

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1622

Amending Administrative Rule 15, Criminal Rule 36, and Civil Rule 60;
rescinding and readopting Administrative Rule 37.5;
renumbering Administrative Rule 40 as Administrative Rule 51; and
adopting new Administrative Rules 37.6, 37.7, 37.8, and 40 to provide procedures for public access to electronic court records.

IT IS ORDERED:

The following Alaska Rules of Court are amended as shown in the attachment to this Order:

1. Administrative Rule 37.5 is rescinded and readopted.
2. New Administrative Rule 37.6 is adopted.
3. A Note is added at the end of new Administrative Rule 37.6.
4. New Administrative Rule 37.7 is adopted.
5. A Note is added at the end of new Administrative Rule 37.7.
6. New Administrative Rule 37.8 is adopted.
7. A Note is added at the end of new Administrative Rule 37.8.
8. Administrative Rule 40 is renumbered as Administrative Rule 51, and new Administrative Rule 40 is adopted.
9. Criminal Rule 36 is amended.
10. Civil Rule 60 is amended.
11. Administrative Rule 15 is amended.

DATED: August 28, 2006

EFFECTIVE DATE: October 15, 2006

/s/
Chief Justice Fabe

/s/
Justice Matthews

/s/
Justice Eastaugh

/s/
Justice Bryner

/s/
Justice Carpeneti

1. Administrative Rule 37.5 is rescinded and new Administrative Rule 37.5 is readopted as follows:

Administrative Rule 37.5. Access to Court Records.

(a) Scope and Purposes.

- (1) Public access to court records is governed by Administrative Rules 37.5 through 37.8. These rules are adopted pursuant to the inherent authority of the Alaska Supreme Court and provide for access in a manner that:
 - (A) maximizes accessibility to court records;
 - (B) supports the role of the judiciary;
 - (C) promotes government accountability;
 - (D) contributes to public safety;
 - (E) minimizes risk of injury to individuals;
 - (F) protects individual privacy rights and interests;
 - (G) protects proprietary business information;
 - (H) minimizes reluctance to use the courts to resolve disputes;
 - (I) makes most effective use of court personnel;
 - (J) provides excellent customer service; and
 - (K) does not unduly burden the ongoing business of the judiciary.
- (2) These rules apply to all court records; however, court personnel need not redact or restrict information that otherwise was public in case records and administrative records created before October 15, 2006.

(b) Who Has Access to Court Records.

- (1) Every member of the public will have the same access to court records under these rules, except as provided in Administrative Rule 37.8(b)(4) and 37.8(c)(2).

- (2) The following persons are not members of the public and may have greater access in accordance with their functions within the judicial system:
 - (A) court personnel for case processing purposes only;
 - (B) people or entities, private or governmental, who assist the court in providing court services;
 - (C) public agencies whose access to court records is defined by another statute, rule, order, or policy; and
 - (D) the parties to a case or their lawyers regarding access to records in their case.

(c) Definitions. For purposes of these rules:

- (1) "Court record" means both case records and administrative records, but does not include records that may be in the court's possession that do not relate to the conduct of the court's business.
- (2) "Case record" means any document, information, data, or other item created, collected, received, or maintained by the court system in connection with a particular case.
- (3) "Administrative record" means any document, information, data, or other item created, collected, received, or maintained by the court system pertaining to the administration of the judicial branch of government and not associated with any particular case.
- (4) "Confidential" means access to the record is restricted to:
 - (A) the parties to the case;
 - (B) counsel of record;
 - (C) individuals with a written order from the court authorizing access; and
 - (D) court personnel for case processing purposes only.
- (5) "Sealed" means access to the record is restricted to the judge and persons authorized by written order of the court.

- (6) "Remote access" means the ability of a person to inspect and copy information in a court record in electronic form through an electronic means.
- (7) "In electronic form" means any information in a court record in a form that is readable through an electronic device.

(d) General Access Rule.

