

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1834

Amending Civil Rule 4(e) to replace newspaper publication as the default means of other service and replacing reference in Civil Rule 26(d)(2)(A) to publication; and amending Civil Rule 84 to provide for posting on the Alaska Court System's legal notice website rather than newspaper publication in name change cases.

IT IS ORDERED:

1. Civil Rules 4(e) and 26(d)(2)(A) are amended read as follows:

Civil Rule 4. Process.

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(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 subsections (d) or (h) of this rule, service shall be made by posting on the Alaska Court System's legal notice website and as otherwise directed by the court as provided in this subsection. The party who seeks to have service made under this subsection shall include in the affidavit of diligent inquiry a discussion of whether other methods of service listed in paragraph (e)(3) may be more likely to give the absent party actual notice. In adoption cases, service by posting on the Alaska Court System's legal notice website or by publication will be allowed 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 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. Unless otherwise ordered by the court, diligent inquiry shall include a reasonable effort to search the internet for the whereabouts of the absent party. The inquiry shall also 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, of what persons and in what manner it was made, and a description of any efforts that were made to search the internet, so that by the facts stated therein it may appear that diligent inquiry has been made for the purpose of effecting actual notice.

(2) *Service by Posting on the Alaska Court System's Legal Notice Website*. A notice shall be continuously posted for four consecutive weeks on the Alaska Court System's legal notice website. Prior to the last week of posting, the party who seeks to have service made must send the absent party a copy of the notice and the complaint or the pleading (A) by registered or certified mail, with return receipt requested, with postage prepaid, and (B) by regular first class mail. The notice must be

addressed in care of the absent party's residence or the place where the party usually receives mail, unless it shall appear by affidavit that the absent party's residence or place is unknown or cannot be determined after inquiry.

(3) *Additional Service by Other Methods.* In addition to the service required under paragraph (2), the court, in its discretion, may require service of process to be made upon an absent party in any other manner that is reasonably calculated to give the party actual notice of the proceedings and an opportunity to be heard. The method of service could include publication of the notice in a print or online newspaper or other publication at least once a week for four consecutive weeks; service of the notice to the absent party's e-mail account; posting of the notice to the absent party's social networking account; physically posting a copy of the notice and complaint on a public bulletin board or on the front door of the absent party's place of residence; or any method the court determines to be reasonable and appropriate.

(4) *Mailing Required.* If service is allowed by any method listed in paragraph (3), the party who seeks to have service made must also send the absent party a copy of the notice and the complaint by mail as required in paragraph (2). Proof of mailing shall be made by affidavit of a deposit in a post office of the copies of the notice and the complaint or other pleadings.

(5) *Form and Contents of Notice—Time.* The notice referred to in paragraphs (2), (3) and (6) shall be in the form of a summons.

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(6) *Proof of Service.*

(A) *Service by Posting on the Alaska Court System's Legal Notice Website.* If service is made by posting to the Alaska Court System's Legal Notice Website, proof of posting shall be made by certification of the court clerk. A printed copy of the posted notice and the dates of posting shall be attached to the clerk's certificate.

(B) *Service by Publication in a Printed Newspaper.* If service is made by publication in a printed newspaper, proof of publication shall be made by the affidavit of the newspaper's publisher, printer, manager, foreman, or principal clerk, or by the certificate of the attorney for the party at whose instance the service was made. A printed copy of the published notice with the name of the newspaper and dates of publication marked therein shall be attached to the affidavit or certificate.

(C) *Service by Posting to an Online Publication Website.* If service is made by posting to an online publication website, proof of posting shall be made by affidavit of the online publication's publisher, printer, manager, foreman, or principal clerk, or by the certificate of the attorney for the party at whose instance the service was made. A printed copy of the posted notice with the name of the online publication and dates of posting marked therein shall be attached to the affidavit or certificate.

(D) *Service by E-mail or Posting to a Social Networking Account.* If service is made by e-mail or posting to a social networking account, proof of e-mail transmission or electronic posting shall be made by affidavit. If service is made by e-mail,

a copy of the sent e-mail transmission shall be attached to the affidavit. If service is made by posting a notice on the absent party's social networking account, a screen print of the posting shall be attached to the affidavit.

(E) *Service by Posting to a Public Bulletin Board or on the Front Door of the Absent Party's Place of Residence.* If service is made by posting to a public bulletin board or on the front door of the absent party's place of residence, proof of posting shall be made by affidavit of posting of the notice and the complaint or other pleadings.

