

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1361

Amending Civil Rule 41(a), Appellate Rule 511(c) and (e), Delinquency Rules 3(a) and (c), 8(c), (e), and (f), 12(d) and (e), 23(b), and 25(b), adding Delinquency Rule 21(g), and adding notes following Civil Rules 23, 59, 60, 62, and 65 to reflect 1999 legislative changes.

IT IS ORDERED:

1. Civil Rule 41(a) is amended to read as follows:

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

(1) *By Plaintiff - By Stipulation.* Subject to the provisions of Rule 23(c), of Rule 66 and of any statute of the state, an action may be dismissed by the plaintiff without an order of the court: [a] by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs; or [b] by filing a stipulation of dismissal signed by all parties who have appeared in the action. A notice of dismissal must include a certification signed by or on behalf of the plaintiff that the plaintiff has submitted the information required under AS 09.68.130 and (a)(3) of this rule to the Alaska Judicial Council or that the case is exempt from this requirement. A stipulation of dismissal must include a certification signed by or on behalf of all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal

or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of this state, or of any other state, or in any court of the United States, an action based on or including the same claim.

(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 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.

(3) *Information about the Resolution of Civil Cases.* If an action is voluntarily dismissed under paragraph (a) of this rule, each party or, if a party is represented by an attorney, the party's attorney must submit the information described in AS 09.68.130(a) to the Alaska Judicial Council. The information must be submitted within 30 days after the case is finally resolved as to that party and on a form specified by the Alaska

Judicial Council. The following types of cases are exempt from this requirement:

- (A) divorce and dissolution;
- (B) adoption, custody, support, visitation, and emancipation of children;
- (C) children-in-need-of-aid cases under AS 47.10 or delinquent minors cases under 47.12;
- (D) domestic violence protective orders under AS 18.66.100 - 18.66.180;
- (E) estate, guardianship, and trust cases filed under AS 13;
- (F) small claims under AS 22.15.040;
- (G) forcible entry and detainer cases;
- (H) administrative appeals; and
- (I) motor vehicle impound or forfeiture actions under municipal ordinance.

2. Appellate Rule 511(c) is amended to read as follows:

(c) **Certification.** An agreement or motion for dismissal filed under (a) or (b) of this rule must include a certification that the settlement information required under AS 09.68.130 and (e) of this rule has

been submitted to the Alaska Judicial Council or that the case is exempt from this requirement.

3. Appellate Rule 511(e) is amended to read as follows:

(e) **Information about the Resolution of Civil Cases.** If a proceeding is dismissed under paragraph (a) or (b) of this rule, each party or, if a party is represented by an attorney, the party's attorney must submit the information described in AS 09.68.130(a) to the Alaska Judicial Council. The information must be submitted within 30 days after the proceeding is finally resolved as to that party and on a form specified by the Alaska Judicial Council. The following types of cases are exempt from this requirement:

(1) divorce and dissolution;

(2) adoption, custody, support, visitation, and emancipation of children;

(3) children-in-need-of-aid cases under AS 47.10 or delinquent minors cases under 47.12;

(4) domestic violence protective orders under AS 18.66.100 - 18.66.180;

(5) estate, guardianship, and trust cases filed under AS 13;

(6) small claims under AS 22.15.040;

(7) forcible entry and detainer cases;

(8) administrative appeals; and

(9) motor vehicle impound or forfeiture actions under municipal ordinance.

4. Delinquency Rule 3(a) is amended to read as follows:

(a) **Notice.** Notice of each hearing must be given to all parties and to any foster parent within a reasonable time before the hearing. Notice to the foster parent must be provided by the Department.

