

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1281

Amending Civil Rules 26, 49, 58, 68, 72.1, 82, and 95, District Court Civil Rules 1 and 4, and Evidence Rule 702 to implement chapter 26 SLA 1997.

IT IS ORDERED:

1. Civil Rule 26 is amended by adding a new paragraph to read:

(g) [Applicable to cases filed on or after August 7, 1997.] Limited Discovery; Expedited Calendaring. In a civil action for personal injury or property damage involving less than \$100,000 in claims, the parties shall limit discovery to that allowed under District Court Civil Rule 1(a)(1) and shall avail themselves of the expedited calendaring procedures allowed under District Court Civil Rule 4.

2. The following notes are added at the end of Civil Rule 26:

Note to SCO 1281: Paragraph (g) of this rule was added by ch. 26, § 40, SLA 1997. According to § 55 of the Act, the amendment to Civil Rule 26 applies "to all causes of action accruing on or after the effective date of this Act." The amendment to Rule 26 adopted by paragraph 1 of this order applies to all cases filed on or after August 7, 1997. See paragraph 17 of this order. The change is adopted for the sole reason that the legislature has mandated the amendment.

Note: Ch. 26, § 10, SLA 1997 repeals and reenacts AS 09.17.020 concerning punitive damages. New AS 09.17.020(e) prohibits parties from conducting discovery relevant to the amount of punitive damages until after the fact finder has determined that an award of punitive damages is allowed. This provision applies to causes of action accruing on or after August 7, 1997. See ch. 26, § 55, SLA 1997. According to § 48 of the Act, new AS 09.17.020(e) has the effect of amending Civil Rule 26 by limiting discovery in certain actions.

3. The following note is added at the end of Civil Rule 49:

Note: Ch. 26, § 11, SLA 1997 amends AS 09.17.080(a) concerning allocation of fault. This provision applies to causes of action accruing on or after August 7, 1997. See ch. 26, § 55, SLA 1997. According to § 50 of the Act, the amendments to AS 09.17.080(a) have the effect of amending Civil Rule 49 by requiring the jury to answer the special interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated among the claimants, defendants, third-party defendants, persons who have been released from liability, or other persons who are potentially responsible for the damages.

4. The following notes are added at the end of Civil Rule

Note: Ch. 26, § 10, SLA 1997 repeals and reenacts AS 09.17.020 concerning punitive damages. New AS 09.17.020(j) requires that 50 percent of an award of punitive damages be deposited in the state general fund. This provision applies to causes of action accruing on or after August 7, 1997. See ch. 26, § 55, SLA 1997. According to § 49 of the Act, new AS 09.17.020(j) has the effect of amending Civil Rule 58 by requiring the court to order that a certain percentage of an award of punitive damages be deposited into the general fund.

Note: Ch. 26, § 19, SLA 1997 amends AS 09.30.070 by adding subsection (c) concerning prejudgment interest on awards of future economic damages, future noneconomic damages, and punitive damages. This provision applies to causes of action accruing on or after August 7, 1997. See ch. 26, § 55, SLA 1997. According to § 53 of the Act, new AS 09.30.070(c) has the effect of amending Civil Rule 58 by providing that prejudgment interest may not be awarded for future economic or noneconomic damages or punitive damages.

5. Civil Rule 68 is amended to read:

**Rule 68. [Applicable to cases filed before August 7, 1997.] Offer of Judgment.**

(a) At any time more than 10 days before the trial begins, either the party making a claim or the party defending against a claim

may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in the offer, with costs then accrued. The offer may not be revoked in the 10 day period following service of the offer. If within 10 days after service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn and evidence of the offer is not admissible except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(b) If the judgment finally rendered by the court is not more favorable to the offeree than the offer, the prejudgment interest accrued up to the date judgment is entered shall be adjusted as follows:

(1) if the offeree is the party making the claim, the interest rate will be reduced by the amount specified in AS 09.30.065 and the offeree must pay the costs and attorney's fees incurred after the making of the offer (as would be calculated under Civil Rules 79 and 82 if the offeror were the prevailing party). The offeree may not be awarded costs or attorney's fees incurred after the making of the offer.

(2) if the offeree is the party defending against the claim, the interest rate will be increased by the amount specified in AS 09.30.065.