- (1) Court records are accessible to the public, except as provided in paragraph (e) below.
- (2) This rule applies to all court records, regardless of the manner of creation, method of collection, form of storage, or the form in which the record is maintained.
- (3) If a court record, or portion thereof, is excluded from public access, there must be a publicly accessible indication of the fact of exclusion but not the content of the exclusion. This subparagraph does not apply to case records or administrative records that are confidential pursuant to law.

(e) Court Records Excluded from Public Access.

- (1) *Case Records.* The following case records and case-related documents are not accessible to the public:
 - (A) memoranda, notes, or preliminary drafts prepared by or under the direction of any judicial officer of the Alaska Court System that relate to the adjudication, resolution, or disposition of any past, present, or future case, controversy, or legal issue;
 - (B) legal research and analysis prepared or circulated by judges or law clerks regardless of whether it relates to a particular case and written discussions relating to procedural, administrative, or legal issues that are or may be before the court; and
 - (C) documents, information, data, or other items sealed or confidential pursuant to statute, court rule, case law, or court order.
- (2) *Administrative Records.* The following administrative records are not accessible to the public:

- (A) personal information, performance evaluations, and disciplinary matters relating to any past or present employee of the Alaska Court System or any other person who has applied for employment with the Alaska Court System, and personnel records that are confidential under Alaska Court System Personnel Rules C1.07 and PX1.08;
 - (B) the work product of any attorney or law clerk employed by or representing the Alaska Court System if the work product is produced in the regular course of business or representation of the Alaska Court System;
 - (C) individual direct work access telephone numbers and email addresses of judges and law clerks;
 - (D) documents or information that could compromise the safety of judges, court staff, jurors, or the public, or jeopardize the integrity of the court's facilities or the court's information technology or recordkeeping systems;
 - (E) records or information collected and notes, drafts, and work product generated during the process of developing policy relating to the court's administration of justice and its operations;
 - (F) email messages that are created primarily for the informal communication of information and that do not set policy, establish guidelines or procedures, memorialize transactions, or establish receipts; and
 - (G) records that are confidential, privileged, or otherwise protected by law, rule, or order from disclosure.
- (f) **Obtaining Access to Public Court Records.** Court records that are accessible to the public shall be open to inspection at all times during the regular office hours of the courts. The administrative director shall establish written guidelines to insure that all members of the public upon request will be given reasonable access and opportunity to inspect such public records and to insure the preservation and safekeeping of such public records for such period of time as they may be kept by the Alaska Court System.

2. New Administrative Rule 37.6 is adopted as follows:

Administrative Rule 37.6. Prohibiting Access to Public Case Records.

- (a) **Limiting Access.** Notwithstanding any other rule to the contrary, the court may, by order, limit access to public information in an individual case record by sealing or making confidential the case file, individual documents in the case file, log notes, the audio recording of proceedings in the case, the transcript of proceedings, or portions thereof. A request to limit access may be made by any person affected by the release of the information or on the court's own motion.
- (b) **Standard.** The court may limit public access as described above if the court finds that the public interest in disclosure is outweighed by a legitimate interest in confidentiality, including but not limited to
- (1) risk of injury to individuals;
 - (2) individual privacy rights and interests;
 - (3) proprietary business information;
 - (4) the deliberative process; or
 - (5) public safety.
- (c) **Least Restrictive Alternative.** In limiting public access the court must use the least restrictive means that will achieve the purposes of these public access rules and the reasonable needs as set out as the basis for the request, without unduly burdening the court.
- (d) **Procedure.** Any request to limit access must be made in writing to the court and served on all parties to the case unless otherwise ordered. A request to limit access, the response to such a request, and the order ruling on such a request must be written in a manner that does not disclose non-public information, are public records, and shall not themselves be sealed or made confidential.

3. The following Note is added at the end of new Administrative Rule 37.6:

Note: Administrative Rule 40 requires the clerk of court to list a case on the public case index even though the case file has been sealed or made confidential under this rule. Only the presiding judge of the judicial district has the power to remove a party's name from the public

case index, and this action may be taken only in very limited circumstances. See Administrative Rule 40(b).

