notice of hearing, if any, shall be served on the executive director of the Alaska Bar Association and, unless the court directs otherwise by an order pursuant to Rule 5(c) of these Rules, on each of the parties to the action or proceeding. With the ~~his~~ motion, the applicant must file with the court the following:

. . .

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

(d) Proof of payment of the required fee to the Alaska Bar Association.

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 the attorney ~~he~~ is associated.

. . .

(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 the party's ~~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.**

(1) 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:

. . .

(iii) Where the party expressly consents in open court or in writing to the withdrawal of the party's ~~his~~ attorney and the party has provided in writing or on the record a current service address and telephone number.

. . .

(g) **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, that member ~~he~~ shall not be permitted to practice before the court until the member ~~he~~ is thereafter reinstated according to existing statutes and rules.

Rule 86. Habeas Corpus.

. . .

(b) **Complaint.** The complaint shall be verified by the prisoner or by someone on the prisoner's ~~his~~ behalf who shall be known as the plaintiff and shall state in substance as follows:

(1) That the person in whose behalf the writ is applied for (the prisoner) is restrained of ~~his~~ liberty.

(2) The name of the prisoner, if known, or the prisoner's ~~his~~ description.

(3) The name of the officer or person by whom the prisoner is so restrained, if known, or the officer's or person's ~~his~~ description.

. . .

(c) **Writ — Order to Show Cause — Warrant.**

(1) *Issuance Upon Application.* Upon the presentation or filing of a complaint, the court (or judge) shall, unless it appears that the plaintiff is not entitled to that relief:

[a] Issue a writ of habeas corpus directed to the person having custody of the prisoner, or the person's ~~his~~ superior, ordering the person or superior ~~him~~ to answer the writ stating the ~~his~~ authority for restraining the prisoner and to bring the person alleged to be restrained before the court (or judge) forthwith, or at a designated time and place; or

. . .

(d) **Sufficiency of Writ.** The writ or order to show cause shall not be disobeyed for any defect of form. It is sufficient (1) if the person having custody of the prisoner is designated simply as the person having custody of the prisoner, and (2) if the person restrained, or who is directed to be produced, is designated by name; or if that person's ~~his~~ name is uncertain or unknown, if that person ~~he~~ is described in any other way, so as to designate the person intended. Anyone served with the writ is deemed the person to whom it is directed.

(e) **Service of Writ.**

(1) *Person to Be Served.* The writ or order to show cause shall be served on the person having custody of the prisoner, who shall be known and designated as the defendant, in the manner prescribed in Rule 4. If the defendant cannot be found, or if the defendant ~~he~~ does not have the prisoner in custody, the writ or order to show cause may be served upon anyone having the prisoner in custody, or that person's ~~his~~ superior, in the manner and with the same effect as if that person or the superior ~~he~~ had been made defendant in the action.

(2) *Tender of Fees.* To make the service of a writ of habeas corpus effective as to the production of the prisoner, the person making service shall tender to the person having custody of the prisoner, or that person's ~~his~~ superior, the fees as follows:

[a] No fees need be tendered if the action is brought by the Attorney General or a prosecuting attorney, nor if the writ is issued by the judge on the judge's ~~his~~ own motion.

[b] If the prisoner is in the custody of a public officer, the fees tendered shall be in a sum adequate to cover the cost of producing the prisoner and of returning the prisoner ~~him~~ if ~~he be~~ remanded, said sum to be established by the judge upon the issuance of the writ and endorsed thereon by the judge ~~him~~.

. . .

(g) **Answer.**

(1) *Contents*. The answer shall state plainly and unequivocally:

[a] Whether the defendant or person served then has, or at any time has had, the prisoner in custody ~~under his control~~, and if so, the authority and cause therefor; and

. . .

(3) *Verification*. The answer shall be signed by the person answering and, except when the person is a sworn public officer and answers in the person's ~~his~~ official capacity, it shall be verified by oath.

. . .

(i) **Controverting Answer.** The plaintiff or the prisoner may, in a reply or at the hearing, controvert the answer under oath, to show either that the restraint of the prisoner was unlawful, or that the prisoner ~~he~~ is entitled to ~~his~~ discharge or other appropriate remedy.

. . .

(k) **Notice of Hearing Before Discharge.** When the answer indicates that the prisoner is in custody on any process under which any other person has an interest in continuing the prisoner's ~~his~~ restraint, no order may be made for the prisoner's ~~his~~ discharge unless the person so interested, or that person's ~~his~~ attorney, has had reasonable notice of the time and place of the hearing. When the answer indicates that the prisoner is detained upon a criminal accusation, the prisoner shall not be discharged until reasonable notice of the time and place of the hearing is given to the prosecuting attorney of the district within which the prisoner is detained or, if there is no prosecuting attorney within the district, to the Attorney General.

. . .

Rule 88. Procedure for Claiming Delivery of Personal Property.

(a) **Prejudgment Delivery of Personal Property to Plaintiff; Availability.** When the plaintiff has commenced a civil action to recover possession of personal property, and has provided a written undertaking with sufficient sureties as ordered by the court, the plaintiff ~~he~~ may make application to the court to have the property delivered to the plaintiff ~~him~~. The court may order the prejudgment seizure of the property in accordance with the provisions of this rule.

(b) **Motion and Affidavit for Delivery.** The plaintiff shall file a motion with the court requesting the delivery of personal property, together with an affidavit showing:

. . .

The plaintiff or the plaintiff's ~~his~~ attorney shall endorse in writing upon the motion attached to the affidavit a request that the property claimed be taken by a peace officer from the defendant and be delivered to the plaintiff.

. . .

(d) **Hearing; Burden of Proof.** At the hearing the court shall require the plaintiff to establish by a preponderance of the evidence the probable validity of the plaintiff's ~~his~~ claim to the property and the absence of any reasonable probability that a successful defense can be asserted by the defendant.

(e) **Issuance of Order; Seizure.** If at the hearing the court finds that the plaintiff has met the ~~his~~ burden of proof as set forth in paragraph (d) of this rule, the court shall issue an order directing a peace officer to seize and take into custody the property described in the affidavit.

. . .

(h) **Return by Peace Officer.** The peace officer shall file a return with the court promptly and in any event within 20 days after the taking of the property from the defendant. Such return shall contain an inventory of the property taken, a statement of the claims, if any, by persons other than the plaintiff, and the name of the person to whom the property has been delivered. If the property is not taken, the peace officer shall promptly make a return to the court stating the fact and giving the ~~his~~ reasons therefor.

. . .

(j) **Ex Parte Prejudgment Delivery of Personal Property.** The court may issue a prejudgment order for delivery of personal property in an ex parte proceeding upon the plaintiff's motion, affidavit, and undertaking *only* in the following extraordinary situations:

(1) *Imminence of Defendant Concealing, Destroying or Conveying the Property.* The court may issue an ex parte order for delivery if the plaintiff establishes the probable validity of the plaintiff's ~~his~~ claim for possession of the property, *and* if the plaintiff ~~he~~ states in the ~~his~~ affidavit specific facts sufficient to support a judicial finding of one of the following circumstances:

. . .

(v) The defendant is otherwise disposing, or about to dispose, of the property in a manner so as to defraud the defendant's ~~his~~ creditors, including the plaintiff.

(2) *Defendant's Waiver of Right to Pre-Seizure Hearing.* The court may issue an ex parte order for delivery if the plaintiff

establishes the probable validity of the plaintiff's ~~his~~ claim for possession of the property, and if the plaintiff ~~he~~ accompanies the affidavit and motion with a document signed by the defendant voluntarily, knowingly and intelligently waiving the defendant's ~~his~~ constitutional right to a hearing before prejudgment seizure of the property.

. . .

(k) **Execution, Duration, and Vacation of Ex Parte Orders.** When the peace officer executes an ex parte delivery order, the peace officer ~~he~~ shall at the same time serve on the defendant copies of the plaintiff's affidavit, motion and undertaking, and the order. No ex parte order shall be valid for more than seven (7) business days (exclusive of Saturdays, Sundays, and legal holidays), unless the defendant waives the ~~his~~ right to a pre-seizure hearing in accordance with subsection (j) (2) of this rule, or unless the defendant consents in writing to an additional extension of time for the duration of the ex parte order. The defendant may at any time after service of the order request an emergency hearing at which the defendant ~~he~~ may refute the special need for the seizure and the validity of the plaintiff's claim for possession of the property.

. . .

Rule 89. Attachment.

. . .

(d) **Hearing; Burden of Proof.** At the hearing the court shall require the plaintiff to establish by a preponderance of the evidence the probable validity of the plaintiff's ~~his~~ claim for relief in the ~~his~~ action and the absence of any reasonable probability that a successful defense can be asserted by the defendant.

(e) **Issuance of Writ.** If at the hearing the court finds that the plaintiff has met the ~~his~~ burden of proof set forth in section (d) of this rule, the court shall order that a writ of attachment be issued unless the defendant posts security as provided in section (j). The writ shall be directed to a peace officer and shall require the peace officer ~~him~~ to attach and safely keep property of the defendant not exempt from execution sufficient to satisfy the plaintiff's demand (the amount of which shall be stated in conformity with the complaint), together with costs and expenses. Several writs may be issued at the same time and delivered to different peace officers, provided the total amount of the several writs does not exceed the plaintiff's claim. Additional writs may be issued where previous writs have been returned unexecuted, or executed in an amount insufficient to satisfy the full amount of the plaintiff's claim.

(f) **Execution of Writ.** The peace officer shall execute the writ without delay, as follows:

. . .

(2) Personal property capable of manual delivery to the peace officer, and not in the possession of a third party, shall be attached by the peace officer by taking it into ~~his~~ custody.

. . .

(i) **Return by Peace Officer.** The peace officer shall note upon the writ of attachment the date of its receipt ~~delivery to him~~. When the writ has been executed, the peace officer shall promptly return it to the clerk with the officer's proceedings endorsed thereon, including a full inventory of any property attached. If the writ cannot be executed, the peace officer shall promptly return it to the clerk stating thereon the reasons why it could not be executed.

. . .

(l) **Garnishee Proceedings.**

(1) *Order of Appearance — Service.* When a person is ordered to appear before the court to be examined as to any property or debt held by the person ~~him~~ belonging to a defendant, such person shall be known as the garnishee. The order shall state the time and place where the garnishee is to appear, shall be served upon the garnishee and return of service made in the manner provided for service of summons and return thereof in Rule 4.

(2) *Failure to Appear — Default.* When a garnishee fails to appear in compliance with the order, the court on motion may compel the garnishee ~~him~~ to do so.

. . .

(5) *Judgment Against Garnishee.* If it shall be found that the garnishee, at the time of service of the writ of attachment and notice, had any property of the defendant liable to attachment beyond the amount admitted in the garnishee's ~~his~~ statement, or in any amount if a statement is not furnished, judgment may be entered against the garnishee for the value of such property in money. At any time before judgment, the garnishee may be discharged from liability by delivering, paying or transferring the property to the peace officer.

. . .

(m) **Ex Parte Attachments.** The court may issue a writ of attachment in an ex parte proceeding based upon the plaintiff's motion, affidavit, and undertaking only in the following extraordinary situations:

. . .

(2) *Imminence of Defendant Avoiding Legal Obligations.* The court may issue an ex parte writ of attachment if the plaintiff establishes the probable validity of the plaintiff's ~~his~~claim for relief in the ~~his~~ main action, and if the plaintiff ~~he~~ states in the ~~his~~ affidavit specific facts sufficient to support a judicial finding of one of the following circumstances:

. . .

(ii) The defendant is concealing the defendant's whereabouts ~~himself~~; or

(iii) The defendant is causing, or about to cause, the defendant's ~~his~~ property to be removed beyond the limits of the state; or

(iv) The defendant is concealing, or about to conceal, convey or encumber ~~his~~ property in order to escape the defendant's ~~his~~ legal obligations; or

(v) The defendant is otherwise disposing, or about to dispose, of ~~the~~ property in a manner so as to defraud the defendant's ~~his~~ creditors, including the plaintiff.

(3) *Defendant's Waiver of Right to Pre-Attachment Hearing.* The court may issue an ex parte writ of attachment if the plaintiff establishes the probable validity of the plaintiff's ~~his~~ claim for relief in the ~~his~~ main action, and if the plaintiff ~~he~~ accompanies the affidavit and motion with a document signed by the defendant voluntarily, knowingly and intelligently waiving the ~~his~~ constitutional right to a hearing before prejudgment attachment of the property.