(c) When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

**Rule 68. [Applicable to cases filed on or after August 7, 1997.] Offer of Judgment.**

(a) At any time more than 10 days before the trial begins, either the party making a claim or the party defending against a claim may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in the offer, with costs then accrued. The offer may not be revoked in the 10 day period following service of the offer. If within 10 days after service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of

service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn, and evidence of the offer is not admissible except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(b) If the judgment finally rendered by the court is at least 5 percent less favorable to the offeree than the offer, or, if there are multiple defendants, at least 10 percent less favorable to the offeree than the offer, the offeree, whether the party making the claim or defending against the claim, shall pay all costs as allowed under the Civil Rules and shall pay reasonable actual attorney fees incurred by the offeror from the date the offer was made as follows:

(1) if the offer was served no later than 60 days after both parties made the disclosures required by Civil Rule 26, the offeree shall pay 75 percent of the offeror's reasonable actual attorney fees;

(2) if the offer was served more than 60 days after both parties made the disclosures required by Civil Rule 26 but more than 90 days before the trial began, the offeree shall pay 50 percent of the offeror's reasonable actual attorney fees;

(3) if the offer was served 90 days or less but more than 10 days before the trial

began, the offeree shall pay 30 percent of the offeror's reasonable actual attorney fees.

(c) If an offeror receives costs and reasonable actual attorney fees under paragraph (b), that offeror shall be considered the prevailing party for purposes of an award of attorney fees under Civil Rule 82. Notwithstanding paragraph (b), if the amount awarded an offeror for attorney fees under Civil Rule 82 is greater than a party would receive under paragraph (b), the offeree shall pay to the offeror attorney fees specified under Civil Rule 82 and is not required to pay reasonable actual attorney fees under paragraph (b). A party who receives attorney fees under this rule may not also receive attorney fees under Civil Rule 82.

6. The following note is added at the end of Civil Rules 68 and 82:

Note to SCO 1281: In 1997 the legislature amended AS 09.30.065 concerning offers of judgment. According to ch. 26, § 52, SLA 1997, the amendment to AS 09.30.065 has the effect of amending Civil Rules 68 and 82 by requiring the offeree to pay costs and reasonable actual attorney fees on a sliding scale of percentages in certain cases, by eliminating provisions relating to interest, and by changing provisions relating to attorney fee awards. According to § 55 of the session law, the amendment to AS 09.30.065

applies "to all causes of action accruing on or after the effective date of this Act." However, the amendments to Civil Rule 68 adopted by paragraph 5 of this order are applicable to all cases filed on or after August 7, 1997. See paragraph 17 of this order.

7. Civil Rule 72.1 is amended to read:

\* \* \* \*

(g) [Applicable to cases filed before August 7, 1997.] Discovery. Except by leave of court, no discovery may be conducted until the report of the panel has been filed or until 80 days have elapsed from the date the case is at issue, whichever is first to occur, unless discovery is further stayed for good cause by order of the court.

(g) [Applicable to cases filed on or after August 7, 1997.] Discovery. Except by leave of court, no discovery may be conducted until the report of the Panel has been filed or until 60 days after selection of the Panel, whichever is first to occur, unless discovery is further stayed for good cause by order of the court.

8. The following note is added at the end of Civil Rule 72.1:

Note to SCO 1281: Paragraph (g) of this rule was amended by ch. 26, § 42, SLA 1997.



According to § 55 of the Act, the amendment to Civil Rule 72.1 applies "to all causes of action accruing on or after the effective date of this Act." The amendment to Rule 72.1 adopted by paragraph 7 of this order applies to all cases filed on or after August 7, 1997. See paragraph 17 of this order. The change is adopted for the sole reason that the legislature has mandated the amendment.

9. Civil Rule 95 is amended to read:

\* \* \* \*

(b) [Applicable to cases filed before August 7, 1997.] In addition to its authority under (a) of this rule and its power to punish for contempt, a court may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing by the court, if requested, impose a fine not to exceed \$1,000.00 against any attorney who practices before it for failure to comply with these rules or any rules promulgated by the supreme court.

(b) [Applicable to cases filed on or after August 7, 1997.] In addition to its authority under (a) of this rule and its power to punish for contempt, a court may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing by the court, if requested, impose a fine not to exceed \$50,000.00 against any attorney who practices before it for failure to comply with

these rules or any rules promulgated by the supreme court.

10. The following note is added at the end of Civil Rule 95:

Note to SCO 1281: Paragraph (b) of this rule was amended by ch. 26, § 43, SLA 1997. According to § 55 of the Act, the amendment to Civil Rule 95 applies "to all causes of action accruing on or after the effective date of this Act." The amendment to Rule 95 adopted by paragraph 9 of this order applies to all cases filed on or after August 7, 1997. See paragraph 17 of this order. The change is adopted for the sole reason that the legislature has mandated the amendment.