5. Delinquency Rule 3(c) is amended to read as follows:

(c) **Admission to Hearings.** The court in all cases shall admit victims of the juvenile's offense to hearings as required by AS 47.12 and shall admit foster parents to hearings subject to paragraph (d) of this rule. The court has discretion in all cases to admit other specific individuals to a hearing if their attendance is compatible with the best interests of the juvenile. Hearings are open to the general public if:

* * * *

6. Delinquency Rule 8 is amended to read as follows:

* * * *

(c) **Service.** The petition must be served on the juvenile and the juvenile's parents or guardian. The petition and the

summons, if issued, must be served on the juvenile pursuant to Criminal Rule 4(c), except that the court may appoint a probation officer or other competent person to serve the summons and petition. The parents or guardian may be served in the same manner as the juvenile or by any method of service allowed under Civil Rule 4, including registered or certified mail, or specified by the court. Inability to obtain service on a parent or guardian does not deprive the court of jurisdiction. The Department shall also provide a copy of the petition to the juvenile's foster parents.

(e) **Dismissal.** The court may dismiss a petition at any time based on a finding of good cause consistent with the welfare of the juvenile and the protection of the public.

(f) **Amendment.** A petition may be amended with leave of the court at any time before adjudication. Amendment will be freely permitted to promote the interests of justice, the welfare of the juvenile and the protection of the public.

7. Delinquency Rule 12 is amended to read as follows:

* * * *

(d) **Foster Parent's Right To Be Heard.**
If the juvenile's foster parent is present at the temporary detention hearing, the court shall give the foster parent an opportunity to be heard.

(e) **Termination of Detention or Placement.** A juvenile who has been detained for a period of 30 days, but who has not been adjudicated a delinquent, will be released unless, at or prior to the expiration of the 30 days, either:

* * * *

8. Delinquency Rule 21 is amended to include new paragraph (g) as follows:

(g) **Foster Parent's Right To Be Heard.**

If the juvenile's foster parent is present at the adjudication hearing, the court shall give the foster parent an opportunity to be heard.

9. Delinquency Rule 23(b) is amended to read as follows:

(b) **Statements.** The court shall allow the parties an opportunity to make a statement and to offer evidence in aid of disposition before entering a disposition order. If the juvenile's foster parent is present at the disposition hearing, the court shall give the foster parent an opportunity to be heard.

10. Delinquency Rule 25(b) is amended to read as follows:

(b) **Review Upon Application.** A party may apply for review of a disposition order.

The court shall order a hearing to review the disposition order upon a showing of good cause or on its own motion. If the juvenile's foster parent is present at a hearing ordered under this paragraph, the court shall give the foster parent an opportunity to be heard.

11. The following note is added at the end of Civil Rule 23:

Note: Chapter 79 § 2 SLA 1999 enacts AS 09.65.260(c), which relates to class actions for damages arising from the year 2000 date change and caused directly or indirectly by a failure of an electronic computing device. According to § 4 of the act, the enactment of AS 09.65.260(c) has the effect of amending Civil Rule 23, by requiring, in a class action relating to the year 2000 date change, that the aggregate claim of all members of the class for economic loss exceeds \$150,000.

12. The following note is added at the end of Civil Rules 59, 60, 62, and 65:

Note: Chapter 42 § 2 SLA 1999 enacts AS 09.19.200 which governs the remedies available in civil litigation involving conditions in correctional facilities. According to § 3 of the act, the enactment of AS 09.19.200 has the effect of amending Civil Rules 59(f), 60(b), 62, and 65 by altering the remedies available and the procedure to

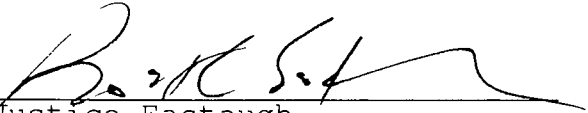
be used in litigation involving correctional facilities.

DATED: July 23, 1999

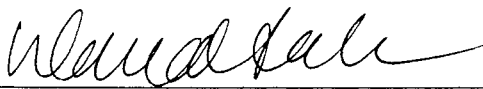
EFFECTIVE DATE: October 15, 1999



Chief Justice Matthews



Justice Eastaugh



Justice Fabe



Justice Boyner



Justice Carpeneti