(F) *Other Service by Court Order.* If the court has allowed service of process to be made upon an absent party in any other manner calculated to give actual notice, proof of service shall be made as directed by the court.

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Note: The Alaska Court System's legal notice website, referenced in paragraph (e)(2), is found on the Alaska Court System Website at: <http://www.courts.alaska.gov/>.

Civil Rule 26. General Provisions Governing Discovery; Duty of Disclosure.

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(d) Timing and Sequence of Discovery.

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(2) *Timing of Discovery—Exempted Actions.* In actions exempted from disclosure under Rule 26(a), discovery may take place as follows:

(A) For depositions upon oral examination under Civil Rule 30, a defendant may take depositions at any time after commencement of the action. The plaintiff must obtain leave of court if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service under Rule 4(e) if authorized, except that leave is not required (i) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (ii) the plaintiff seeks to take the deposition under Civil Rule 30(a)(2)(C).

2. Civil Rule 84 is amended to read as follows:

Civil Rule 84. Change of Name.

(a) Petition. Every action for change of name shall be commenced by filing a verified petition entitled in the name of petitioner, showing the name which petitioner desires to adopt and setting forth the reasons for requesting a change of name.

(b) Notice of Application. The court by order shall set a date for hearing not less than 40 days after the date of the order. Unless otherwise ordered by the court based on the petitioner's personal safety concerns, notice of the filing of the petition with a statement of the relief sought therein and the date of hearing thereon shall be continuously posted for four consecutive weeks prior to the date of the hearing on the Alaska Court System's legal notice website. Proof of posting to the legal notice website shall be made as prescribed in Rule 4(e)(6)(A). In its discretion, the court by order may also require the posting or publication of the notice as prescribed in Rule 4(e)(3). Proof of publication shall be made as prescribed in Rule 4(e)(6)(B), (C) or (E).

(c) Judgment -- Notice -- Filing. If satisfied that there is no reasonable objection to the assumption of another name by petitioner, the court shall by judgment authorize petitioner to assume such other name after a time to be fixed in the judgment, which shall not be less than 30 days after the date shown in the clerk's certificate of distribution on the judgment. Except in cases where notice is not required under subsection (b), within 10 days after the date shown in the clerk's certificate of distribution on the judgment, a copy thereof shall be posted on the Alaska Court System's legal notice website for one week. Proof of posting to the legal notice website shall be made as prescribed in Rule 4(e)(6)(A).

The court may also require publication of a copy of the judgment as provided in subdivision (b). Within 20 days after the date shown in the clerk's certificate of distribution on the judgment, proof of publication shall be filed with the clerk. The petitioner may then submit a certificate to be issued by the clerk stating that the judgment has been entered and that all requirements for posting a copy of the judgment have been met.

(d) Applicability. This rule shall not apply to restoration of a prior name sought in a complaint for divorce or in a petition for dissolution of marriage.

(e) Change of Name for Minor Child. An action for change of name for a minor child will be commenced by the filing of a verified petition in the name of a parent or guardian on behalf of the minor child, showing the name which the petitioner desires the child to assume and setting forth the reasons for requesting the change of name. No petition will be heard unless written consent to the petition is filed by both the child's legal parents

and the child's legal guardian (if any), or unless proof of service is filed with the court showing that the child's parent(s) and legal guardian(s) have been served with a summons and a copy of the petition at least 30 days prior to the date set for hearing. Service of the petition and summons will be in accord with the provisions of these rules applicable to the service of a complaint and summons. The summons must advise the recipient of the date set for hearing on the petition.

If the court receives an objection to the proposed name change presented by a parent and/or legal guardian of the child prior to or at the time of the hearing on the proposed name change, the court shall consider the objection and shall only grant the name change if the court finds the name change to be in the best interest of the child. The court shall also consider the desires of a child old enough to express the same in determining whether a requested name change will be granted.

The requirements of (b) and (c) of this rule apply to a change of name proceeding brought under this section.

Note: The Alaska Court System's legal notice website, referenced in subsections (b) and (c) of this rule is found on the Alaska Court System Website at: <http://www.courts.alaska.gov/>.

DATED: July 9, 2014

EFFECTIVE DATE: October 15, 2014

/s/
Chief Justice Fabe

/s/
Justice Winfree

/s/
Justice Stowers

/s/
Justice Maassen

/s/
Justice Bolger