

NOTICE
TO ALL HOLDERS OF ARCPA

All recipients of Supreme Court Order No. 56 attached hereto are reminded that the Alaska Rules of Court Procedure and Administration (Michie edition, copyright 1962) as promulgated by Supreme Court Order No. 49 of December 21, 1962, were previously to said Order No. 56 amended by the following orders:

Supreme Court Order No. 50, effective 1/1/63, amending Rule 31, Rules Governing the Administration of all Courts.

Supreme Court Order No. 51, effective 1/18/63 adding Rule 5, Magistrate Rules of Criminal Procedure.

Supreme Court Order No. 54, effective 7/1/63 amending Rules 17(c) and 19, Rules Governing the Administration of all Courts; and amending Rule 43, Rules of Civil Procedure.

Supreme Court Order No. 55, effective 9/1/63 and amending Rule 67, Rules of Civil Procedure.

The rule changes promulgated under these orders and under Order No. 56 attached hereto are being incorporated into the First Supplement to the Alaska Rules now in preparation by the publishers. The Michie Company will send out direct notices to the members of the legal profession advising on date of availability and purchase price of the supplement.

THE SUPREME COURT OF THE STATE OF
ALASKA

Order No. 56

Amending Rules 18, 20 and 36, Rules Governing the Administration of all Courts; amending Rules 7, 11, 35 and 36, Rules of the Supreme Court of Alaska; adding Rule 57 to the Rules of the Supreme Court of Alaska; amending Rules 43, 69, 72, 79 and 84, Rules of Civil Procedure; amending Rule 19, Rules of Criminal Procedure; amending Rules 1 and 2, Magistrate Rules of Criminal Procedure; adding Rule 6 to the Magistrate Rules of Criminal Procedure; amending Rules 7 and 21, Magistrate Rules of Civil Procedure; adding Rule 25 to the Magistrate Rules of Civil Procedure.

IT IS ORDERED:

That Rules Governing the Administration of all Courts, Rules of the Supreme Court of Alaska, Rules of Civil Procedure, Rules of Criminal Procedure, Magistrate Rules of Criminal Procedure and Magistrate Rules of Civil Procedure are amended as set out below:

Rule 18, Rules Governing the Administration of all Courts: Has been deleted.

Rule 20, Rules Governing the Administration of all Courts: Is amended by changing the title to read as follows:

"Jurors-Predetermination of Qualifications-Service of Summons".

And by adding the following subdivision to be numbered 20(d).

"(d) In addition to the methods of service provided by Rule 4, Rules of Civil Procedure, summons of persons for jury duty may be served by registered or certified mail. All summons shall be mailed by the clerk, delivery receipt requested. Return delivery receipts shall be attached to the appropriate copies of the summons retained by the court."

Rule 36(a), Rules Governing the Administration of all Courts: Is amended by substituting for the citation "AS 26.15.160" in the third line, the citation "AS 22.15.160".

Rule 36(b), Rules Governing the Administration of all Courts: Is amended by substituting for the citation "AS 26.15.160" in the third line, the citation "AS 22.15.160".

Rule 7(c), Rules of the Supreme Court of Alaska: Is amended to read as follows:

"(c) Bond on Appeal. Unless a party is exempted by law, a bond for costs on appeal shall be filed with the notice of appeal. The bond shall be in the sum of seven hundred and fifty dollars (\$750.00), unless the superior court fixes a different amount or unless a supersedeas bond is filed, in which event no separate bond on appeal is required. The bond on appeal shall have sufficient surety and shall be conditioned to secure the payment of costs if the appeal is dismissed or the judgment affirmed, or such costs as the supreme court may award if the judgment is modified. If a bond on appeal in the sum of seven hundred and fifty dollars (\$750.00) is given, no approval thereof is necessary. After a bond on appeal is filed an appellee may by motion raise objection to the form or amount of the bond or to the sufficiency of the surety which shall be determined by the superior court. In lieu of filing such cost bond, the appellant may deposit in the office of the clerk a sum of money reasonably sufficient to cover such costs, the amount thereof to be fixed by the superior court."

Rule 11(b), Rules of the Supreme Court of Alaska: Is amended to read as follows:

"(b) Appellee's Brief. Within thirty (30) days after service of the appellant's brief, appellee shall file with the clerk of this court a brief prepared in accordance with Supreme Court Order No. 14. The appellee's brief shall be of like character with that required of the appellant, except that no specification of errors and no statement of questions presented shall be required, and no statement of the case unless that presented by the appellant is controverted."

