

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 186

Amending Civil Rule 42

IT IS ORDERED:

1) That the title of Civil Rule 42 be changed by adding "CHANGE OF JUDGE", to read as follows: "RULE 42. CONSOLIDATION--SEPARATE TRIALS--CHANGE OF JUDGE."

2) That Civil Rule 42 be amended by adding subsection (c), which is hereby adopted to read as follows:

(c) Change of Judge as a Matter of Right. In all courts of the State where a master calendar system has been adopted, a judge or master may be peremptorily challenged as follows:

(1) Nature of Proceeding. In an action pending in the superior or district courts, each side is entitled as a matter of right to a change of one judge and of one master. Each action, whether single or consolidated, shall be treated as having only two sides. Whenever two or more parties on a side have adverse or hostile interests, the presiding judge may allow additional changes of judge as a matter of right but each side shall have the right to the same number of such changes. A party wishing to exercise his right to change of judge shall file a pleading entitled "Notice of Change of Judge." The notice may be signed by an attorney, it shall state the name of the judge to be changed, and it shall neither specify grounds nor be accompanied by an affidavit. A judge may honor an informal request for change of judge. When he does so, he shall enter upon the record the date of the request and the name of the parties requesting change of judge. Such action shall constitute an exercise of the requesting party's right to change of judge.

(2) Filing and Service. The notice shall be filed and copies served on the parties, the presiding judge and the court administrator, if any, in accordance with Rule 5, Alaska Rules of Civil Procedure.

(3) Timeliness. Failure to file a timely notice precludes change of judge as a matter of right. A notice is timely if filed before the commencement of trial and within five (5) days after notice that the case has been assigned to a specific judge. Where a party enters an action after the case has been assigned to a specific judge, a notice shall also be timely if filed by the party before the commencement of trial and within five (5) days after he appears or files a pleading in the action.

(4) Waiver. A party waives his right to change a particular judge as a matter of right when he knowingly participates before that judge in:

(i) Any judicial proceeding which concerns the merits of the action and involves the consideration of evidence or of affidavits; or

(ii) A pretrial conference; or

(iii) The commencement of trial; or

(lv) If the parties agree upon a judge to whom the case is to be assigned. Such waiver is to apply only to the agreed upon judge.

(5) Assignment of Action. After a notice of change of judge is timely filed, the presiding judge shall immediately assign the matter to a new judge. Should that judge be challenged, the presiding judge shall continue to assign the case to new judges until all parties have exercised or waived their right to change of judge.

If a judge to whom an action has been assigned later becomes unavailable because of death, illness or other physical or legal incapacities, the parties shall be restored to their several positions and rights of this rule as they existed immediately before the assignment of the action to such judge.

3) This order shall be effective July 1, 1974.

DATED: June 28, 1974

/s/ Jay A. Rabinowitz  
Chief Justice

/s/ Roger G. Connor  
Justice

/s/ Robert C. Erwin  
Justice

/s/ Robert Boochever  
Justice

/s/ James M. Fitzgerald  
Justice

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