

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1564

Amending Civil Rule 77 concerning
Replies, Oral Argument, and
Expedited Consideration

IT IS ORDERED that Alaska Rule of Civil Procedure 77 is amended to read as follows:

Rule 77. Motions

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(d) **Reply.** Reply and supplemental materials and memoranda, if any, may be served and filed by the moving party within five 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 request a hearing within five days after service of a responsive pleading or the time limit for filing such a responsive pleading, whichever is earlier.

(2) 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 the judge. The amount of time to be allowed for oral argument shall be set by the judge.

(3) If oral argument is to be held, the argument shall be set for a date no more than 45 days from the date the request is filed or the motion is ripe for decision, whichever is later.

(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.

(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) If the parties are represented by counsel, the motion for expedited consideration shall include a certification of counsel that a good faith effort has been made to resolve the issues raised with opposing counsel, but that these efforts were not successful; or, in the alternative, that it was not possible to attempt to resolve the issues with opposing counsel beforehand. The certification shall include a description of what efforts were made to resolve the issues for which expedited consideration is sought, or an explanation of why no efforts were made.

(5) 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 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.

(6) 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.

(7) 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.

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DATED: February 1, 2005

EFFECTIVE DATE: April 15, 2005

Chief Justice Bryner

Justice Matthews

Justice Eastaugh

Justice Fabe

Justice Carpeneti