The terms “confidential” and “sealed” are defined in Administrative Rule 37.5(c).

4. New Administrative Rule 37.7 is adopted as follows:

Administrative Rule 37.7 Obtaining Access to Non-Public Court Records.

(a) Allowing Access to Non-Public Records. The court may, by order, allow access to non-public information in a case or administrative record if the court finds that the requestor’s interest in disclosure outweighs the potential harm to the person or interests being protected, including but not limited to:

- (1) risk of injury to individuals;
- (2) individual privacy rights and interests;
- (3) proprietary business information;
- (4) the deliberative process; or
- (5) public safety.

Non-public information includes information designated as confidential or sealed by statute or court rule and public information to which access has been limited under Administrative Rule 37.6. A request to allow access may be made by any person or on the court’s own motion as provided in paragraph (b).

(b) Procedure. Any request to allow access must be made in writing to the court and served on all parties to the case unless otherwise ordered. The court shall also require service on other individuals or entities that could be affected by disclosure of the information. A request to allow access, the response to such a request, and the order ruling on such a request must be written in a manner that does not disclose non-public information, are public records, and shall not themselves be sealed or made confidential.

5. The following Note is added at the end of new Administrative Rule 37.7:

Note: This rule does not apply to bulk or compiled data. Access to bulk and compiled data is governed by Administrative Rule 37.8(b)-(d).

6. New Administrative Rule 37.8 is adopted as follows:

Administrative Rule 37.8. Electronic Case Information.

(a) **Availability.** The following case-related information maintained in the court system's electronic case management systems will not be published on the court system's website or otherwise made available to the public in electronic form:

- (1) addresses, phone numbers, and other contact information for parties and witnesses;
- (2) names, addresses, phone numbers, and other contact information for victims in criminal cases;
- (3) social security numbers;
- (4) driver and vehicle license numbers;
- (5) account numbers of specific assets, liabilities, accounts, credit cards, and PINs (Personal Identification Numbers);
- (6) names of minor children in domestic relations cases, including paternity actions, domestic violence cases, emancipation cases, and minor settlements under Civil Rule 90.3;
- (7) juror information;
- (8) party names protected under Administrative Rule 40(b); and
- (9) information that is confidential or sealed in its written form.

(b) Bulk Distribution of Electronic Case Information.

- (1) Bulk distribution is defined as the distribution of all or a significant subset of the case information in the court system's electronic case management systems, as is, and without modification or compilation.

- (2) Bulk distribution of case information is permitted, unless the information is not publicly available in electronic form under subsection (a) of this rule.
- (3) Bulk distribution of imaged case records is not allowed, unless the records are already remotely accessible to the public on the court system's website.
- (4) The administrative director may allow bulk distribution of case information that is not publicly available and of publicly available imaged case records for scholarly or governmental purposes. The administrative director shall adopt procedures to protect the security of information and records released under this paragraph.

(c) Distribution of Compiled Information.

- (1) Compiled information is defined as information that is derived from the selection, aggregation, or reformulation of case information in the court system's electronic case management systems.
- (2) Information routinely compiled by the court may be made available unless the compiled information is privileged or reveals information that is confidential, sealed, or not available to the public under subsection (a) of this rule. A request from a person outside the court system for other compiled information must be approved by the administrative director. The request may be granted if resources are available to compile the information and if it is an appropriate use of public resources, such as for scholarly, governmental, or any other purpose in the public interest.

(d) Fees. The administrative director may establish fees for distribution of information under subsections (b) and (c) of this rule.

7. The following Note is added at the end of new Administrative Rule 37.8:

Note to Administrative Rule 37.8(a)(7): Juror information is also protected by Administrative Rule 15(j).

8. Administrative Rule 40 is renumbered as Administrative Rule 51, and new Administrative Rule 40 is adopted to read as follows:

Administrative Rule 51. Title.

