

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1318

Amending Civil Rules 16, 26 and
100 to address alternative
dispute resolution.

IT IS ORDERED:

1. Paragraph (a) of Civil Rule 16 is amended to read:

(a) **Pretrial Conferences; Objectives.**
In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as:

(1) expediting the disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation; and

(5) facilitating the settlement of the case, including use of alternative dispute resolution procedures such as mediation, early neutral evaluation, arbitration, and settlement conferences.

2. Paragraph (b) of Civil Rule 16 is amended to read:

(b) Scheduling Order; Mandatory Scheduling Conference.

(1) Except in categories of actions exempted under Rule 16(g), the judge shall, after receiving the report from the parties under Rule 26(f), enter a scheduling order that limits or establishes the time:

(A) to join other parties and to amend the pleadings;

(B) to file motions;

(C) to disclose expert witnesses and reports required under Rule 26(a)(2);

(D) to supplement disclosures required under Rule 26(a);

(E) to identify witnesses and exhibits;

(F) to complete discovery; and

(G) for trial or the trial setting conference.

The scheduling order may also address:

(H) modification of the discovery limitations contained in these rules, including the length of depositions in light of the factors listed in Rule 30(d)(2), and

the extent of discovery to be permitted;

(I) the date or dates for conferences before trial; and

(J) the use and timing of an alternative dispute resolution procedure; and

~~(J)~~ (K) any other matters appropriate in the circumstances of the case.

The order shall issue as soon as practicable but in any event within 90 days after the appearance of the defendants. A schedule shall not be modified except upon a showing of good cause and by leave of court.

(2) The judge shall meet with the attorneys for the parties and any unrepresented parties prior to entering the scheduling order unless the parties have waived this conference in their report and the judge determines that a conference is unnecessary. The court shall distribute notice of the conference date as soon as practicable after the appearance of the defendants. The conference may be held on or off the record.

3. Paragraph (f) of Civil Rule 26 is amended to read:

(f) **Meeting of Parties; Planning for Discovery and Alternative Dispute Resolution.** Except when otherwise ordered and except in actions exempted from disclosure under Rule

26(a), the parties shall, as soon as practicable and in any event at least 14 days before a scheduling conference is held or a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, including whether an alternative dispute resolution procedure is appropriate, to make or arrange for the disclosures required by subparagraph (a)(1), and to develop a proposed discovery plan and a proposed alternative dispute resolution plan. The plan shall indicate the parties' views and proposals concerning:

(1) what changes should be made in the timing or form of disclosures under paragraph (a), including a statement as to when the disclosures under subparagraph (a)(1) were made or will be made and what are appropriate intervals for supplementation of disclosure under Rule 26(e)(1);

(2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(3) what changes should be made in the limitations on discovery imposed under these rules and what other limitations should be imposed;

(4) the plan for alternative dispute resolution, including its timing, the method of selecting a mediator, early neutral evaluator, or arbitrator, or an explanation of why alternative dispute resolution is inappropriate;

~~(4)~~ (5) whether a scheduling conference is unnecessary; and

~~(5)~~ (6) any other orders that should be entered by the court under paragraph (c) or under Rule 16(b) and (c).

The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging and being present or represented at the meeting, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 10 days after the meeting a written report outlining the plan.

4. Civil Rule 100 is amended to read:

Rule 100. Mediation and Other Forms of Alternative Dispute Resolution.

* * * *

(b) **Order.** A order of mediation must state:

(1) the name of the mediator, or how

the mediator will be decided upon;

(2) any changes in the procedures specified in paragraphs ~~(e)~~ (d) and (e), or any additional procedures;

(3) that the costs of mediation are to be borne equally by the parties unless the court apportions the costs differently between the parties; and

(4) a date by which the initial mediation conference must commence.

* * * *

(g) Confidentiality. Mediation proceedings shall be held in private and are confidential. The mediator shall not testify as to any aspect of the mediation proceedings. Evidence of conduct or statements made in the course of court-ordered mediation is inadmissible to the same extent that conduct and statements are inadmissible under Alaska Rule of Evidence 408. This rule does not relieve any person of a duty imposed by statute.

(h) Dismissal. If the mediation is successful, the party requesting mediation shall prepare a stipulation for dismissal which dismisses all or such portions of the action as have been concluded by mediation as agreed upon at the mediation.

(i) Other Forms of Alternative Dispute Resolution.

(1) Early Neutral Evaluation. Parties or the court may use the procedure set out in this rule to refer a case to early neutral evaluation instead of mediation. All provisions of this rule apply to a case in which early neutral evaluation has been ordered under paragraph (a).

(2) Arbitration. Parties may stipulate to arbitration without further order of the court.

(3) Settlement Conference. At any time after a complaint is filed, a party may file a motion with the court requesting a settlement conference with a judge for the purpose of achieving a mutually agreeable settlement. The court may order a settlement conference in response to such a motion or on its own motion.

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Effective Date: July 15, 1998
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DATED: March 5, 1998

EFFECTIVE DATE: July 15, 1998

/s/
Chief Justice Matthews

/s/
Justice Compton

/s/
Justice Eastaugh

/s/
Justice Fabe

/s/
Justice Bryner