

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1266

Rescinding Civil Rule 16.1 and amending Civil Rule 16, Civil Rule 26, Civil Rule 33, Civil Rule 41, and Civil Rule 90.1 concerning pretrial procedure, discovery, and disclosure in civil cases.

IT IS ORDERED:

1. Civil Rule 16.1 is rescinded in its entirety.
2. Paragraph (b) of Civil Rule 16 is amended to read:

**(b) Scheduling Order; Mandatory Scheduling Conference.**

(1) Except in categories of actions exempted ~~by rule as inappropriate under Rule 16(g)~~, the judge shall, after receiving the report from the parties under Rule 26(f), enter a scheduling order that limits or establishes the time:

\* \* \* \*

(2) The judge shall meet with the attorneys for the parties and any unrepresented parties prior to entering the scheduling order unless the parties have waived this conference in their report and the judge determines that a conference is unnecessary. The court shall distribute notice of the conference date as soon as practicable after the appearance of the defendants. The conference may be held on or off the record.

3. Paragraph (g) of Civil Rule 16 is amended to read:

(g) **Actions Exempted from Rule 16(b).** ~~The following categories of actions are exempted from Rule 16(b): special proceedings listed in Part XII of these rules and paternity actions.~~ The following categories of cases are exempted from the requirement of scheduling conferences and scheduling orders under Rule 16(b):

(1) special proceedings listed in Part XII of these rules, including habeas corpus petitions and dissolution of marriage and divorce actions;

(2) paternity cases;

(3) small claims cases;

(4) actions to enforce out-of-state judgments;

(5) eminent domain cases;

(6) proceedings for post-conviction relief under Criminal Rule 35.1; and

(7) proceedings to obtain a domestic violence protective order under AS 18.66.100 and AS 18.66.110.

4. Paragraph (a) of Civil Rule 26 is amended to read:

**(a) Required Disclosures; Methods to Discover Additional Matter.** Disclosure under subparagraphs (a)(1), ~~and (2), and (3)~~ of this

rule is required in all civil actions, ~~except domestic relations and those categories of cases exempted from the requirement of scheduling conferences and scheduling orders under Civil Rule 16(q), adoption proceedings, and prisoner litigation against the state under AS 09.19.~~

\* \* \* \*

5. Paragraph (d) of Civil Rule 26 is amended to read:

(d) **Timing and Sequence of Discovery.**

(1) Timing of Discovery--Non-Exempted Actions. In an action in which disclosure is required under Rule 26(a), a party may serve up to ten of the thirty interrogatories allowed under Rule 33(a) at the times allowed by section (d)(2)(C) of this rule. ~~Except when authorized under these rules or otherwise,~~ except by order of the court or agreement of the parties, a party may not seek discovery from any source before the parties have met and conferred as required by paragraph (f).

(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 by publication 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).

(B) For depositions upon written questions under Civil Rule 31, a party may serve questions at any time after commencement of the action.

(C) For interrogatories, requests for production, and requests for admission under Civil Rules 33, 34, and 36, discovery requests may be served upon the plaintiff at any time after the commencement of the action, and upon any other party with or after service of the summons and complaint upon that party.

(3) Sequence of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

6. Paragraph (f) of Civil Rule 26 is amended to read:

(f) **Meeting of Parties; Planning for Discovery.** Except when otherwise ordered and except in actions exempted from disclosure under Rule 26(a), the parties shall, as soon as practicable and in any event at least 14 days before a scheduling conference is held or a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by subparagraph (a)(1), and to develop a proposed discovery plan. The plan shall indicate the parties' views and proposals concerning:

\* \* \* \*

7. Paragraph (a) of Civil Rule 33 is amended to read:

(a) **Availability.** ~~Without leave of court or written stipulation, a~~Any party may serve upon any other party written interrogatories, ~~not exceeding 30 in number including all discrete subparts,~~ to be answered by the party served or, if the party served is a public or private corporation, a partnership, an association, or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Without leave of court or written stipulation, a party may serve only thirty interrogatories upon another party, including all discrete subparts. This limit includes interrogatories served under Rule 26(d)(1).

Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of Rule 26(b)(2). Without leave of court or written stipulation, interrogatories may not be served before the time specified in Rule 26(d). There shall be sufficient space provided so that answers to the interrogatories propounded may be inserted thereon.

8. Paragraph (e) of Civil Rule 41 is amended to read:

**(e) Dismissal for Want of Prosecution.**  
~~Actions which have been pending in a court for more than one year without any proceedings having been taken may be dismissed as a matter of course, for want of prosecution, by the court on its own motion or on motion of a party to the action. The clerk shall review all pending cases semi-annually and in all cases in which no proceedings have been taken for more than one year, the court shall hold a call of the calendar or the clerk shall send notice to the parties to show cause in writing why the action should not be dismissed. If good cause to the contrary is not shown at a call of the calendar or within 30 days of distribution of the notice, the court shall dismiss the action. The clerk may dismiss actions under this paragraph if a party has not opposed dismissal. A dismissal for want of prosecution is without prejudice unless the court states in the order that the case is dismissed with prejudice.~~

(1) The court on its own motion or on motion of a party to the action may dismiss a case for want of prosecution if

(A) the case has been pending for more than one year without any proceedings having been taken, or

(B) the case has been pending for more than one year, and no trial or mandatory pretrial scheduling conference has been scheduled or held.

(2) The clerk shall review all pending cases semi-annually and in all cases that are subject to dismissal under (e)(1), the court shall hold a call of the calendar or the clerk shall send notice to the parties to show cause in writing why the action should not be dismissed.

(3) If good cause to the contrary is not shown at a call of the calendar or within sixty days after distribution of the notice, the court shall dismiss the action. The clerk may dismiss actions under this paragraph if a party has not opposed dismissal.

(4) A dismissal for want of prosecution is without prejudice unless the court states in the order that the case is dismissed with prejudice.

(5) If a case dismissed under this paragraph is filed again, the court may make

such order for the payment of costs of the case previously dismissed as it may deem proper, and may stay the proceedings in the case until the party has complied with the order.

9. Paragraph (e) of Civil Rule 90.1 is rescinded:

~~(e) Discovery. In an action for divorce or dissolution of marriage, parties may obtain discovery by the methods specified in Rule 26(a)(5). All rules governing these methods of discovery, including the limitations on the use of these methods, shall apply, except as provided in subparagraphs (e)(1) and (2) below.~~

~~(1) Depositions. Leave of court is not required under Rule 30(a)(2)(C) unless 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 made under Rule 4(e), except that leave is not required in these circumstances if (A) a defendant has served a notice of taking deposition or otherwise sought discovery, or (B) the notice contains a certification, with supporting facts, that the person to be examined is about to go out of the judicial district where the action is pending and more than 100 miles from the place of trial, or is about to go out of the state, or is bound on a voyage to sea, and will be unavailable for examination unless deposed before that time.~~



~~(2) Other Discovery Methods. Interrogatories under Rule 33, requests for production or inspection under Rule 34, and requests for admissions under Rule 36 may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.~~

DATED: May 1, 1997

EFFECTIVE DATE: July 15, 1997

/s/  
Chief Justice Compton

/s/  
Justice Matthews

/s/  
Justice Eastaugh

/s/  
Justice Fabe

/s/  
Justice Bryner