

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1307

Amending Civil Rule 5 and
adopting Civil Rule 5.1
concerning service and filing
by fax.

IT IS ORDERED:

1. Paragraph (b) of Civil Rule 5 is amended to read:

(b) **Service — How Made.** Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party, ~~or~~ by mailing it to the attorney's or party's last known address, by transmitting it to the attorney's or party's facsimile machine telephone number as provided in Civil Rule 5.1(b), or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the attorney's or party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. ~~Service, execution and return based on a copy of any paper transmitted by telegraph or radio may be~~

~~made by the person to whom directed with the same effect as if such copy were the original. In such case the original shall be filed in the court from which it was issued.~~

2. Paragraph (e) of Civil Rule 5 is amended to read:

(e) **Filing With the Court Defined.** The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court at the court location where the case is filed unless otherwise directed by the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Papers may be filed by facsimile transmission only as permitted by Civil Rule 5.1(a).

3. The Civil Rules are amended by adding Civil Rule 5.1, which reads:

Rule 5.1. Filing and Service by Facsimile Transmission.

(a) Filing by Facsimile Transmission. A party may file documents by fax as permitted by administrative order of the presiding judge or with prior written consent of the judge assigned to the case. Unless the court orders that the original document be filed, a party filing a document by fax shall retain the original and shall produce it for inspection

upon request of another party to the action or as ordered by the court.

(b) Service by Facsimile Transmission.

(1) Application of this Rule. This rule governs the service of documents by fax. It applies only to documents that may be served under Civil Rule 5(b). It does not apply to documents that must be served under Civil Rule 4. It applies to service by parties and by the court.

(2) Method of Service. Service by fax is made by transmitting the paper to the facsimile machine telephone number of a person who has consented to be served in this manner. Additional service by mail is not required; however, a copy of the paper must be mailed to the person upon request.

(3) Consent to Service. A person who is willing to accept service by fax in an action shall so indicate beneath the signature in the person's initial filing or by serving and filing a separate notice of consent. A party may revoke consent by serving and filing a separate notice that consent has been revoked.

(4) Page Limit. A person may serve by fax a total of 25 pages per recipient per day unless the parties have agreed to a different page limit. Cover sheets and separators do not count toward the page limit.

(5) When Service is Complete. Service by fax is complete upon receipt of the entire document by the receiving party's facsimile machine. Service that occurs in whole or in part after 4:30 p.m. shall be deemed to have occurred at the opening of business on the next day that is not a Saturday, a Sunday or a judicial holiday listed in Administrative Rule 16.

(6) Proof of Service. If service is made by fax, proof of service must be made by affidavit of the person making service, or by certificate of an attorney, an authorized agent of the attorney, or a pro se litigant. The affidavit or certificate must include the following information:

(A) the date and time of the transmission;

(B) the telephone number of the transmitting facsimile machine;

(C) the recipient's name and facsimile machine telephone number;

(D) the number of pages transmitted; and

(E) a statement that the document was transmitted by facsimile transmission and the person signing the affidavit or certificate believes the transmission to have been complete and without error.

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In lieu of including this information, the person signing the affidavit or certificate may attach a copy of the transmission report issued by the transmitting facsimile machine if the report is an accurate record of the transmission.

DATED: October 30, 1997

EFFECTIVE DATE: January 15, 1998

/s/
Chief Justice Matthews

/s/
Justice Compton

/s/
Justice Eastaugh

/s/
Justice Fabe

/s/
Justice Bryner