. . .

(n) **Execution, Duration, and Vacation of Ex Parte Writs of Attachment.** When the peace officer executes an ex parte writ of attachment, the peace officer ~~he~~ shall at the same time serve on the defendant copies of the plaintiff's affidavit, motion and undertaking, and the order. No ex parte attachment shall be valid for more than seven (7) business days (exclusive of Saturdays, Sundays, and legal holidays), unless the defendant waives the ~~his~~ right to a pre-attachment hearing in accordance with subsection (m)(3) of this rule, or unless the defendant consents in writing to an additional extension of time for the duration of the ex parte attachment, or the attachment is extended, after hearing, pursuant to section (e) of this rule. The defendant may at any time after service of the writ request an emergency hearing at which the defendant ~~he~~ may refute ~~refuse~~ the special need for the attachment and validity of the plaintiff's claim for relief in the ~~his~~ main action.

(o) **Discharge of Attachment Where Perishable Goods Have Been Sold.** Whenever the defendant shall have appeared in the action, the defendant ~~he~~ may apply to the court for an order to discharge the

attachment on perishable goods which have been sold. If the order be granted, the peace officer shall deliver to the defendant all proceeds of sales of perishable goods, upon the giving by the defendant of the undertaking provided for in section (j).

. . .

Rule 90. Contempts.

(a) **Contempt in Presence of Court.** A contempt may be punished summarily if the judge certifies that the judge ~~he~~ saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

(b) **Other Contempts — Proceedings — Parties.** For every contempt other than that specified in subdivision (a) of this rule, upon a proper showing on ex parte motion supported by affidavits, the court shall either order the accused party to show cause at some reasonable time, to be therein specified, why the accused party ~~he~~ should not be punished for the alleged contempt, or shall issue a bench warrant for the arrest of such party. Such proceeding may be commenced and prosecuted in the same action or in an independent proceeding either by the state, or by the aggrieved party whose right or remedy in an action has been defeated or prejudiced or who has suffered a loss or injury by the act constituting a contempt.

. . .

(e) **Return.** Proof of service of an order to show cause or execution of a bench warrant shall be governed by Rule 4(f). Any bond delivered to an officer making service shall be filed by the officer ~~him~~ with the court.

(f) **Hearing and Determination.** When the defendant has been brought before the court ~~up~~ or has appeared, the court or judicial officer shall proceed to investigate the charge by examining the defendant and witnesses for or against the defendant ~~him~~. Upon the evidence so taken, the court or judicial officer shall determine the defendant's guilt or innocence of the contempt charged.

. . .

DISTRICT COURT CIVIL RULES

Rule 1. Scope of Rules — Construction.

(a) **Scope of Rules.**

. . .

(2) If in any action or proceeding a magistrate finds it impracticable to proceed or is ~~finds himself~~ at a disadvantage because of the application of any of such rules, the magistrate ~~he~~ may hold the action or proceeding in abeyance, without prejudice to the rights of the parties, for further action by a district judge.

. . .

Rule 8. Scope and Applicability.

. . .

(b) A party having a claim or claims exceeding the maximum amount of a small claim as defined by AS 22.15.040 may waive the ~~his~~ right to recover the excess amount and elect to proceed under this Part II, by filing a written waiver of the excess amount.

. . .

Rule 10. Pleadings.

. . .

(c) An answer form shall be served with the complaint and shall advise the defendant of the ~~his~~ right to proceed informally under this Part II or formally under Part I of these rules. The form shall contain a statement that when the defendant requests informal proceedings, the defendant ~~he~~ waives the right to trial by jury and to proceed formally. A plaintiff against whom a counterclaim is filed shall have ten days after such claim is mailed to the plaintiff ~~him~~ to withdraw the plaintiff's ~~his~~ election to proceed under Part II, and failure to withdraw the ~~his~~ election waives the plaintiff's ~~his~~ right to trial by jury and formal procedure as to the counterclaim.

(d) A defendant who does not wish to contest the claim ~~against him~~ may default by failing to file an answer or may file an answer agreeing with the complaint. The latter shall be sufficient basis for entry of judgment on the pleadings by the court or clerk when the claim is for a specific amount of damages.

Rule 13. Defenses and Objections — When and How Presented.

(a) A defendant shall file or state an ~~his~~ answer within 20 days after service of the summons and complaint upon the defendant ~~him~~. A counterclaim shall be deemed denied by the plaintiff.

. . .

Rule 17. Judgment.

(a) If the defendant fails to answer the complaint within 20 days after service of process or fails to attend trial, the defendant ~~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 the defendant ~~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. The clerk may enter a default judgment if the damages alleged are liquidated and no default hearing is required. If the defendant answers but fails to appear at trial, the court may nevertheless consider any relevant and material evidence filed with the answer. The court may allow an answer to be filed after the defendant is in default, but before judgment is entered, upon a showing of good cause. The plaintiff may move the court to enter a default judgment if the defendant is in default. Affidavits or exhibits necessary to the entry of default judgment under this rule shall accompany the motion.

. . .

(c) If the plaintiff fails to attend the trial, the plaintiff ~~he~~ is in default. When neither party appears, the court may dismiss the action with prejudice. When the defendant appears and the plaintiff does not, the court shall inquire of the defendant concerning the validity of the defendant's ~~his~~ defense and the defendant's ~~his~~ knowledge, if any, of the reasons for the plaintiff's absence. The court may then, in its discretion, enter judgment dismissing the claim with prejudice. If the defendant has asserted a counterclaim, it shall be disposed of according to paragraph (a) of this rule.

. . .

(e) 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 the ~~his~~ pleadings.

. . .

Rule 21. Assistance to Litigants — Handbook.

Magistrates and clerks of any district court are authorized, where necessary, to assist litigants in the preparation of complaints and answers. First recourse should be had to the Alaska Small Claim Handbook, which shall be available for distribution to prospective litigants at all locations ~~seats~~ of any court empowered

to handle small claims actions, and shall be served upon the defendant with the summons and complaint. When a party is illiterate or otherwise unable to write a ~~his~~ pleading, and is unable to obtain assistance from a friend or relative, the clerk or magistrate shall write it on the appropriate form. A form written by the clerk or magistrate shall be signed by the party or bear the party's ~~his~~ witnessed mark. The clerk shall note upon its face the method of preparing the pleading under this rule.

Rule 32. Presumption of Death.

(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 the person's ~~his~~ disappearance. The petition shall show the following:

. . .

Rule 4. Warrant or Summons Upon Complaint.

(a) **Issuance.**

. . .

(3) *Failure of Defendant to Appear After Summons*. If a defendant who has been duly summoned fails to appear or if there is reasonable cause to believe that the defendant ~~he~~ will fail to appear, a warrant of arrest shall issue; provided that in the case of a defendant charged with a minor offense as defined in Rule 8, District Court Rules of Criminal Procedure, additional summons may issue in lieu of a warrant of arrest. If a defendant corporation fails to appear after having been duly summoned, a plea of not guilty shall be entered by the court if the court is empowered to try the offense for which the summons was issued and the court may proceed to trial and judgment without further process. If the court is not so empowered it shall proceed as though the defendant has appeared.

. . .

(b) **Form and Contents.**

(1) *Warrant*. The warrant shall be signed by the judge or magistrate, or by a clerk directed to do so on the record. The warrant shall contain the name of the defendant or, if the defendant's ~~his~~ name is unknown, any name or description by which the defendant can be identified with reasonable certainty, and shall describe the offense charged in the complaint. The warrant shall be directed to any peace officer or other person authorized by law to execute the warrant and shall command that the defendant be arrested and brought before the nearest available judge or magistrate without unnecessary delay. The judge or magistrate shall endorse the amount of bail upon the warrant.

(2) *Summons*. The summons shall be signed by the judge or magistrate or by a clerk directed to do so on the record. The summons shall be in the same form as the warrant, except that it shall summon the defendant to appear before a judge or magistrate at the time and place stated therein, and shall inform the defendant that if the defendant ~~he~~ fails to appear a warrant will issue for the defendant's ~~his~~ arrest.

(c) **Execution or Service and Return.**

. . .

(3) *Manner*. The warrant shall be executed by the arrest of the defendant. The officer need not possess ~~have~~ the warrant ~~in his possession~~ at the time of the arrest, but upon request ~~he~~ shall show the warrant to the defendant as soon as possible. If the officer does not possess ~~have~~ the warrant ~~in his possession~~ at the

time of the arrest, the officer ~~he~~ shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon the defendant by delivering a copy to the defendant ~~him~~ personally, or by leaving it at the defendant's ~~his~~ dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or in any other manner provided for service of process in civil actions.

. . .

Rule 5. Proceedings Before the Judge or Magistrate.

(a) **Appearance Before Judge or Magistrate.**

. . .

(2) If

. . .

(v) The arrested person has no date, time and place established for his or her next court appearance,

then the arrested person shall be taken before a judge or magistrate in the community where the jail is located within twenty-four hours of the person's ~~his~~ detention in that jail

(aa) in order for ~~his~~ bail to be reviewed, and

(bb) in order to determine if the person ~~he~~ is represented by counsel, and

. . .

(b) **Rights of Prisoner to Communicate with Attorney or Other Person.** Immediately after ~~his~~ arrest, the prisoner shall have the right forthwith to telephone or otherwise to communicate with both an ~~his~~ attorney and any relative or friend. Any attorney at law entitled to practice in the courts of Alaska, at the request of either the prisoner or any relative or friend of the prisoner, shall have the right forthwith to visit the prisoner in private.

(c) **Statement by Judge or Magistrate — Right to Counsel — Bail.** The judge or magistrate

(1) shall inform the defendant of the complaint ~~against him~~ and of any affidavit filed therewith, and

. . .

(3) shall inform the defendant

(i) of the ~~his~~ right to retain counsel, and

(ii) of the ~~his~~ right to request the assignment of counsel if the defendant ~~he~~ is unable to obtain counsel, and

(iii) of the ~~his~~ right to have a preliminary examination, and

(4) shall inform the defendant that the defendant ~~he~~ is not required to make a statement and that any statement may be used against the defendant ~~him~~. The judge or magistrate shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided by law and by these rules.

. . .

(e) **Felonies.** If the charge against the defendant is a felony, the defendant shall not be called upon to plead, but shall be given reasonable time and opportunity to consult counsel. The judge or magistrate shall proceed as follows:

. . .

(2) *Right to Preliminary Examination.*

(i) The judge or magistrate shall inform the defendant of the ~~his~~ right to a preliminary examination. A defendant is entitled to a preliminary examination if the defendant ~~he~~ is charged with a felony for which the defendant ~~he~~ has not been indicted, unless

(aa) the defendant ~~he~~ waives the preliminary examination, or

(bb) an information has been filed against the defendant ~~him~~ with the defendant's ~~his~~ consent in the superior court.

(ii) If the defendant after having had the opportunity to consult with counsel waives preliminary examination, the judge or magistrate shall forthwith hold the defendant ~~him~~ to answer in the superior court.

. . .

Rule 5.1. Preliminary Examination.

(a) **Representation by Counsel.** The defendant is entitled to be represented by counsel. If the defendant cannot secure counsel, counsel shall be appointed for the defendant ~~him~~.

(b) **Order of Proof — Witnesses Called by the State.** The state shall first present the evidence in support of its case. All witnesses called by the state shall be examined in the presence of the defendant and may be cross-examined by the defendant ~~him~~ or by the defendant's ~~his~~ counsel.

(c) **Witnesses Called by the Defendant.** The defendant may produce and examine witnesses on the defendant's ~~his own~~ behalf. All witnesses, including the defendant should the defendant choose

to testify ~~he make himself his own witness~~, may be cross-examined. The production of witnesses shall be governed by Rule 17, so far as it is applicable.

. . .

(h) **Commitment of Defendant.** If from the evidence it appears that there is probable cause to believe that an offense has been committed and that the defendant committed it, the judge or magistrate shall enter an order holding the defendant to answer to the charge and committing the defendant ~~him~~ to proper custody. The judge or magistrate shall admit the defendant to bail as provided by law and by these rules.

(i) **Records.** When a judge or magistrate has held a defendant to answer, the judge or magistrate ~~he~~ shall transmit to the clerk of the superior court of the judicial district in which the offense is triable all papers in the proceedings, any bail taken by the judge or magistrate ~~him~~, and all exhibits introduced at the examination.