These rules shall be known and cited as the “Rules Governing the Administration of All Courts.”

Administrative Rule 40. Index to Cases.

- (a) The clerk of court shall maintain an alphabetical index by last name of every party named in every case filed. The index must show the party’s name, the case number, the case caption or title, the filing date, the case type, and other information required for that case type by court rule. The index may show the party’s date of birth. The clerk shall publish a public version of the index, which excludes only
- (1) cases designated as confidential or sealed by statute or court rule, unless the index to those cases is public under court rules;
 - (2) foreign domestic violence protective orders filed under AS 18.66.140; and
 - (3) party names protected under paragraph (b) of this rule.

The clerk shall continue to list a case on the public index even though the case file has been sealed or made confidential under Administrative Rule 37.6, unless the party names were protected under paragraph (b) of this rule. The public index will be available to the public in electronic form except as limited by Administrative Rule 37.8.

- (b) The presiding judge of a judicial district may direct the clerk of court to remove a party’s name from the public index for a period of five years if the presiding judge finds that publication of the name is likely to result in substantial physical harm to the party or members of the party’s household and protection of the party’s name outweighs the public’s interest in disclosure. After five years, the party’s name will appear on the public index unless the presiding judge orders the name protected for an additional period of time, upon another showing that publication of the name is likely to result in substantial physical harm to the party or members of the party’s household. Unless otherwise ordered, a party’s name will not appear on the public index while a request to protect the name is pending before the presiding judge.

9. Criminal Rule 36 is amended to read as follows:

Criminal Rule 36. Clerical Mistakes.

Clerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the court at any time and after such notice, if any, as the court orders. For purposes of this rule, the record includes electronic information maintained about the case.

10. Civil Rule 60 is amended to read as follows:

Civil Rule 60. Relief From Judgment or Order.

- (a) **Clerical Mistakes.** Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal or petition for review to the Supreme Court, such mistakes may be so corrected before the record is filed in the Supreme Court, and thereafter may be so corrected with leave of the Supreme Court. For purposes of this rule, the record includes electronic information maintained about the case.

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11. Administrative Rule 15 is amended to read as follows:

Administrative Rule 15. Jurors - Predetermination of Qualifications - Service of Summons - Selection of Jury Panel - Periods of Jury Service.

(a) **Administration.**

- (1) The administrative director of the courts shall be responsible for the management of the jury system.
- (2) The administrative director may prescribe policies and procedures for efficient and effective jury management.
- (3) Computerization may be utilized for the random selection of jurors and for management of the jury system. The administrative director may authorize random selections other than by computer when circumstances so warrant.

(b) **Master Jury List.**

- (1) By November 30 of each year the administrative director will prepare a statewide master list of prospective jurors in Alaska.
- (2) The administrative director will divide the statewide master list into local master jury lists for each court location. A court location's local master jury list will include the names of all prospective jurors who live in the community and other areas assigned to that court for jury selection purposes. Communities and other areas will be assigned to court locations for the purposes of jury selection according to the following criteria:
 - (i) Each court location will be assigned its own community and all non-court locations within a 50 mile radius of that court except as provided in (ii) and (iii) below.
 - (ii) If a non-court location is within the 50 mile radius of two or more court locations, that non-court location will be assigned to that court in the same senate district. If both court locations are in the same senate district, then the presiding judge will assign that non-court location to the court location deemed most appropriate.
 - (iii) If the non-court location is not within a 50 mile radius of any court, that non-court location will remain unassigned unless the presiding judge orders the non-court location assigned to a court.
 - (iv) No community will be assigned to more than one court location for the purpose of petit jury selection.
- (3) Clerks and magistrates shall send a periodic listing of duplicate names, names of deceased persons or persons who are permanently excused from jury service to the administrative director. This list shall be used to update the annual master jury list to ensure that these names are not again selected for jury service.