11. Paragraph (a) of District Court Civil Rule 1 is amended to read:

(a) **Scope of Rules.**

(1) [Applicable to cases filed before August 7, 1997.] The procedure in civil actions and proceedings before district judges and magistrates shall be governed by the rules governing the procedure in the superior court to the extent that such rules are applicable.

(1) [Applicable to cases filed on or after August 7, 1997.] The procedure in civil actions and proceedings before district judges and magistrates shall be governed by the rules governing the procedure in the superior court to the extent such rules are applicable.

However, in a civil action for personal injury or property damage, unless otherwise agreed by all parties or permitted by order of the court in exceptional cases and for good cause shown, discovery shall be limited to the disclosures required under Civil Rule 26(a) and to the taking by each party of the deposition of one or more opposing parties and of one additional person who is not a party.

(2) If in any action or proceeding a magistrate finds it impracticable to proceed or is at a disadvantage because of the application of any of such rules, the magistrate may hold the action or proceeding in abeyance, without prejudice to the rights of the parties, for further action by a district judge.

\* \* \* \*

12. The following note is added at the end of District Court Civil Rule 1:

Note to SCO 1281: Subparagraph (a)(1) of this rule was amended by ch. 26, § 44, SLA 1997. According to § 55 of the Act, the amendment to District Court Civil Rule 1 applies "to all causes of action accruing on or after the effective date of this Act." The amendment to District Court Civil Rule 1 adopted by paragraph 11 of this order applies to all cases filed on or after August 7, 1997. See paragraph 17 of this order. The change is

adopted for the sole reason that the legislature has mandated the amendment.

13. District Court Civil Rule 4 is amended to read:

(a) The assignment and calendaring of cases in the district court shall be as set forth in Civil Rule 40(a), or by such procedures established by the presiding judge as will cause all cases to be regularly reviewed for placement on the trial calendar for dismissal for want of prosecution, or other appropriate disposition.

(b) [Applicable to cases filed on or after August 7, 1997.] In a civil action for personal injury or property damage, unless otherwise permitted by order of the court in exceptional cases and for good cause shown, all parties shall file a memorandum to set the case for trial, as set out in Civil Rule 40(b), no later than 180 days after service of the complaint on all parties to the case. The memorandum shall contain a certification that each party has exchanged the information described in Civil Rule 26(a) and may state their separate positions if they do not agree concerning information or estimates to be provided in the memorandum. After the court satisfies itself that the information described in Civil Rule 26(a) has been disclosed, the court shall set the case for trial as soon as practicable, but no sooner than 30 days after the court makes the determination regarding disclosure.

14. The following note is added at the end of District Court Civil Rule 4:

Note to SCO 1281: Paragraph (b) of District Court Civil Rule 4 was added by ch. 26, § 45, SLA 1997. According to § 55 of the Act, the amendment to District Court Civil Rule 4 applies "to all causes of action accruing on or after the effective date of this Act." The amendment to District Court Civil Rule 4 adopted by paragraph 13 of this order applies to all cases filed on or after August 7, 1997. See paragraph 17 of this order. The change is adopted for the sole reason that the legislature has mandated the amendment.

15. Evidence Rule 702 is amended by adding a new paragraph to read:

(c) [Applicable to cases filed on or after August 7, 1997.] Professional Negligence Cases. In an action based on professional negligence, a person may not testify as an expert witness on the issue of the appropriate standard of care except as provided in AS 09.20.185.

16. The following note is added at the end of Evidence Rule 702:

Note to SCO 1281: In 1997 the legislature enacted AS 09.20.185 which prohibits a person from testifying as an expert in a professional negligence action unless the person has the qualifications listed in AS 09.20.185(a).

According to ch. 26, § 51, SLA 1997, this statute has the effect of amending Evidence Rule 702 by requiring certain qualifications for a person testifying as an expert witness. According to § 55 of the session law, AS 09.20.185 applies "to all causes of action accruing on or after the effective date of this Act." However, Rule 702(c), adopted by paragraph 15 of this order, is applicable to all cases filed on or after August 7, 1997. See paragraph 17 of this order.

17. The rule changes adopted by this order apply to cases filed on or after August 7, 1997.

Supreme Court Order No. 1281  
Effective Date: August 7, 1997  
Page 15

DATED: August 7, 1997

EFFECTIVE DATE: August 7, 1997

/s/  
Chief Justice Matthews

/s/  
Justice Compton

/s/  
Justice Eastaugh

/s/  
Justice Fabe

/s/  
Justice Bryner