(j) **Counsel for Complaining Witness — Counsel for Prosecution.** A complaining witness may be represented by counsel at every stage of the preliminary hearing. The attorney general or some attorney authorized to act for the attorney general ~~him~~ may appear on behalf of the State of Alaska and control the conduct of the prosecution.

Rule 7. Indictment and Information.

. . .

(b) **Waiver of Indictment.** An offense which may be punished by imprisonment for a term exceeding one year may be prosecuted by information if the defendant, after having ~~he has~~ been advised of the nature of the charge and of the defendant's ~~his~~ rights, waives in open court prosecution by indictment.

(c) **Nature and Contents — Defects of Form Do Not Invalidate.** The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that the defendant ~~he~~ committed it by one or more specified means. The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's ~~his~~ prejudice. When an

indictment is found the names of all witnesses examined before the grand jury must be inserted at the foot of the indictment, or endorsed thereon, before it is presented to the court. No indictment is insufficient, nor can the trial, judgment or other proceedings thereon be affected by reason of a defect or imperfection in matter of form in the indictment, which does not tend to prejudice the substantial rights of the defendant.

. . .

Rule 9. Warrant or Summons Upon Indictment or Information.

(a) **Issuance.** Upon the return of the indictment or filing of the information the court shall issue a warrant of arrest for each defendant named in the information, if it is supported by oath, or in the indictment, except that no warrant should be issued for any defendant who has theretofore been held to answer for the offense or offenses charged or who is on bail or recognizance for that offense or offenses, and in other cases no warrant should be issued unless the court has reason to believe that the defendant will not appear in response to a summons. The clerk shall issue a summons instead of a warrant upon the request of the prosecuting attorney, or by direction of the court. Upon like request or direction the clerk ~~he~~ shall issue more than one warrant or summons for the same defendant. The clerk ~~He~~ shall deliver the warrant or summons to a peace officer or other person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue.

. . .

Rule 10. Arraignment.

(a) **Generally.** Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to the defendant ~~him~~ the substance of the charge and calling on the defendant ~~him~~ to plead thereto. The defendant may appear by use of telephonic or television equipment pursuant to Criminal Rules 38.1 and 38.2.

(b) **Defendant's Name.**

(1) When ~~the defendant is~~ arraigned, the defendant ~~he~~ shall be informed of the name which appears in the indictment or information.

(2) The defendant shall then be given the opportunity to declare the defendant's ~~his~~ true name.

(i) If the defendant states that another name is the defendant's ~~his~~ true name, the court shall direct entry thereof to be made in the record. Subsequent proceedings on the indictment or information shall be had against the defendant by both the declared true name and the name which appears on the indictment or information.

(ii) If the defendant declares no other name to be the defendant's ~~his~~ true name, the case against the defendant shall proceed under the name which appears in the indictment or information.

(c) **Peremptory Disqualification of the Judge.** At the arraignment any defendant who has waived counsel shall be advised that the defendant ~~he~~ may peremptorily disqualify the judge to whom the defendant's ~~his~~ case has been assigned on the grounds that the defendant ~~he~~ believes the defendant ~~he~~ cannot obtain a fair and impartial trial before that judge. In any court in the state where a master calendar system has been adopted, a defendant who has waived counsel shall be advised at the arraignment that the defendant ~~he~~ may give notice of change of judge under Rule 25 (d).

Rule 11. Pleas.

. . .

(b) **Extension of Time for Pleading.** If the defendant requests an extension of time for entering a ~~his~~ plea, then the court shall allow the defendant until the next day following the arraignment, or until such further time as the court considers reasonable, to plead to the indictment or information.

(c) **Pleas of Guilty or Nolo Contendere.** The court shall not accept a plea of guilty or nolo contendere from a defendant without first addressing the defendant personally and

(1) determining that the defendant ~~he~~ understands the nature of the charge; and

(2) informing the defendant ~~him~~ that by a ~~his~~ plea of guilty or nolo contendere the defendant ~~he~~ waives the ~~his~~ right to trial by jury or trial by a judge and the right to ~~be~~ confronte~~d with the~~ adverse witnesses ~~against him~~; and

(3) informing the defendant ~~him~~:

. . .

(d) **Insuring That the Plea is Voluntary.** The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire of the prosecuting attorney, defense counsel and the defendant ~~himself~~ to determine whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney for the state and the defendant or the defendant's ~~his~~ attorney.

(e) **Plea Agreement Procedure.**

. . .

(4) *Rejection of Plea.* If the court rejects the plea agreement, the court shall inform the parties of this fact and advise the defendant personally in open court that the court is not bound by the plea agreement. The court shall then afford the defendant the opportunity to withdraw the ~~his~~ plea, and advise the defendant that if the defendant ~~he~~ persists in the ~~his~~ plea of guilty or nolo contendere, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

. . .

(h) **Plea Withdrawal.**

(1) The court shall allow the defendant to withdraw a ~~his~~ plea of guilty or nolo contendere whenever the defendant, upon a timely motion for withdrawal, proves that withdrawal is necessary to correct manifest injustice.

. . .

Rule 12. Pleadings and Motions Before Trial — Defenses and Objections.

. . .

(g) **Effect of Determination.** If the court grants a motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that the defendant be held in custody or that ~~his~~ bail be continued for a specified time pending the filing of a new indictment or information.

. . .

Rule 15. Depositions.

(a) **When Taken.** Upon order of the court for good cause shown, the testimony of a prospective witness may be taken by either party for discovery upon notice and after the deposing party has disclosed all statements, exhibits, and witness lists required by Rule 16. Any designated book, paper, document, record, recording, or other material not privileged may be subpoenaed at the same time and place of the taking of the deposition. If a witness is committed for failure to give bail or appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that the witness' ~~his~~ deposition be taken. After the deposition has been subscribed the court may discharge the witness. In considering a request for the taking of depositions, the court shall grant such motion only if the taking of such deposition will not cause unreasonable delay in the trial of the action.

. . .

(c) **How Taken.** Subject to such additional conditions as the court shall provide and except as otherwise provided in these rules

a deposition shall be taken and filed in the manner provided in Civil Rules 26, 28, 29, 30, 31 and 32. In no event shall a deposition be taken of a party defendant without that defendant's ~~his~~ consent.

(d) **Use.** At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used by stipulation of the parties or if the witness is unavailable, as defined in section (e) of this rule, or if the witness gives testimony at the trial or hearing inconsistent with the witness' ~~his~~ deposition. If only a part of a deposition is offered in evidence by a party, an adverse party may require ~~him to~~ the offering of all of it which is relevant to the part offered and any party may offer other parts.

(e) **Unavailability.** A witness is "unavailable" when the witness ~~he~~ is:

(1) Exempted by ruling of the judge on the ground of privilege from testifying concerning the subject matter of the witness' ~~his~~ statement; or

. . .

(4) Absent from the hearing and beyond the jurisdiction of the court to compel appearance and the proponent of the witness' ~~his~~ statement has exercised reasonable diligence but has been unable to procure the witness' ~~his~~ attendance.

. . .

Rule 16. Discovery.

. . .

(b) **Disclosure to the Accused.**

(1) *Information within Possession or Control of Prosecuting Attorney*. Except as is otherwise provided as to matters not subject to disclosure and protective orders, the prosecuting attorney shall disclose the following information within the prosecuting attorney's ~~his~~ possession or control to defense counsel and make available for inspection and copying:

. . .

(2) *Information Provided by Informant — Electronic Surveillance*. The prosecuting attorney~~s~~ shall inform defense counsel:

. . .

(ii) of any electronic surveillance, including wiretapping, of

(aa) conversations to which the accused or the accused's ~~his~~ attorney was a party,

(bb) premises of the accused or the accused's ~~his~~ attorney.

(3) *Information Tending to Negate Guilt or Reduce Punishment.* The prosecuting attorney shall disclose to defense counsel any material or information within the prosecuting attorney's ~~his~~ possession or control which tends to negate the guilt of the accused as to the offense or would tend to reduce the accused's ~~his~~ punishment therefor.

(4) *Information Within Possession or Control of Other Members of Prosecuting Attorney's Staff.* The prosecuting attorney's obligations extend to material and information in the possession or control of

(i) members of the prosecuting attorney's ~~his~~ staff, and

(ii) any others who have participated in the investigation or evaluation of the case and who either regularly report or with reference to the particular case have reported to the prosecuting attorney's ~~his~~ office.

. . .

(8) *Legal Research and Records of Prosecuting Attorney.* Disclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the prosecuting attorney or members of the prosecuting attorney's ~~his~~ legal staff.

(c) **Disclosure to the Prosecuting Attorney.**

. . .

(2) *Non-Testimonial Identification Procedures — Scope.* An order issued under subsection (c) (1) of this rule may direct the person to do or submit to any and all of the following:

. . .

(vi) Permit the taking of specimens of material under the person's ~~his~~ fingernails;

(vii) Permit the taking of samples of blood, hair and other materials of the person's ~~his~~ body which involve no unreasonable intrusion thereof;

(viii) Provide specimens of the person's ~~his~~ handwriting;

(ix) Submit to a reasonable physical or medical inspection of the person's ~~his~~ body.

(3) *Right to Counsel.* When issuing an order under subsection (c) (1) of this rule, the court shall also order that the person be represented by counsel or waive the ~~his~~ right to be represented by counsel before being required to appear in a lineup, give a specimen of handwriting, or speak for identification by witnesses to an offense.

. . .

(d) **Regulation of Discovery.**

. . .

(2) *Additional or Newly Discovered Information.* If, subsequent to compliance with these rules or orders issued pursuant thereto, a party discovers additional material or information which is subject to disclosure, that party ~~he~~ shall promptly notify the other party or the other party's ~~his~~ counsel of its existence. If the additional material or information is discovered during trial, the court shall also be notified.

. . .

(4) *Restriction or Deferral of Disclosure of Information.* Upon a showing of cause, the court may at any time order that specified disclosure be restricted or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled shall be disclosed in time to permit the party's ~~his~~ counsel to make beneficial use thereof.

. . .

Rule 17. Subpoena.

. . .

(d) **Service.**

(1) A subpoena may be served by any peace officer or any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and subject to the provisions of sections (a) and (b) of this rule, by tendering to that person ~~him~~ the fee for one day's attendance and the mileage allowed by law or by rule.

. . .

(g) **Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon that person ~~him~~ may be deemed a contempt of the court from which the subpoena issued.

Rule 20. Temporary Transfer of Case File.

(a) A defendant may request a temporary transfer of a case pending against the defendant ~~him~~ to another court location in the state if (1) the defendant is arrested in a court location other than that in which the action is pending or (2) the defendant has been notified that a charge is pending against the defendant ~~him~~ in a court location other than that nearest to where the defendant ~~he~~ is residing.

(b) A defendant requesting a temporary transfer of a case shall state in writing or in open court that the defendant ~~he~~ wishes to be arraigned and enter a plea in the court location where the defendant ~~he~~ was arrested or nearest to where the defendant ~~he~~ resides. Transfer of a case is contingent upon approval by the prosecuting attorney for the court location in which the action is pending. Approval may be given in writing, in open court, or by telephonic authorization to the clerk of the court who shall note the prosecuting attorney's approval in the file.

. . .

(d) If a defendant enters a plea of guilty or nolo contendere, the defendant may be sentenced in the court in which the defendant ~~he~~ enters the plea. If a defendant enters a plea of not guilty, the court in which the defendant enters the plea shall at the time of the plea set the case for trial in the originating court.

. . .

Rule 24. Trial Jurors.

(a) **Examination.** The court shall require the jury to be selected in a prompt manner. The court may permit the defendant or the defendant's ~~his~~ attorney and the prosecuting attorney to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event the court shall permit the defendant or the defendant's ~~his~~ attorney and the prosecuting attorney to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions by the parties or their attorneys as it deems proper. The court may also require the parties to question the panel as a whole rather than individually and impose reasonable time limits on the examination of prospective jurors.

. . .

(c) **Challenges for Cause.** After the examination of prospective jurors is completed and before any juror is sworn, the parties may challenge any juror for cause. A juror challenged for cause may be directed to answer every question pertinent to the inquiry. Every challenge for cause shall be determined by the court. The following are grounds for challenges for cause:

. . .

(3) That the person shows a state of mind which will prevent the person ~~him~~ from rendering a just verdict, or has formed a positive opinion on the facts of the case or as to what the outcome should be, and cannot disregard such opinion and try the issue impartially.

(4) That the person has opinions or conscientious scruples which would improperly influence the person's ~~his~~ verdict.

. . .