(c) **Selection of Prospective Petit Jurors.**

- (1) Prospective petit jurors shall be selected from the area defined in (b)(2) unless the court finds that the selection area defined in section (b)(2):
 - (i) will not provide a petit jury which is a truly representative cross-section of the appropriate community or,

(ii) would cause unreasonable transportation expenses, in which case the trial court, on its own motion or on the motion of the parties, may designate an area other than that specified in section (b)(2) from which the petit jurors shall be selected.

(2) Selection of prospective petit jurors will be from all locations assigned in (b)(2) unless an alternative assignment is specifically authorized by the presiding judge. The presiding judge will forward this authorization to the administrative director by February 1 of each year so that the area of selection can be changed.

(d) **Qualification of Jurors.**

(1) The administrative director shall be responsible for overseeing the mailing of a qualification questionnaire to prospective jurors to determine if they are qualified to serve. Qualification questionnaires may be served by regular mail.

(2) If a prospective juror's response to the qualification questionnaire indicates that he or she is not qualified for service or, in the opinion of the judge or magistrate, the prospective juror has stated grounds sufficient to be excused or deferred, no summons shall be issued or, if already issued, the prospective juror shall be excused or deferred to a later date.

(e) **Summoning Jurors.**

(1) Summons may be served by regular mail.

(2) The summons shall state the court location, reporting date and reporting time or call-in date and call-in time for jury service.

(3) A prospective juror shall not be paid jury fees or be reimbursed for travel expenses incurred and subsistence if the prospective juror appears at the court house:

(i) in response to a qualification questionnaire rather than a summons;

(ii) because he or she failed to call-in as instructed; or

(iii) after having been sent an excusal notice or after having been otherwise notified that he or she was excused.

- (f) **Venire List.** The venire list is comprised of all prospective jurors whose responses on a jury questionnaire indicate they meet the minimum statutory qualifications for jury service.
- (g) **Jury Panel.**
- (1) Under the direction of the court, the clerk shall select a jury panel from the venire list.
 - (2) The jury panel is that group of prospective jurors who are summoned to report or call-in for a term of jury service.
 - (3) Persons on the jury panel will be required to be available for actual jury service as specified in section (k) of this rule.
- (h) **Trial Panel.** The trial panel is that group of prospective jurors from the jury panel who are sent to a courtroom for possible inclusion on a trial jury.
- (i) **Trial Jury.**
- (1) A trial jury consists of those prospective jurors selected from the trial panel to hear a trial.
 - (2) Unless otherwise stipulated by the parties and ordered by the trial judge, a trial jury in superior court shall consist of 12 persons. A trial jury in district court shall consist of 6 persons. An inquest jury and a presumptive death jury shall consist of 6 persons.
 - (3) When a case is to be tried by jury, the clerk shall randomly select from the names of those on the trial panel a number of names sufficient to comprise a trial jury and alternate jurors, if the court decides alternate jurors are needed.
 - (4) The prospective trial jurors shall be examined, challenged, and sworn as provided in Civil Rule 47 and Criminal Rule 24.
- (j) **Juror Privacy**
- (1) The statewide master jury list, local master jury lists, venire lists, jury panel lists, and qualification questionnaires submitted pursuant to paragraph (d) are for internal court use only.
 - (2) Trial questionnaires and trial panel lists are confidential. These items, along with the dates of birth of individuals on the trial panel list, will be provided to the parties and counsel of record for use by the parties, their attorneys, and agents of their attorneys only in

connection with jury selection in the case for which the questionnaires and lists were prepared.

- (3) The parties, their attorneys, and agents of their attorneys shall not disclose or use the trial questionnaires, trial panel lists, or any compiled list of persons selected to serve on a jury except as permitted by this rule.
- (4) Log notes and the electronic record of private questioning of prospective jurors are confidential.

(k) Term of Service.

