

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1423

Amending Civil Rule 77 concerning response times for motions filed before answer is due.

**IT IS ORDERED:**

Paragraphs (a) through (k) of Civil Rule 77 are amended to read as follows:

(a) **Service.** All motions, orders to show cause, petitions, applications and every other such matter shall be served upon the adverse party, or, after the adverse party has appeared by counsel, upon counsel for the adverse party.

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

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

(2) ~~A~~ a brief, complete written statement of the reasons in support of the motion, which shall include a memorandum of the points and authorities upon which the moving party will rely; and

(3) ~~An~~ an appropriate order for the court's signature in the event that the motion is granted.

(4) In addition, if a motion is filed and served on a defendant before an answer to the complaint is due under the rules, the motion must be accompanied by a notice advising the defendant of the right to file a written opposition to the motion, the time within which the opposition must be filed under Civil Rule 77(c)(2)(i), and the place where it must be filed.

(c) **Opposition.** Unless otherwise ordered by the court or otherwise stipulated by the parties with court approval, opposition to the motion or other application shall be made as follows:

(e)(1) *Form.* Each party opposing the motion or other application shall, within 10 days after service of the motion or other application upon that party, unless otherwise ordered by the court, or otherwise stipulated to by the parties with court approval serve and file either:

~~(1)(i) Serve and file~~ legible copies of all photographs, affidavits and other documentary evidence upon which the party intends to rely; and

~~(2)(ii) Serve and file~~ a brief, complete written statement of the reasons in opposition to the motion, which shall include an adequate answering brief of points and authorities; and

~~(3)(iii) Serve and file~~ an appropriate order for the court's signature in the event that the motion is denied; or

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

(2) Time. The time for filing opposition to the motion or other application shall be 10 days from the date of service of the motion or application, except as follows:

(i) for motions or other applications filed and served on defendant before an answer to the complaint is due under the rules, the time for filing opposition shall be either 10 days from the date of service, or the date the defendant's answer is due under the rules, whichever is later;

(ii) for motions to dismiss, motions for summary judgment and motions for judgment on the pleadings, the time for filing opposition shall be either 15 days from the date of service or, if the plaintiff is the movant, the date the defendant's answer is due under the rules, whichever is later; and

(iii) for motions filed under Civil Rules that prescribe their own response times (for example, Civil Rule 88 and Civil Rule 89) or that authorize expedited relief (for example, Civil Rule 77(g) or Civil Rule 65), the time for filing opposition shall be governed by the specific rule under which the motion is filed.

(d) **Reply.** Reply and supplemental materials and memoranda, if any, may be served and filed by the moving party within three days of the date of the service of the opposition to the motion.

(e) **Oral Argument.**

(1) If either party desires oral argument on the motion, that party shall file a notice of hearing within five days after service of a responsive pleading or the time limit for filing such a

responsive pleading, whichever is earlier.

(2) The notice of hearing shall set forth the date, time, and place of the hearing and shall include a certificate by counsel that he or she has attempted to resolve the matter with opposing counsel and that in his or her opinion oral argument is necessary. Such conferral with opposing counsel by mail or telephone is sufficient.

(3) The hearing date shall be set not less than seven nor more than 14 days from the date of filing of the notice of hearing. In cases of motions to dismiss, motions for summary judgment and motions for judgment on the pleadings, the hearing date shall be set not less than ten days and not more than 20 days from the date of filing of the notice of hearing.

(4) The amount of time to be allowed for oral argument shall be set by the judge. Except on motions to dismiss; motions for summary judgment; motions for judgment on the pleadings; other dispositive motions; motions for delivery and motions for attachment, oral argument shall be held only in the discretion of judge.

(5) The presiding judge in each judicial district shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which oral argument may be heard on motions; but any judge, at any time and on such notice, if any, as the judge considers reasonable, may order the hearing of motions at times other than on motion days.

(f) **Disposition Without Oral Argument.** If oral argument is not heard, the court shall promptly rule on the motion and comply with Administrative Rule 3.

(g) **Expedited Consideration.** A party may move for expedited consideration of its principal motion by filing a second motion requesting relief in less time than would normally be required for the court to issue a decision.

(1) The motion must be captioned "Motion for Expedited Consideration" and must have an appropriate order on the issue of expedited consideration attached.