Rule 25. Judge — Disqualification or Disability.

. . .

(b) **During Trial.** If a judge holding superior court be prevented during a trial from continuing to preside therein, the presiding judge or the chief justice of the supreme court shall designate another judge of the superior court to sit in such court to complete such trial, as if such other judge had been present and presiding from the commencement of such trial, provided, however, that from the beginning of the taking of testimony at such trial a stenographic or electronic record of such trial shall have been made so that the judge so continuing may become familiar~~ize himself~~ with the previous proceedings at such trial.

(c) **After Verdict.** If by reason of absence from the district, death, sickness or other disability, the judge before whom the action has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge regularly sitting in or assigned to the court may perform those duties; but if the ~~such~~ other judge is satisfied that a judge who ~~he cannot perform those duties because he~~ did not preside at the trial cannot perform those duties or that it is appropriate for any other reason, that judge ~~he~~ may ~~in his discretion~~ grant a new trial.

(d) **Change of Judge as a Matter of Right.** In all courts of the state, a judge may be peremptorily challenged as follows:

. . .

(3) *Re-Assignment.* When a request for change of judge is timely filed under this rule, the judge shall proceed no further in the action, except to make such temporary orders as may be absolutely necessary to prevent immediate and irreparable injury before the action can be transferred to another judge. However, if the named judge is the presiding judge, the judge ~~he~~ shall continue to perform the functions of the presiding judge.

. . .

Rule 27. Proceedings Upon Trial — Management of Juries.*

(a) **Order of Proceedings.** After a jury is impanelled and sworn, the trial shall proceed in the following order:

(1) The prosecuting attorney shall state the case of the prosecution, and may briefly state the evidence by which the prosecuting attorney ~~he~~ expects to sustain it.

(2) (i) The defendant, or the defendant's ~~his~~ counsel, may then state the ~~his~~ defense, and may briefly state the evidence the defendant ~~he~~ expects to offer in support of it.

(ii) If no statement of the defendant's case is made after the statement of the prosecution's case, then after the state has produced its evidence and presented its case in chief, the defendant, or the defendant's ~~his~~ counsel, if the defendant ~~he~~ intends to produce evidence, shall state the ~~his~~ defense, and may briefly state the evidence the defendant ~~he~~ expects to offer in support of it.

(3) The state shall first produce its evidence, and the defendant may then produce the defendant's ~~his~~ evidence. The state will then be confined to rebutting evidence unless the court, for good reason and in furtherance of justice, permits it to offer evidence in chief.

(4) Unless the case be submitted without argument, counsel for the state shall commence, the defendant or the defendant's ~~his~~ counsel shall follow and counsel for the state shall conclude the arguments to the jury. Unless good cause is shown, the state shall present in its concluding argument no theory of law or fact which was not presented in one or both of the prior arguments. The court may, in its discretion, limit the time of such arguments.

. . .

(c) **Admonition to Juror Upon Separation From Jury.**

(1) If any juror is permitted to separate from the jury during the trial, the court shall admonish the juror ~~him~~ that it is the juror's ~~his~~ duty

. . .

(2) If any juror is permitted to separate from the jury after the case is submitted to the jury, the court shall admonish the juror ~~him~~ that it is the juror's ~~his~~ duty

. . .

(d) **Juror Unable to Continue.** If, prior to the time the jury retires to consider its verdict, a juror is unable to perform or is disqualified from performing the juror's ~~his~~ duty, the court may order the juror ~~him~~ to be discharged. If an alternate juror has not been impanelled as provided in the rules,

. . .

(e) **Selection of Foreperson ~~man~~ — Deliberations of Jury — Communications.**

(1) When the jury has retired to consider their verdict, they shall elect one of their number foreperson ~~man~~. The foreperson ~~man~~ shall preside over their deliberations, sign the verdict unanimously agreed upon, and speak for them on the return of their verdict in open court.

. . .

(3) Unless otherwise ordered by the court, the officer of the court having charge of the jury ~~under his charge~~ shall keep the jurors together, and separate from other persons. The officer shall not suffer any communication to be made to the jury nor shall the officer make any communication ~~himself~~ except to ask the jury if they have agreed upon their verdict. The officer ~~He~~ shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon. The officer shall be sworn to act ~~conduct himself~~ according to the provisions of this section (e).

Rule 28. Expert Witnesses.

The court may order the defendant or the state or both to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness ~~he~~ consents to act. A witness so appointed shall be informed of the witness' ~~his~~ duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness' ~~his~~ findings, if any, and may thereafter be called to testify by the court or by any party. The witness ~~He~~ shall be subject to cross-examination by each party. The court may, unless otherwise provided for by rule, determine the reasonable compensation of such witness and direct its payment out of such funds as may be provided by law. The parties also may call expert witnesses of their own selection.

Rule 31. Verdict.

. . .

(c) **Conviction of Lesser Offense.** The defendant may be found guilty of an offense necessarily included in the offense charged, or of an attempt to commit either the offense charged or the offense necessarily included therein if the attempt is an offense. When it appears that the defendant has committed a crime, and there is reasonable ground of doubt in which of two or more degrees the

defendant ~~he~~ is guilty, the defendant ~~he~~ can be convicted of the lowest of those degrees only.

. . .

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

. . .

(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 that ~~his intention of having~~ the order will be 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 the judge ~~he~~ announces that ~~his intention of having~~ the order will be reduced to writing, the date of notice is the date shown in the clerk's certificate of distribution on the written order.

. . .

Rule 34. Arrest of Judgment.

. . .

(c) **Effect of Order Arresting Judgment.** The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation the defendant ~~in which he~~ was in before the indictment was found.

(d) **Recommitting Defendant or Admission to Bail.** If from the evidence given on the trial, there is reasonable ground to believe the defendant guilty, and a new indictment or information can be framed upon which the defendant ~~he~~ may be convicted, the court shall order the defendant to be recommitted to custody or admitted to bail, to answer the new indictment or information, if one be found or filed. If the evidence shows the defendant ~~him~~ to be guilty of another crime than that charged in the indictment or information, the defendant ~~he~~ must in like manner be committed or held thereon, and in neither case is the verdict a bar to another action for the same crime.

(e) **Discharge of Defendant.** If no evidence appears sufficient to charge the defendant with any crime, the defendant ~~he~~ must, if in custody, be discharged, or, if the defendant ~~he~~ has given bail or deposited money in lieu thereof, the ~~his~~ bail is exonerated or the ~~his~~ money must be refunded to the defendant ~~him~~, and in such case the arrest of judgment operates as an acquittal of the charge upon which the indictment or information was founded.

. . .

Rule 35.1. Post-conviction Procedure.

(a) **Scope.** Any person who has been convicted of, or sentenced for, a crime and who claims:

. . .

(5) that the ~~his~~ sentence has expired, that ~~his~~ probation, parole or conditional release have been unlawfully revoked, or that the person ~~he~~ is otherwise unlawfully held in custody or other restraint;

. . .

(d) **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 the ~~his~~ conviction or sentence. Argument, citations and discussion of authorities are unnecessary. Applications which are incomplete shall be returned to the applicant for completion.

. . .

(h) **Waiver of or Failure to Assert Claims.** All grounds for relief available to an applicant under this rule must be raised in the ~~his~~ original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Rule 37. Search and Seizure.

(a) **Search Warrant Issuance and Contents.**

. . .

(2) If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, the judge or magistrate ~~he~~ shall issue a warrant

. . .

Rule 38. Presence of the Defendant.

. . .

(b) **Continued Presence Not Required.** The further progress of the trial to and including the return of the verdict shall not be prevented whenever a defendant, initially present:

(1) Is absent v~~V~~oluntarily ~~absents himself~~ after the trial has commenced; or

(2) Engages in conduct which is such as to justify exclusion ~~his being excluded~~ from the courtroom.

. . .

Rule 41. Bail.

. . .

(b) **Prosecuting Attorney — Appearance and Notice.** The prosecuting attorney may appear and be heard in all proceedings relating to bail. The judge or magistrate~~, in his discretion,~~ may require that notice of such proceedings be given the prosecuting attorney.

(c) **Surrender of Defendant.** At any time before forfeiture of the undertaking or the cash deposit in lieu thereof, the sureties on the undertaking or the owner of the deposit may surrender the defendant to the custody of a peace officer or the defendant may surrender personally ~~himself~~ to the officer. There shall be delivered to the officer at the time of surrender a certified copy of the undertaking or a certificate as to the cash deposit executed by the clerk of court. The peace officer shall thereupon detain the defendant in custody as upon a commitment and acknowledge the surrender by a written certificate.

. . .

Rule 43. Dismissal.

. . .

(d) **Discharge from Custody — Exoneration of Bail.** When dismissal is ordered pursuant to this rule the defendant shall be discharged from custody, or if admitted to bail, the ~~his~~ bail exonerated, or money deposited in lieu thereof refunded to the depositors.

Rule 44. Service and Filing of Papers.

. . .

(b) **Service — How made.** Whenever under these rules or by an order of the court 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 in the manner provided in civil actions.

. . .

Rule 45. Speedy Trial.

. . .

(d) **Excluded Periods.** The following periods shall be excluded in computing the time for trial:

. . .

(2) The period of delay resulting from an adjournment or continuance granted at the timely request or with the consent of the defendant and the defendant's ~~his~~ counsel. The court shall grant such a continuance only if it is satisfied that the postponement is in the interest of justice, taking into account the public interest in the prompt disposition of criminal offenses. A defendant without counsel shall not be deemed to have consented to a continuance unless the defendant ~~he~~ has been advised by the court of the ~~his~~ right to a speedy trial under this rule and of the effect of ~~his~~ consent.

. . .

(4) The period of delay resulting from the absence or unavailability of the defendant. A defendant should be considered absent whenever the defendant's ~~his~~ whereabouts are unknown and in addition the defendant ~~he~~ is attempting to avoid apprehension or prosecution or the defendant's ~~his~~ whereabouts cannot be determined by due diligence. A defendant should be considered unavailable whenever the defendant's ~~his~~ whereabouts are known but the defendant's ~~his~~ presence for trial cannot be obtained or the defendant ~~he~~ resists being returned to the state for trial.

(5) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases, the defendant shall be granted a severance in order

that the defendant ~~he~~ may be tried within the time limits applicable to the defendant ~~him~~.

(6) The period of delay resulting from detention of the defendant in another jurisdiction provided the prosecuting attorney has been diligent and has made reasonable efforts to obtain the presence of the defendant for trial. When the prosecution is unable to obtain the presence of the defendant in detention, and seeks to exclude the period of detention, the prosecution shall cause a detainer to be filed with the official having custody of the defendant and request the official to advise the defendant of the detainer and to inform the defendant of the defendant's ~~his~~ rights under this rule.

. . .

(f) **Waiver.** Failure of a defendant represented by counsel to move for dismissal of the charges under these rules prior to plea of guilty or trial shall constitute waiver of the defendant's ~~his~~ rights under this rule.

. . .

Rule 46. Exceptions Unnecessary.

Exceptions to rulings or orders of the court are unnecessary. 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 the party ~~he~~ desires the court to take or the party's ~~his~~ objection to the action of the court and the grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice the party ~~him~~.

Rule 56. Definitions.

. . .

(c) "Presiding Judge" includes the duly-designated presiding judge of the superior court in each judicial district or, in the presiding judge's ~~his~~ absence, the person designated presiding judge pro tem.

. . .

DISTRICT COURT CRIMINAL RULES

Rule 1. Applicability of Rules — Special Provisions.

. . .

(b) **Arraignment and Plea.** When the defendant is brought before the district judge or magistrate the complaint shall be read to the defendant ~~him~~, and the defendant ~~he~~ shall be furnished a copy of the complaint. The defendant may appear by use of telephonic or television equipment pursuant to Criminal Rules 38.1 and 38.2.

The district judge or magistrate shall inform the defendant

(1) of the ~~his~~ right to counsel~~;, and~~

(2) of the ~~his~~ right to have counsel appointed at public expense ~~for him~~ if the defendant could

. . .

(iii) suffer a heavy enough fine to indicate criminality~~;, and~~

(3) of the ~~his~~ right to be admitted to bail~~;, and~~

(4) that the defendant ~~he~~ is not required to make a statement~~;, and~~

(5) that any statement made by the defendant ~~him~~ may be used against the defendant ~~him;, and~~

(6) that if the defendant ~~he~~ is charged by the State of Alaska the defendant ~~he~~ may demand to be tried before a district judge~~;,~~ and

(7) that the defendant ~~he~~ may peremptorily disqualify the district judge or magistrate to whom the ~~his~~ case is assigned pursuant to AS 22.20.022.