- (1) Except as otherwise provided by the administrative director, a juror's term of service is based upon the size of the court's local master jury list as defined in section (b) of this rule. The maximum term of service and maximum length of actual service are shown below:

SIZE OF LOCAL MASTER JURY LIST	MAXIMUM AVAILABILITY SERVICE (TERM OF SERVICE)	LENGTH FOR JURY SERVICE)	MAXIMUM LENGTH OF ACTUAL COURT ATTENDANCE (SERVICE)
Under 2,000	1 year		30 days per year
2000 to 7000	90 consecutive days per jury year unless interrupted by a deferral		30 days per year
7000 and over	30 consecutive days per jury year unless interrupted by a deferral		30 days per year

- (2) "Term of service" begins the date the juror first appears in court or calls the court as ordered on a summons, unless the term of service is deferred at the request of the prospective juror.
- (3) "Service" starts the first day the juror is paid for jury service.
- (4) If the commencement of a prospective juror's term of service is deferred to a later date at the juror's request, his or her term of service shall commence on the date to which he or she is deferred. If after beginning a term of service a prospective juror requests a deferral, the court may defer the remaining portion of the term of service.

- (5) After a person completes his or her term of service, that person shall not be required to serve as a juror within one year after the last day of actual court attendance for which he or she was paid.
- (6) A juror who commences sitting in a trial within the term of service shall continue to serve in that matter until discharged by the trial judge.

(l) **Definitions.**

- (1) Deferral of Jury Service -- the postponement of jury service to a later date. This postponement can be no longer than 10 months from the date the initial term of service was to have started. A person may have jury service deferred if he or she shows that jury service at the time when he or she is summoned will cause hardship to that person or others, or that transportation problems make it impossible to serve. Jury service may be deferred only if the person seeking the deferment agrees to a deferred date.
- (2) Excused -- a person may be excused from service as a juror if it is shown that his or her health, the health or proper care of his or her family, a physical or mental disability, or other conditions exist which would cause a hardship to the individual. Unless the court specifically authorizes a permanent excusal, all excusals from jury service shall be for the current jury year only. However, a person who has appeared for jury duty may be excused for two years from further jury duty in a jury selection area as defined in paragraph (b) with a population over 50,000
- (3) Jury Panel -- that group of prospective jurors who are summoned to report or call-in for a term of jury service.
- (4) Jury Summons -- a court order directing a prospective juror to report or call-in for jury duty.
- (5) Jury Year -- the term during which a master jury list is in effect; normally, from November 30 of one year (when the list is compiled) until November 29 of the next year (when a new master list must be prepared).
- (6) Local Master Jury List -- a randomly ordered listing of names of prospective jurors for a court location who may be sent qualification questionnaires for jury service.
- (7) Natural Faculties -- normal abilities to reason.

- (8) Permanent Excusals -- a prospective juror may be permanently excused from all jury service if he or she:
 - (i) is advanced in age. Those people who are over age 70 and request in writing to be permanently excused shall be.
 - (ii) has a permanent physical disability. The disability must be verified in writing by a physician.
 - (iii) has a permanent mental disability. The disability must be verified in writing by a physician.
- (9) Qualification List -- a list of names from the local master jury list to which qualification questionnaires will be mailed in order to create a venire list.
- (10) Qualification Questionnaire -- document used to determine whether a prospective juror meets the statutory minimum qualifications for jury service.
- (11) Resident -- for jury qualification purposes, a person is a resident of the State of Alaska if he or she:
 - (i) has registered to vote in Alaska,
 - (ii) has obtained a resident fish and game permit for Alaska, or
 - (iii) is eligible for the Alaska permanent fund dividend.
- (12) Term of Service -- begins the date the juror first appears in the court or calls the court as ordered on a summons unless the term of service is deferred at the request of a prospective juror.
- (13) Trial Jury -- those prospective jurors selected from the trial panel to hear a trial.
- (14) Trial Panel -- that group of prospective jurors from the jury panel who are sent to the courtroom for possible inclusion on a trial jury.
- (15) Trial Questionnaire -- document filled out by members of a trial panel that is used during the jury selection process.
- (16) Venire List -- a list of all prospective jurors whose responses on a qualification questionnaire indicate they meet the minimum statutory qualifications for jury service.