(2) The motion for expedited relief must comply with other provisions of this rule, including paragraph (e) concerning any

request for oral argument except as the provisions of this paragraph specify otherwise. However, a hearing need not be set within the time limits stated in paragraph (e)(3).

(3) The motion for expedited consideration must include an affidavit or other evidence showing the facts which justify expedited consideration, and the date before which a decision on the principal motion is needed.

(4) The motion for expedited consideration must include proof of service; and, if the motion requests a decision before the usual time for response to the motion, must include a certificate of counsel indicating when and how the opposing party was notified of the motion, or, if the opposing party was not notified, what efforts were made to notify the opposing party and why it was not practical to notify the opposing party in a manner and at a time that a response could be made.

(5) The court may not grant the motion for expedited consideration prior to allowing the opposing party a reasonable opportunity to respond, either in person, by telephone or in writing, absent compelling reasons for a prompt decision and a showing that reasonable efforts were made to notify the opposing party of the motion for expedited consideration in time to allow a reasonable opportunity to respond.

(6) The court may not grant the principal motion prior to allowing the opposing party a reasonable opportunity to respond, either in person, by telephone or in writing, unless it clearly appears from the specific facts in the motion papers or court records that immediate and irreparable injury, loss or damage would result to the moving party before any reasonable opportunity to respond could be given. In no event will a decision be rendered on the principal motion without a response until at least 24 hours after the date of service of the principal motion or the date actual notice is given, whichever is sooner. However, this limitation does not preclude a decision in less than 24 hours on an application for relief made pursuant to Civil Rule 65(b) or any other rule or statute authorizing such action.

(h) **Stipulations.** Stipulations between counsel may be submitted in support of motions, but are not binding on the court unless otherwise specifically provided by rule.

(i) **Evidence.** When a motion is based on facts not appearing of record, the court may hear the matter on affidavits or other documentary evidence presented by the respective parties, but the court may direct that the matter be heard wholly or partly on testimony or deposition.

(j) **Frivolous Motions or Oppositions.** The presentation to the court of frivolous or unnecessary motions or frivolous or unnecessary opposition to motions, which unduly delay the course of the action proceeding, or the filing of any motion to dismiss or motion to strike for the purpose of delay where no reasonable ground appears therefor subjects counsel presenting or filing such, at the discretion of the court, to imposition of costs and attorney's fees to the opposing party, to be fixed by the court and paid to the clerk of court, and any other sanctions, which may be authorized by rule or law.

(k) **Motions for Reconsideration.** A motion to reconsider the ruling must be made within ten days after the date of notice of the ruling as defined in Civil Rule 58.1(c) unless good cause is shown why a later filing should be accepted. In no event shall a motion to reconsider a ruling be made more than ten days after the date of notice of the final judgment in the case.

(1) A party may move the court to reconsider a ruling previously decided if, in reaching its decision:

(i) The court has overlooked, misapplied or failed to consider a statute, decision or principle directly controlling; or

(ii) The court has overlooked or misconceived some material fact or proposition of law; or

(iii) The court has overlooked or misconceived a material question in the case; or

(iv) The law applied in the ruling has been subsequently changed by court decision or statute.

(2) The motion for reconsideration shall specifically state which of the grounds for reconsideration specified in the prior subparagraph exists, and shall specifically designate that portion of the ruling, the memorandum, or the record, or that particular authority, which the movant wishes the court to consider. The motion for reconsideration and supporting memorandum shall not exceed five pages.

(3) No response shall be made to a motion for reconsideration unless requested by the court, but a motion for reconsideration will ordinarily not be granted in the absence of such a request.

(4) The motion for reconsideration shall be decided by the court without oral argument. If the motion for reconsideration has not been ruled upon by the court within 30 days from the date of the filing of the motion, or within 30 days of the date of filing of a response requested by the court, whichever is later, the motion shall be taken as denied.

(5) The court, on its own motion, may reconsider a ruling at any time not later than 10 days from the date of notice of the final judgment in the case.

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DATED: February 8, 2001

EFFECTIVE DATE: April 15, 2001

/s/  
Chief Justice Fabe

/s/  
Justice Matthews

/s/  
Justice Eastaugh

/s/  
Justice Bryner

/s/  
Justice Carpeneti