. . .

Rule 104. Preliminary Questions.

. . .

(c) **Hearing of Jury.** Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interest of justice require or, when an accused is a witness, if the accused ~~he~~ so requests.

(d) **Testimony by Accused.** The accused does not, by testifying upon a preliminary matter, become subject ~~himself~~ to cross-examination as to other issues in the case. Testimony given by the accused at the hearing is not admissible against the accused ~~him~~ unless inconsistent with the accused's ~~his~~ testimony at trial.

. . .

Rule 106. Remainder of, or Related Writings or Recorded Statements.

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction ~~him~~ at that time of ~~to introduce~~ any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

Rule 404. Character Evidence Not Admissible to Prove Conduct — Exceptions — Other Crimes.

(a) **Character Evidence Generally.** Evidence of a person's character or a trait of ~~his~~ character is not admissible for the purpose of proving that the person ~~he~~ acted in conformity therewith on a particular occasion, except:

(1) *Character of Accused.* Evidence of a relevant trait of ~~his~~ character offered by an accused, or by the prosecution to rebut the same;

(2) *Character of Victim.* Evidence of a relevant trait of character of a victim of crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor, subject to the following procedure:

(i) When a party seeks to admit the evidence for any purpose, the party ~~he~~ must apply for an order of the court at any time before or during the trial or preliminary hearing.

. . .

Rule 411. Liability Insurance.

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person ~~he~~ acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

Rule 503. Lawyer-Client Privilege.

. . .

(b) **General Rule of Privilege.** A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client, (1) between the client ~~himself~~ or the client's ~~his~~ representative and the client's ~~his~~ lawyer or the ~~his~~ lawyer's representative, or (2) between the client's ~~his~~ lawyer and the lawyer's representative, or (3) by the client ~~him~~ or the client's ~~his~~ lawyer to a lawyer representing another in a matter of common interest, or (4) between representatives of the client or between the client and a representative of the client, or (5) between lawyers representing the client.

(c) **Who May Claim the Privilege.** The privilege may be claimed by the client, the client's ~~his~~ guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer at the time of the communication may claim the privilege but only on behalf of the client. The ~~His~~ authority to do so is presumed in the absence of evidence to the contrary.

. . .

Rule 504. Physician and Psychotherapist-Patient Privilege.

. . .

(b) **General Rule of Privilege.** A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of the patient's ~~his~~ physical, mental or emotional conditions, including alcohol or drug addiction, between or among the patient ~~himself~~, the patient's ~~his~~ physician or psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

. . .

(d) **Exceptions.** There is no privilege under this rule:

. . .

(6) *Examination by Order of Judge.* As to communications made in the course of an examination ordered by the court of the physical, mental or emotional condition of the patient, with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise. This exception does not apply where the examination is by order of the court upon the request of the lawyer for the defendant in a criminal proceeding in order to provide the lawyer with information needed so that the lawyer ~~he~~ may advise the defendant whether to enter a plea based on insanity or to present a defense based on the defendant's ~~his~~ mental or emotional condition.

. . .

Rule 506. Communications to Members of the Clergy~~men~~.

(a) **Definitions.** As used in this rule:

(1) A member of the clergy~~man~~ is a minister, priest, rabbi, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting the individual ~~him~~.

. . .

(b) **General Rule of Privilege.** A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a member of the clergy~~man~~ in that individual's ~~his~~ professional character as spiritual adviser.

(c) **Who May Claim the Privilege.** The privilege may be claimed by the person, by the person's ~~his~~ guardian or conservator, or by the person's ~~his~~ personal representative if the person ~~he~~ is deceased. The member of the clergy~~man~~ may claim the privilege on behalf of the person. The ~~His~~ authority so to do is presumed in the absence of evidence to the contrary.

Rule 508. Trade Secrets.

A person has a privilege, which may be claimed by the person ~~him~~ or the person's ~~his~~ agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by the person ~~him~~, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. When disclosure is directed, the judge shall take such protective measures as the interests of the holder of the privilege and of the parties and the furtherance of justice may require.

Rule 509. Identity of Informer.

. . .

(c) **Exceptions.**

(1) *Voluntary Disclosure — Informer a Witness.* No privilege exists under this rule if the identity of the informer or the informer's ~~his~~ interest in the subject matter of the ~~his~~ communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the prosecution.

(2) *Testimony on Merits.*

(i) If a party claims that a government informer may be able to give testimony necessary to a fair determination of the issue of guilt, innocence, credibility of a witness testifying on the merits, or punishment in a criminal case, or of a material issue on the merits in a civil case to which the state is a party, and if the government invokes the privilege, the party shall be given an opportunity to show that the party's ~~his~~ claim is valid. The judge shall hear all evidence presented by the party and the government, and both sides shall be permitted to be present with counsel during the presentation of evidence, subject to subdivision (c) (2) (ii) of this rule.

(ii) If the government requests an opportunity to submit to the court, by affidavit or testimony or otherwise, evidence concerning the information possessed by an informant, which submission might tend to reveal the informant's identity, the judge shall permit the government to make its submission without disclosure to the other party. Neither the attorney for the government, nor the other party or the other party's ~~his~~ attorney may be present when the judge is examining the *in camera* submission. Although the submission generally will consist of affidavits, the judge may direct that witnesses appear before the judge ~~him~~, without the government or the other party present, to give testimony.

. . .

(3) *Legality of Obtaining Evidence.*

(i) When a defendant challenges the legality of the means by which evidence was obtained by the prosecution and the prosecution relies upon information supplied by an informer to support its claim of legality, if the judge is not satisfied that the information was received from an informer reasonably believed to be reliable or credible the judge ~~he~~ may require the identity of the informer to be disclosed. In determining whether or not to require disclosure, the judge shall hear any evidence offered by the parties and both the defendant and the government shall have the right to be represented by counsel.

. . .

Rule 510. Waiver of Privilege by Voluntary Disclosure.

A person upon whom these rules confer a privilege against disclosure of the confidential matter or communication waives the privilege if the person ~~he~~ or the person's ~~his~~ predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the matter or communication. This rule does not apply if the disclosure is itself a privileged communication.

Rule 601. Competency of Witnesses.

A person is competent to be a witness unless the court finds that (1) the proposed witness is incapable of communicating ~~expressing himself~~ concerning the matter so as to be understood by the court and jury either directly or through interpretation by one who can understand the proposed witness ~~him~~, or (2) the proposed witness is incapable of understanding the duty of a witness to tell the truth.

Rule 602. Lack of Personal Knowledge.

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness ~~he~~ has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony ~~of the witness himself~~. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Rule 603. Oath or Affirmation.

Before testifying, every witness shall be required to declare that the witness ~~he~~ will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' ~~his~~ conscience and impress the witness' ~~his~~ mind with the ~~his~~ duty to do so.

Rule 606. Competency of Juror as Witness.

(a) **At the Trial.** A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror ~~he~~ is sitting ~~as a juror~~. No objection need be made in order to preserve the point.

(b) **Inquiry Into Validity of Verdict or Indictment.** Upon an inquiry into the validity of a verdict or indictment, a juror may not be questioned as to any matter or statement occurring during the course of the jury's deliberations or to the effect of any matter or statement upon that ~~his~~ or any other juror's mind or emotions as influencing the juror ~~him~~ to assent to or dissent from the verdict or indictment or concerning the juror's ~~his~~ mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a

juror's ~~his~~ affidavit or evidence of any statement by the juror ~~him~~ concerning a matter about which the juror ~~he~~ would be precluded from testifying be received for these purposes.

Rule 607. Who May Impeach or Support.

(a) Subject to the limitation imposed by these rules, the credibility of a witness may be attacked by any party, including the party calling the witness ~~him~~.

. . .

Rule 609. Impeachment by Evidence of Conviction of Crime.

(a) **General Rule.** For the purpose of attacking the credibility of a witness, evidence that the witness ~~he~~ has been convicted of a crime is only admissible if the crime involved dishonesty or false statement.

. . .

Rule 613. Prior Inconsistent Statements — Bias and Interest of Witnesses.

. . .

(b) **Foundation Requirement.** Before extrinsic evidence of a prior contradictory statement or of bias or interest may be admitted, the examiner shall lay a foundation for impeachment by affording the witness the opportunity, while testifying, to explain or deny any prior statement, or to admit, deny, or explain any bias or interest, except as provided in subdivision (b) (1) of this rule.

. . .

(2) In examining a witness concerning a prior statement made by the witness ~~him~~, whether written or not, the statement need not be shown nor its contents disclosed to the witness ~~him~~ at that time, but on request the same shall be shown or disclosed to opposing counsel.

Rule 703. Basis of Opinion Testimony by Experts.

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert ~~him~~ at or before the hearing. Facts or data need not be admissible in evidence, but must be of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject.

Rule 706. Court Appointed Experts.

(a) **Appointment.** The court may on its own motion or on the motion of any party enter an order to show cause why expert

witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint expert witnesses. An expert witness shall not be appointed by the court unless the witness ~~he~~ consents to act. A witness so appointed shall be informed of the witness' ~~his~~ duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness' ~~his~~ findings, if any; the witness' ~~his~~ deposition may be taken by any party; and the witness ~~he~~ may be called to testify by the court or any party. If the court determines that the interests of justice so require, the party calling an expert appointed under this rule may cross-examine the witness.

. . .

Rule 801. Definitions.

The following definitions apply under this article:

(a) **Statement.** A statement is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person ~~him~~ as an assertion.

. . .

(d) **Statements Which Are Not Hearsay.** A statement is not hearsay if

(1) *Prior Statement by Witness.* The declarant testifies at the trial or hearing and the statement is

(A) inconsistent with the declarant's ~~his~~ testimony. Unless the interests of justice otherwise require, the prior statement shall be excluded unless

. . .

(B) consistent with the declarant's ~~his~~ testimony and is offered to rebut an express or implied charge against the declarant ~~him~~ of recent fabrication or improper influence or motive; or

(C) one of identification of a person made after perceiving the person ~~him~~; or

(2) *Admission by Party-Opponent.* The statement is offered against a party and is (A) the party's ~~his~~ own statement, in either an ~~his~~ individual or a representative capacity, or (B) a statement of which the party ~~he~~ has manifested an ~~his~~ adoption or belief in its truth, or (C) a statement by a person authorized by the party ~~him~~ to make a statement concerning the subject, or (D) a statement by the party's ~~his~~ agent or servant concerning a matter within the scope of the ~~his~~ agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

Rule 803. Hearsay Exceptions — Availability of Declarant Immaterial.

. . .

(5) **Recorded Recollection.** A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness ~~him~~ to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' ~~his~~ memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

. . .

(18) **Learned Treatises.** To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness ~~him~~ in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) **Reputation Concerning Personal or Family History.** Reputation among members of a person's ~~his~~ family by blood, adoption, or marriage, or among a person's ~~his~~ associates, or in the community, concerning the ~~a~~ person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of ~~his~~ personal or family history.

. . .

Rule 804. Hearsay Exceptions — Declarant Unavailable.

. . .

(b) **Hearsay Exceptions.** The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

. . .

(2) *Statement Under Belief of Impending Death.* A statement made by a declarant while believing that the declarant's ~~his~~ death was imminent, concerning the cause or circumstances of what the declarant ~~he~~ believed to be ~~his~~ impending death.

(3) *Statement Against Interest.* A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant ~~him~~ to civil or criminal liability, or to render invalid a claim by the declarant ~~him~~ against another, that a reasonable person ~~man~~ in the

declarant's ~~his~~ position would not have made the statement unless ~~he~~ believ~~inged~~ it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

. . .

Rule 806. Attacking and Supporting Credibility of Declarant.

When a hearsay statement, or a statement defined in Rule 801 (d)(2) (C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay ~~his~~ statement, is not subject to any requirement that the declarant ~~he~~ may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement or a statement defined in Rule 801(d)(2)(C), (D), or (E) has been admitted calls the declarant as a witness, the party is entitled to examine the declarant ~~him~~ on the statement as if under cross-examination.

Rule 1004. Admissibility of Other Evidence of Contents.

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if

. . .

(c) **Original in Possession of Opponent.** At a time when an original was under the control of the party against whom offered, that party ~~he~~ was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party ~~he~~ does not produce the original at the hearing; or

. . .

Rule 102. Clerk.

. . .

(c) The clerk may not practice law~~, either as attorney or counsellor,~~ in any court ~~while he continues to be clerk~~.

(d) The clerk shall, before entering ~~on the execution of his~~ office, take and subscribe to the oath set forth in section 5, article XII of the state Constitution and such further oaths or affirmations as may be prescribed by the legislature, and shall give bond in the sum to be fixed, and with sureties to be approved by the supreme court, faithfully to discharge the duties of the ~~his~~ office. The bond shall be deposited for safekeeping as the supreme court may direct. The supreme court may permit the clerk to be covered under the blanket bond provided in Rule 34 of the Rules Governing the Administration of All Courts, in lieu of giving a separate bond.

Rule 104. Clerks to Justices Not to Practice.

No person ~~one~~ serving as a law clerk, secretary, or other full-time officer or employee of the appellate courts or of a justice or judge of the appellate courts may engage in the private practice of law while continuing in that position; nor may the person ~~he~~ ever participate, by way of any form of professional consultation or assistance, in any case which was pending in the court by which the person ~~he~~ was employed during the period that the person ~~he~~ held such position.

Rule 204. Appeal: Time — Notice — Bonds.

. . .

(d) **Supersedeas Bond.** Whenever in a civil case an appellant entitled thereto desires a stay on appeal, the appellant ~~he~~ may present to the superior court for its approval a supersedeas bond which shall have such surety or sureties as the court requires. The bond shall be conditioned for the satisfaction of the judgment in full, together with costs and interest, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs and interest as the supreme court may adjudge and award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, and interest, unless the superior court, after notice and hearing and for good cause shown, fixes a different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy as in real actions, replevin, and actions to foreclose mortgages or when such property is in the custody of the court or the state troopers or when the proceeds of such property of a bond for its value is in the custody

or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the cost of the action, costs on appeal, and interest, unless the superior court, after notice and hearing and for good cause shown, fixes a different amount or orders security other than the bond. A municipality or an officer or agent thereof desiring a stay on appeal is exempted from the requirement of posting supersedeas bond imposed by this subsection.

. . .

(f) **Judgment Against Surety.** By entering into an appeal or supersedeas bond given pursuant to subdivisions (c) and (d) of this rule, the surety submits ~~himself~~ to the jurisdiction of the superior court and irrevocably appoints the clerk of that court as the surety's ~~his~~ agent upon whom any papers affecting the surety's ~~his~~ liability on the bond may be served. The surety's ~~His~~ liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the superior court prescribed may be served on the clerk of the superior court who shall forthwith mail copies to the surety if the surety's ~~his~~ address is known.

. . .

Rule 206. Stay of Execution And Release Pending Appeal in Criminal Cases.

(a) **Stay of Execution.**

. . .

(2) *Fine*. A sentence to pay a fine or a fine and costs, if an appeal is taken, may be stayed by the trial court or by the appellate court upon such terms as the court deems proper. The court may require the defendant pending appeal to deposit the whole or any part of the fine and costs in the registry of the trial court or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating ~~his~~ assets.

. . .

Rule 208. Custody of Prisoners in Habeas Corpus Proceedings.

. . .

(b) **Detention or Release of Prisoner Pending Review of Decision Failing a Release.** Pending review of a decision failing or refusing to release a prisoner in such a proceeding, the prisoner may be detained in the custody from which release is sought, or in other appropriate custody, or may be released upon the prisoner's ~~his~~ recognizance, with or without surety, as may appear fitting to the court or justice or judge rendering the decision, or to the

court of appeals or to the supreme court, or to a judge or justice of either court.

(c) **Release of Prisoner Pending Review of Decision Ordering Release.** Pending review of a decision ordering the release of a prisoner in such a proceeding, the prisoner shall be released upon the prisoner's ~~his~~ recognizance, with or without surety, unless the court or justice or judge rendering the decision, or the court of appeals or the supreme court, or a judge or justice of either court shall otherwise order.

. . .

Rule 209. Appeals at Public Expense.

(a) **Civil Matters.**

(1) A party to a civil action in the superior court may file in the superior court a motion to appeal or to petition for review at public expense. The motion shall be accompanied by:

[a] An affidavit of the party detailing the party's ~~his~~ inability to pay fees and costs or to give security for fees and costs;

[b] An affidavit of the party stating that the party ~~he~~ believes ~~that~~ the party ~~he~~ is entitled to redress on appeal or on petition for review;

[c] A concise statement of the points on which the party intends to rely in the party's ~~his~~ appeal or petition for review.

. . .

Rule 210. Record on Appeal.

(b) **Transcript.**

(1) If there is to be included in the record on appeal any evidence or proceedings that were stenographically reported or electronically recorded, the appellant shall incorporate in the appellant's ~~his~~ designation a description in the best practical manner of the particular parts of the evidence or proceedings to be included. At the time of filing the request for the preparation of the transcript, the appellant shall state the type of proceedings and the number of days of trial involved.

. . .

(3) If the appellant's designation includes only part of the recorded or reported evidence or proceedings, the appellee, in the ~~his~~ designation referred to in subdivision (a) of this rule, shall in like manner designate such additional parts thereof as the appellee ~~he~~ desires to have added. If it is impractical to describe with precision those portions which the parties desire to have in-

cluded in the record on appeal, amended or supplemental designations maybe filed at the time a transcript has been prepared.

. . .

(e) **Statement of Points.** At the time of filing a ~~his~~ notice of appeal, the appellant shall serve and file with this designation a concise statement of the points on which the appellant ~~he~~ intends to rely on the appeal. The appellate court will consider nothing but the points so stated. On motion in the appellate court, and for cause, the statement of points may be supplemented subsequent to the filing of the designation of record.

(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 agency record filed before the superior court in an appeal from an administrative agency; 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 the appellant ~~he~~ intends to rely.

. . .

(8) The clerk of the trial courts shall comply with paragraph (6) of this subsection even though, pursuant to paragraph (g) (1), the clerk of the appellate courts may request that a particular record be transmitted to the appellate courts ~~his office~~ immediately upon its completion.

. . .

(k) **Appeals When No Stenographic Report or Electronic Recording was Made.** In the event no stenographic report or electronic recording of the evidence or proceedings at a hearing or trial was made, the appellant may prepare a statement of the evidence of proceedings from the best available means, including the appellant's ~~his~~ recollection, for use instead of a stenographic or electronically recorded transcript. This statement shall be served on the appellee, who may serve objections or proposed amendments, and shall be submitted to the court from which the appeal is being taken for settlement and approval. As settled and approved, the statement shall be included by the clerk of that court in the record on appeal.

. . .

(l) **Exhibits.** If physical exhibits are designated for the record on appeal, the clerk of the trial courts shall list them in the table of contents, together with a brief description of each, but shall not transmit them to the appellate court unless requested to do so by the clerk of the appellate courts. If a party wishes to have particular physical exhibits transmitted, the party ~~he~~ may file a motion with the appellate court. As used in this subsection, "physical exhibits" includes exhibits other than documents or photographs, and also includes documents or photographs of unusually large size or unusual bulk or weight.

(m) **Transfer of Record on Appeal.** If it is impractical for Alaska counsel for a party to prepare a ~~his~~ brief because counsel ~~he~~ resides in a city or town other than the one where the record on appeal is situated, the clerk of the appellate courts may direct the transfer of the record for the accommodation of counsel in the preparation of briefs.

Rule 212. Briefs.

(a) **Serving and Filing Briefs.**

(1) *Time for Serving and Filing Briefs.* The appellant shall serve and file the appellant's ~~his~~ brief within 30 days after notice of certification of the record has been served. The appellee shall serve and file the appellee's ~~his~~ brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 20 days after service of the brief of the appellee. At the time a brief is filed with the appellate court, it must be accompanied by proof of service on all parties.

(c) **Substantive Requirements.**

. . .

(6) *Briefs in Cases Involving Cross-Appeals.*

[a] Cross-Appellant. An appellee who is also a cross-appellant may elect to file a single brief that both discusses the appellee's ~~his~~ claims of error and answers the original appellant. Such a single brief shall be filed on the date the appellee's brief is due. It shall be divided into two sections: the first section shall contain the issues and arguments involved in the cross-appeal and shall be prepared in accordance with (c)(1) of this rule; the second section shall contain the answer to the brief of the appellant and shall be prepared in accordance with (c)(2) of this rule. The single brief may not exceed 50 numbered pages. If the cross-appellant elects to file a single brief, the right to file a reply brief to the answer to the cross-appeal is waived. If the cross-appellant does not elect to file a single brief, the schedule and form for filing briefs in the cross-appeal shall be in accordance with the procedures for an original appeal.

. . .

(12) *Citation of Supplemental Authorities.* When pertinent authorities come to the attention of a party after the party's ~~his~~ brief has been filed, or after oral argument but before decision, the party may promptly advise the clerk of the court, by letter, with a copy to adversary counsel, setting forth the citations.

. . .

Rule 215. Sentence Appeal.

(a) **Notification of Right to Appeal Sentence.** At the time of imposition of any sentence of imprisonment of 45 days or more, the judge shall inform the defendant as follows:

. . .

(2) That upon such appeal the appellate court may reduce or increase the sentence, and that by appealing the sentence under this rule, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal the defendant ~~he~~ has been twice placed in jeopardy for the same offense;

(3) That if the defendant wants counsel and is unable to pay for the services of an attorney, the court will appoint an attorney to represent the defendant ~~him~~ on the appeal.

. . .

(c) **Termination of Appeal.** Any appeal of a sentence initiated by the defendant may be terminated by the defendant ~~his~~ filing within 30 days from the filing of the notice of appeal a notice of intent to terminate the appeal. Such a termination shall prevent any increase in the sentence or sentences imposed.

. . .

(g) **Record on Appeal.**

. . .

(2) *Distribution.* Immediately upon preparation of the record on appeal, the clerk shall send the original to the clerk of the appellate courts, and copies to the defendant, the defendant's ~~his~~ counsel, and the attorney for the prosecution.

. . .

Rule 217. Appeals from District Court.

. . .

(f) In lieu of filing a brief, any party may instead serve and file a notice that the party ~~he~~ wishes to submit the case for decision based on the legal memoranda filed in the District Court, without further briefing. An election by one party to submit the

case without filing a brief does not obligate any other party to do so. If the appellee files a brief, the appellant may file a reply brief.

. . .

(h) Oral argument, if timely requested under Rule 213(a), shall be limited to 15 minutes per side, unless otherwise ordered by the Court of Appeals on its own motion. A party may request oral argument whether the party ~~he~~ has filed a brief or a notice under paragraph (f).

Rule 305. Procedure When Hearing Granted.

(a) Unless the order granting a hearing specifies otherwise,

. . .

(2) the case shall be briefed in the manner prescribed in Rule 212. The petitioner shall serve and file the petitioner's ~~his~~ opening brief within 30 days after service of the order granting a hearing.

. . .

Rule 403. Petitions for Review — Procedure.

(a) **Filing.**

. . .

(4) *Notice to Trial Court*. Upon the filing of a petition for review, the clerk of the appellate courts shall promptly notify the judge whose order is sought to be reviewed, and the clerk of the judge's ~~his~~ court, informing them of the date and identity of the order sought to be reviewed, the name of the party filing the petition, and the docket number assigned to the petition in the appellate court. The clerk of the appellate courts shall also promptly notify them of the action taken by the appellate court on the petition.

. . .

Rule 404. Original Applications.

. . .

(c) **Response.** Each respondent shall have ten days after service of the application upon the respondent ~~him~~ within which to serve and file an original and five legible copies of the response. The court or a judge or justice thereof may, for good cause shown, extend the time for filing. If the application seeks the issuance of a writ of habeas corpus, response shall be made in accordance with Civil Rule 86(g). When the response is filed, it shall be accompanied by proof of service. Replies and supplemental memoranda

will not be received unless ordered by the court. A motion to dismiss the application will not be received. Objections to the exercise of the discretionary power of the court must be included in the response.

. . .

Rule 406. Review of Proceedings of Commission on Judicial Conduct.

. . .

(c) Upon recommendation of the commission that a judge be suspended pursuant to AS 22.30.070(b) or on the supreme court's own motion for a suspension, a judge, upon ~~his~~ request, shall be provided a hearing before the supreme court.

. . .

Rule 502. Time — Computation and Extension.

. . .

(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 the party ~~him~~ and the notice or paper is served upon the party ~~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.

. . .

Rule 503. Motions.

. . .

(f) **Motions Determined by an Individual Justice or Judge.** Any motion which would not have the effect of determining the merits of a proceeding, and which is not appropriate for determination by the clerk, may be determined by an individual justice or judge without reference to the full court. Motions shall be referred to justices and judges by the clerk under the direction of the court. A justice or judge has the ~~may in his~~ discretion to refer such a motion for decision by the full court.

. . .

Rule 504. Emergency Motions.

. . .

(f) The motion shall be accompanied by a written statement by the movant or the movant's ~~his~~ attorney, indicating when and how opposing counsel was notified of the motion, or, if opposing counsel was not notified, indicating what efforts were made to

notify opposing counsel and why it was not practicable to notify opposing counsel in a manner and at a time that counsel could respond to the motion;

. . .

Rule 511. Dismissal of Causes.

(a) **Dismissal by Agreement.** Whenever the parties, by their attorneys of record, shall file with the clerk of the appellate court an agreement in writing that an appeal or petition be dismissed, specifying the terms with respect to costs, and shall pay to the clerk any fees that may be due the clerk ~~him~~, the clerk shall enter an order of dismissal without further reference to the court.

(b) **Dismissal by Appellant or Petitioner.**

(1) Whenever an appellant or petitioner in the appellate court, by the appellant's or petitioner's ~~his~~ attorney of record, shall file with the clerk of that court a motion to dismiss a proceeding to which such appellant or petitioner is a party, 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 seven days after service thereof, may file an objection, after which time the matter shall be determined by the court.

. . .

Rule 511.5. Dismissal for Failure to Prosecute.

(a) If an appellant or an appellant's ~~his~~ counsel fails to comply with these rules, the clerk shall notify the appellant and the appellant's counsel in writing that the appeal will be dismissed for want of prosecution unless the appellant remedies the default within 14 days after the date of notification, time to be computed in accordance with Rule 502(c). If the appellant fails to comply within the 14-day period, the clerk shall issue an order dismissing the appeal for want of prosecution. In no case, except by order of the court on a motion to reinstate the appeal, shall the appellant be entitled to remedy the default after the appeal has been dismissed under this rule.

. . .

Rule 514. Service — Appearance of Counsel — Signing of Documents.

(a) **In General.** 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 the attorney or party ~~him~~ or by mailing it to the attorney's or party's ~~him at his~~ last known address or, if no address is known, by leaving it with or mailing it to the clerk of

the appellate courts. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's ~~his~~ office with a ~~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 the attorney's or party's ~~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.

. . .

Rule 515. Process — How Returnable.

A person serving the process of the appellate courts 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 process. If service is made by a person other than a marshal, a marshal's ~~his~~ deputy, a state police officer, or other officer of the court so designated, the person making service shall make affidavit thereof. Failure to make proof of service shall not affect the validity of the service.

Rule 1. Board of Governors: General Powers Relating to Admissions.

. . .

Section 10. On verified petition of the Executive Director or of an applicant, any member of the Board may order that the testimony of a material witness residing inside or outside the state be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set out (1) the name and address of the witness whose testimony is desired; (2) a showing of the materiality of the witness' ~~his~~ testimony; (3) a showing that the witness will be unable or cannot be compelled to attend; and (4) a request for an order requiring the witness to appear and testify before an officer named in the petition for that purpose. If the witness resides outside the state and if a member of the Board orders the taking of the witness' ~~his~~ testimony by deposition, the member of the Board shall obtain an order of court to that effect by filing a petition for the taking of the deposition in the superior court. The proceedings on this order shall be in accordance with provisions governing the taking of a deposition in the superior court in a civil action.

. . .

Rule 3. Applications.

. . .

Section 2. Any person seeking admission to the practice of law shall file with the Executive Director at the office of the Alaska Bar Association an application, in duplicate, in the form provided by the board. The application shall be made under oath and contain such information relating to the applicant's age, residence, addresses, citizenship, occupations, general education, legal education, moral character and other matters as may be required by the Board. Any notice required or permitted to be given an applicant under these rules, if not personally delivered shall be delivered to the mailing address declared on the application unless notice in writing is actually received by the Board declaring a different mailing address. Any notice concerning the eligibility of the applicant sent by certified mail to the last mailing address to provided shall be deemed sufficient under these rules. Every applicant shall submit two 2-inch by 3-inch photographs of the applicant ~~himself~~ showing a front view of the applicant's ~~his~~ head and shoulders. The application shall be deemed filed only upon receipt of a substantially completed form with payment of all required fees. Applications received without payment of all fees or which are not substantially complete shall be promptly returned to

the applicant with a notice stating the reasons for rejection and requiring payment of such additional fees as may be fixed by the Board as a condition of reapplication.

. . .

Rule 4. Examinations.

Section 1. An applicant shall be allowed to take the bar examination once the applicant's ~~his~~ application is approved by the board. Every applicant shall be notified no fewer than ten days in advance of the bar examination whether the ~~his~~ application has been approved and shall be provided an examination permit which shall state whether the examinee is an attorney applicant or a general applicant. The examination permit shall be presented to the examination proctor on the first day of the examination.

Section 2. If an ~~Every applicant shall, after his~~ application is approved by the board, the applicant shall submit to a bar examination. The bar examination shall be given not less than once every 12 months, shall be written, and shall be conducted in the manner and at the time and place established by the board. The board may direct that the bar examination be administered to applicants with physical handicaps in a fair and reasonable manner other than the manner by which it is administered to other applicants. An applicant with a physical handicap who desires the bar examination to be administered ~~to him~~ in a manner other than the manner by which it is administered to other applicants shall so petition the board at the time of filing the ~~his~~ application. Approval of an application and subsequent bar examination shall not operate to foreclose a subsequent determination by the board that the applicant is unfit or ineligible for certification to the supreme court for admission to the practice of law.

. . .

Section 8. All examination books and answers, including those designated by the committee as comprising a representative sampling of passing and failing answers to the bar examination, may be destroyed one year following the last date an applicant has been notified of the applicant's ~~his~~ failure; except that no examination book and answers shall be destroyed until one year following the final disposition of any proceeding to which they may be relevant.

. . .

Section 2. An applicant who fails to comply with the provisions of Section 1 of this Rule shall not be eligible for certification to the Supreme Court for admission and shall be deemed to have abandoned the ~~his~~ application.

. . .

Rule 6. Review.

. . .

Section 3. In any appeal the applicant shall have the burden of proving the material facts upon which the applicant ~~he~~ relies.

. . .

Section 6. ~~A~~ Board members or ~~a~~ masters appointed under this rule shall disqualify themselves ~~himself~~ and withdraw from any case in which they ~~he~~ cannot accord a fair and impartial hearing. The applicant may request the disqualification of the master or of a Board member by filing an affidavit within ten days following the first notice of the hearing. The affidavit shall state with particularity why a fair and impartial hearing cannot be accorded by the person sought to be disqualified. Where the request concerns a Board member the issue shall be determined by the master. Notice of the determination shall be given applicant no fewer than 10 days before commencement of the hearing and such notice shall include the name of a new master if one is appointed. The time for notice fixed by Section 3 and by this Section shall not apply to notice concerning a master appointed to replace a disqualified master.

Section 7. Only the following materials shall be subject to production by the Alaska Bar Association in any proceedings held pursuant to this Rule:

. . .

(b) Where an examination permit has been denied because of failure to meet residency requirements, the applicant has a right to inspect the minutes of any meeting of the Board of G~~g~~overnors at which the applicant's residency ~~his application~~ has been discussed, together with a synopsis of the facts with respect to any other person who, within the last two years, has been denied an examination permit for the same reason; and

(c) Where an examination permit has been denied on the basis of character and fitness, the applicant has a right to inspect the minutes of any meeting of the Board of Governors at which the applicant's character and fitness ~~his application~~ has been discussed, together with a statement of the specific grounds upon which denial of the permit was based.

. . .

Rule 7. Procedures.

. . .

Section 2. From the time the master ~~he~~ has been designated to preside until issuance of the master's ~~his~~ proposed decision and the transfer of the proceeding to the board, the master shall have the following authority to:

. . .

Section 4. The applicant shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues, even if not covered in direct examination, to impeach any witness regardless of which party called the witness ~~him~~, and to rebut the evidence against the applicant ~~him~~. The applicant may be called and examined as if under cross-examination whether or not the applicant ~~he~~ testified on the applicant's ~~his~~ own behalf. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient standing alone to support a finding unless it would be admissible over objections in civil actions. Irrelevant and unduly repetitious evidence shall be excluded. The sworn testimony of a witness subpoenaed under these rules shall be deemed testimony received in a judicial proceeding. In any action for defamation arising out of such sworn testimony, the witness shall be entitled to the defense of privilege to the same extent available to witnesses in judicial proceedings with the State of Alaska.

Section 5. The master shall prepare in writing a proposed decision supported by findings of fact and conclusions of law. In cases in which the majority of the board was not present during the evidentiary hearing, the master shall file the proposed decision with the Board and cause the entire record to be certified to the Board for decision. The record, upon payment of costs, shall be made available to the applicant. Copies of the proposed decision shall be served by the master on the applicant or the applicant's ~~his~~ attorney of record and on the Executive Director, or the Bar Association's attorney of record. Within twenty days after service of the proposed decision, the applicant and the Executive Director or attorney for the Alaska Bar Association may file exceptions and briefs and, upon request, may appear and present oral argument to the Board. Copies of the exceptions and briefs, when filed, shall be served on the applicant or the Executive Director or attorney for the Bar Association, as the case may be.

. . .

Rule 22. Procedure.

. . .

(b) **Confidentiality.** Complainants and all persons contacted during the course of an investigation have a duty to maintain the confidentiality of discipline and disability proceedings prior to the initiation of formal proceedings subject to Bar Rule 21(c). It will be regarded as contempt of court to breach this confidentiality in any way. It will not be regarded as a breach of confidentiality for a person so contacted to consult with an attorney. A Respondent may waive confidentiality in writing and request disclosure of any information pertaining to the Respondent ~~him~~ to any person or to the public.

. . .

(e) **Formal Proceedings.** Upon a finding of misconduct, and after seeking review in accordance with Rule 25(d), Bar Counsel may initiate discipline proceedings by filing with the Director a petition for formal hearing which specifically sets forth the charge(s) of misconduct. A copy of the petition will be served upon the Respondent.

Respondent will be required to file the original ~~of his~~ answer with the Director, and serve a copy upon Bar Counsel, within 20 days after the service of the petition for formal hearing. Should Respondent fail to timely answer, the charges will be deemed admitted without need of any further action by Bar Counsel.

. . .

Rule 43. Waivers to Practice Law for Alaska Legal Services Corporation.

Section 1. Eligibility. A person not admitted to the practice of law in this state may receive permission to practice law in the state for a period of not more than two years if such person meets all of the following conditions:

(a) The person is a graduate of a law school which was accredited or approved by the Council of Legal Education of the American Bar Association or the Association of American Law Schools when the person ~~he~~ entered or graduated and is an attorney in good standing, licensed to practice before the courts of another state, territory or the District of Columbia, or is eligible to be admitted to practice upon taking the oath of that state, territory or the District of Columbia;

. . .

Rule 44. Legal Interns.

. . .

Section 4. Prior Admission. Any applicant who has been admitted to practice in another jurisdiction must file a certificate of good standing from each jurisdiction in which the applicant ~~he~~ is admitted. If not in good standing, the applicant shall submit satisfactory proof that the applicant ~~he~~ has never been disbarred, suspended or otherwise disciplined.

. . .

Section 5. Act Authorized by Permit.

(a) A legal intern may appear and participate in all proceedings before any district or superior court of this state to the extent permitted by the judge or the presiding officer if the attorney representing the client is ~~himself~~ personally present and

able to supervise the intern and has filed an entry of appearance with the court and the office of the Alaska Bar Association substantially in compliance with the form set forth in Section 9 of this rule;

(b) A legal intern may also appear and participate before any district court in small claims matters, arraignments, pleas, bail hearings, sentencings and recorded in-chambers conferences without an attorney being personally present to supervise the intern ~~him~~ under the following conditions:

. . .

(3) If the client gives ~~his~~ written consent to the appearance. A governmental body may grant approval through its attorney; and

. . .

Section 6. Termination of Permit. A permit shall cease to be effective upon the occurrence of one of the following events whichever occurs first:

. . .

(b) The failure of an intern to take the first Alaska Bar examination for which the intern ~~he~~ is eligible;

. . .

Section 9. Form. The form for entry of appearance under Section 5 of this rule shall be substantially as follows:

COMES NOW, (Name of Attorney), attorney at law, and enters his/her appearance on behalf of (Name of Party). Please service all pleadings and notices at counsel's address of record:

Pursuant to Alaska Bar Rule IV-44, (Name of Intern) hereby enters his/her appearance as a legal intern. Supervising counsel (Name of Attorney), certifies that he/she is supervising (Name of Intern) in all matters relating to this case.

. . .

Rule 46. Applications for Reimbursement.

. . .

(d) The form shall include in its body the pro tanto assignment from the applicant to the Alaska Bar Association of the applicant's right against the named lawyer, or the lawyer's ~~his~~

personal representative, ~~his~~ estate or assigns, as required by Alaska Bar Rule 55.

Rule 50. Evidence and Burden of Proof.

. . .

(a) any disciplinary proceeding against the lawyer of which the lawyer ~~he~~ had notice conducted by the Alaska Bar Association or any body authorized to conduct disciplinary proceedings against attorneys in any state or the District of Columbia.

. . .

Rule 52. Consideration by Committee.

. . .

(d) Upon receipt of the report, the Executive Director shall provide copies of it to the attorney or the attorney's ~~his~~ representative and the claimant.

. . .

Rule 55. Assignment of Applicant's Rights and Subrogation.

Payments on approved applications shall be made from the Fund only upon condition that the Alaska Bar Association receives, in consideration for any payment from the Fund, a pro tanto assignment from the applicant of the applicant's right against the lawyer involved, or the lawyer's ~~his~~ personal representative, ~~his~~ estate or assigns. The collection of the aforementioned assignments shall be handled by the Executive Director of the Alaska Bar Association or a staff attorney thereof, under the supervision of the Board of Governors or in such other manner as may from time to time be directed by the Board of Governors. In order to effect collection of said assignment, the Executive Director or other attorney prosecuting the collection, may disclose such information concerning the application and the consideration thereof by the Alaska Bar Association as in the Executive Director's ~~his~~ discretion is necessary; provided, however, that without prior approval of the Board of Governors, the Executive Director shall not disclose information which refers to the existence of any non-public disciplinary matter or proceeding. Upon commencement of an action by the Alaska Bar Association, pursuant to its subrogation rights, it shall give written notice thereof to the reimbursed applicant at the applicant's ~~his~~ last known address. The reimbursed applicant may then join in such action to press a claim for the applicant's ~~his~~ loss in excess of the amount of the above reimbursement, but any recovery shall first be applied to offset the reimbursement.

Rule 56. Applicant May Be Advised.

The applicant may be advised of the status of the Alaska Bar Association's consideration of the applicant's ~~his~~ application and shall be advised of the final determination of the Alaska Bar Association upon the same. In written communications to the applicant the lawyer's name shall not appear unless and until the Board has directed that a payment be made to the applicant from the Fund.

Rule 62. Adoption of Recommended Rules, Bylaws, and Regulations.

. . .

Section 7. (a) With respect to petitions addressed to the Board of Governors, on the day and at the time and place designated in the notice referred to in Sections 5 and 6 hereof, the Board of Governors shall give ~~each~~ interested persons or their ~~his~~ authorized representatives, or both, the opportunity to present statements, arguments, or contentions in writing or orally as the Board of Governors shall determine.

(b) With respect to petitions addressed to the annual convention of the Alaska Bar, the Board of Governors shall, at the time and place designated in the notice referred to in Sections 5 and 6 hereof, present the petition for consideration by the members in attendance at the convention, and shall give ~~each~~ interested persons or their ~~his~~ authorized representatives, or both, the opportunity to present statements, arguments, or contentions in writing or orally, as the Board of Governors shall determine.

. . .

ADMINISTRATIVE RULES

Rule 1. Administrative Director of Courts — Duties.

There shall be an administrative director of courts who shall, under policy guidelines provided by the supreme court:

. . .

(n) Be legal advisor for the chief justice and the supreme court in all legal matters not adjudicatory in nature, such as:

. . .

(7) Rendering legal opinions in any non-adjudicatory matters as ~~he may be~~ directed from time to time by the chief justice.

. . .

Rule 2. Appointment and Compensation of Employees — Practice of Law by Personnel Prohibited.

. . .

(b) The administrative director shall receive an annual compensation in an amount equal to $2,000.00 less than the annual compensation provided by law for a justice of the Alaska Supreme Court. Employees in the partially exempt and classified service are entitled to receive compensation in accordance with the salary and classification plan adopted by the administrative director under the personnel rules. The administrative director with the approval of the chief justice shall appoint and fix the compensation of such assistants as are necessary ~~to enable him~~ to the exercise and performance of the powers and duties vested in the administrative director ~~him~~.

(c) No employee of the court system may be hired without the prior approval of the administrative director of the Court System or the administrative director's ~~his~~ designee nor may an employee be hired except in accordance with the personnel rules.

(d) During the ~~his~~ term of office or employment, neither the administrative director nor any other employee of the Alaska Court System may engage directly or indirectly in the practice of law in any of the courts of this state.

Rule 3. Information and Data to Be Furnished to Administrative Director and Presiding Judges.

. . .

(b) Each area court administrator, or the presiding judge in those judicial districts not having an area court administrator, shall maintain a current list of all matters under advisement in the superior and district courts in the ~~his~~ judicial district. The

clerk of the appellate courts shall maintain a list of all matters under advisement in the supreme court and the court of appeals. Such lists shall contain the following information:

. . .

(d) Judges ~~Each judge~~ of the superior and district courts and ~~each~~ masters under continuing appointment shall submit a weekly report to their ~~his~~ area court administrator or presiding judge, identifying the matters that are ~~he has~~ under advisement, and providing the information required by paragraphs (b)(1) — (5) of this rule.

(e) ~~Any j~~Judges or masters having a motion under advisement more than 10 calendar days from the date submitted, or having a decision following trial of a case under advisement more than 30 calendar days from the date submitted, shall submit in writing to the presiding judge of their ~~his~~ judicial district an explanation of the circumstances justifying the delay and the date on or before which such motion or case shall be decided.

(f) ~~A j~~Justices or judges who disqualify~~ies~~ themselves ~~himself~~ for cause shall set forth the specific reasons for the disqualification in writing. ~~A s~~Superior court judges or ~~a~~ district court judges shall send the ~~his~~ statement of reasons to the presiding judge of their ~~his~~ judicial district and a copy of the statement to the administrative director. A court of appeals judge shall send the ~~his~~ statement of reasons to the chief judge of that court and to the clerk of that court. The chief judge of the court of appeals or a presiding judge of the superior court shall send the ~~his~~ statement of reasons to the chief justice and a copy of the ~~his~~ statement to the administrative director. A supreme court justice shall send the ~~his~~ statement to the other justices and to the clerk of the appellate courts.

Rule 5. Disposal of Money Paid to or Deposited With the Court.

(a) The administrative director shall designate, in accordance with written procedures established by the administrative director ~~him~~, the banking institutions to serve as depositories for all monies paid to, or deposited with, the courts. Certain accounts in the designated banks shall be the depositories for trust funds held by the various courts. Monies may be withdrawn from the accounts in accordance with procedures established by the administrative director.

Rule 7. Witness Fees.

(a) **Amount.** A witness attending before any court, referee, master, grand jury or coroner's jury or upon a deposition in a discovery proceeding, whose testimony is necessary and material to the action, shall receive a witness fee of $12.50 if such attendance, including the time necessarily occupied in traveling from the witness' ~~his~~ residence to the place of ~~his~~ attendance and returning from that place, requires not more than three consecutive

hours. If such attendance requires more than three consecutive hours, the witness shall receive a witness fee of $25.00 for each day of attendance. Any witness who attends at a point so far removed from the witness' ~~his~~ residence as to necessarily prohibit return thereto from day-to-day shall receive per diem at the rate allowed for state employees.

(b) **Travel Expense.** Every witness who is required to travel in excess of 30 miles from the witness' ~~his~~ residence is entitled to receive reimbursement for round-trip travel from the witness' residence to the place of court at the rate allowed for state employees.

. . .

Rule 9. Fee Schedule.

The fees specified in this rule shall be charged for the services designated herein:

. . .

(f) **General Provisions:**

. . .

(2) Notarization required in an action by a person represented in such action by an attorney furnished to the person ~~him~~ by an organization authorized to provide legal services to indigents is exempted from notary public fees provided under this schedule.

Rule 11. Fees — Service of Civil Process.

(a) The following schedule establishes the maximum amount recoverable from another party as costs for the services designated.

. . .

(2) Sales of Property Pursuant to Final Process:

. . .

provided, that when the officer disposes of property by sale, set-off, or otherwise, according to law, but does not receive and pay over money on account of such sale, the officer ~~he~~ shall receive one-half of the commission allowed in this subdivision.

(3) Deeds:

For executing a deed prepared by a party or a party's ~~his~~ attorney	10.00

Rule 14. Jurors' and Grand Jurors' Fees.

. . .

(c) If it is impracticable for a juror to return ~~to his~~ home each evening, subsistence at the per diem rate allowed to state employees shall be allowed for each day of the juror's ~~his~~ term of service on the venire.

Rule 17. Sessions and Offices of the Supreme Court.

. . .

(b) **Offices.** The principal office of the supreme court shall be at Anchorage, Alaska. The chief justice or an associate justice may maintain an ~~his~~ office at a place other than the principal office as designated by order of the court or of the chief justice.

Rule 20. Magistrate Salaries.

. . .

(b) When any magistrate position becomes vacant, the salary for that position shall be reevaluated. The administrative director may provide for a salary higher than that provided by supreme court order for that position for an appointee whom the administrative director ~~he~~ determines possesses extraordinary qualifications or when the administrative director ~~he~~ determines other special circumstances exist justifying a departure from the salary provided herein for that position. The administrative director shall keep a written record of the reasons for such action.

. . .

Rule 23. Appointment of Retired Justices or Judges Pro Tempore — Compensation — Expenses.

. . .

(c) **Compensation.** The retired justice or judge is entitled to receive compensation for judicial service pro tempore in an amount equal to the salary of a justice or a judge of the court to which the retired justice or judge ~~he~~ was assigned pro tempore for the period of such service diminished by the amount of retirement pay if any is received by the retired justice or judge ~~him~~ for such period. The retired justice or judge is futher entitled to receive full medical insurance coverage during the same period. The retired justice or judge is not entitled to personal, annual, or sick leave benefits, and acceptance of an appointment pro tempore acts as a waiver of any claim to such benefits. For an appointment of over 90

consecutive days, such leave may be granted at the discretion of the administrative director upon confirmation by the chief justice.

Rule 24. Assignment of Judicial Officers.

(a) **Assignments Within Judicial Districts.** Assignment of a judicial officer from the court location of the judicial officer's ~~his or her~~ residence to locations within the same judicial district shall be made by the presiding judge of the judicial district or by the presiding judge's ~~his~~ designee. In making such assignments, due regard shall be had of the status of accumulated calendars of the courts in the district to the end that judicial officers are assigned to such courts as needed in order to keep the calendars current.

Rule 27. Presiding Judge.

(a) The chief justice shall designate one judge from each judicial district to be presiding judge of that district. A judge designated as presiding judge shall hold office as such for a term of one year and shall be eligible to serve successive terms ~~succeed himself~~ thereafter.

. . .

Rule 31. Additional Duties of Judicial Officers and Employees.

. . .

(b) A judge or magistrate may, with the approval of the presiding judge of the district and the chief justice, serve as a part-time United States Magistrate, when so designated by a United States District Judge for District of Alaska. A judge or magistrate may retain any compensation paid to him or her by the United States for such services and shall submit to the administrative director such reports concerning this additional activity as may be required by the administrative director ~~him~~. When acting in the capacity of a United States Magistrate, the judge or magistrate shall be governed in all respects by the United States law and instructions from federal officials or agencies.

Rule 33. Magistrate Training Judges.

The chief justice shall appoint one or more judges in each judicial district to be a training judge in that district. The training judges shall keep themselves ~~himself~~ and the presiding judge of their ~~his~~ districts regularly informed as to the status of the calendars in the magistrate locations in the district assigned to them ~~him~~ and shall visit these magistrate locations in the district as often as required by the presiding judge or the chief justice for the purpose of providing such training and assistance to the magistrates as may be necessary. The training judge shall make such examinations, inspections and reports on the functions performed by the magistrates as may be required by the presiding judge or the administrative director.