Rule 11(c), Rules of the Supreme Court of Alaska: Is amended to read as follows:

"(c) Appellant's Reply Brief. Within twenty (20) days after the service of the appellee's brief, appellant may file with the clerk of this court a reply brief prepared in accordance with Supreme Court Order No. 14.

Rule 35, Rules of the Supreme Court of Alaska: Is amended to read as follows: Rehearing-Grounds-Form of Petition-Time for Filing.

"(a) Grounds for Petition. The court may order a rehearing of a matter previously decided if, in reaching its decision

- (1) The court has overlooked, misapplied or failed to consider a statute, decision or principle directly controlling; or
- (2) The court has overlooked or misconceived some material fact or proposition of law; or
- (3) The court has overlooked or misconceived a material question in the case.

A rehearing will not be granted if it is sought merely for the purpose of obtaining a reargument on and a reconsideration of matters which have already been fully considered by the court."

"(b) Time for Filing - Form of Petition. An original and three legible copies of a petition for a rehearing must be filed within ten (10) days after judgment. The petition must be supported by certificate of counsel that in his judgment it is well founded and that it is not interposed for delay. The petition shall specifically state which of the above grounds exists, and shall specifically designate that portion of the opinion, brief, the record, or particular authority which the petitioner wishes the court to consider. The petition shall be prepared in conformity with Rule 12(b) and when filed shall be accompanied by proof of service on all parties. No petition for rehearing shall exceed three typewritten pages. No memoranda or briefs in support of or in opposition to a petition for rehearing shall be received unless requested by court."

Rule 36, Rules of the Supreme Court of Alaska: Is amended to read as follows:

Rule 36. Mandate

Except as otherwise provided in these rules, in all cases finally determined in this court a mandate or other process shall, upon the payment of any costs due in the case, be issued as of course from this court to the superior court for the purpose of informing the latter of the proceedings in this court and so that further proceedings may be had in the superior court as may be required. Such mandate, if not stayed by order of a justice who participated in such decision, shall be issued as follows:

- (1) On the expiration of ten (10) days from the date of such final determination if a petition for rehearing is not filed; or
- (2) On the expiration of five (5) days from the date of determination of a petition for rehearing.

The Rules of the Supreme Court of Alaska: Are amended by the addition of the following:

"Rule 57. Legal Effect of Rules - Procedural Portions of Statutes Superseded.

These rules are promulgated pursuant to constitutional authority granting rule making power to the supreme court, and to the extent that they are inconsistent with any procedural provisions of any statute not enacted for the specific purpose of changing a rule, shall supersede such statute to the extent of such inconsistency."

Rule 43(h)(7), Rules of Civil Procedure: Is amended to read as follows:

"(7) Degrading Character of Witness - Previous Conviction of a Crime. Every natural person has a privilege, which he may claim, to refuse to disclose in an action any matter that will have a direct tendency to degrade his character, except that such privilege shall not exist if the matter relates to the fact in issue or to a fact from which the fact in issue would be presumed. A witness must answer as to the fact of his previous conviction of a crime."

Rule 69(c), Rules of Civil Procedure: Is amended by substituting in line 2 for the word "or" the word "of".

Rule 72(d)(2), Rules of Civil Procedure: Is amended to read as follows: The third paragraph thereof to read:

"The notice shall further state that the defendant, without filing an answer, may serve on plaintiff's attorney a notice of appearance designating the property in which he claims to be interested; that thereafter he will receive notice of all proceedings affecting it; that regardless of whether the defendant appears or answers, he may present evidence as to the amount of compensation to be paid for his property at the hearing or trial of the issue of just compensation; that regardless of whether he appears or answers he may share in the distribution of the award; that if neither an appearance nor an answer is filed the court will proceed to hear the action and to fix the compensation without further notice; and that if neither an appearance nor an answer is filed before ten (10) days after the master's report is filed, judgment by default will be taken against the defendant for the relief demanded in the complaint."

Rule 72(d)(3)[b], Rules of Civil Procedure: Is amended by adding to the end thereof the following sentence:

"Diligent inquiry shall be undertaken and established as provided in Rule 4(e)(1)."

Rule 72(e)(4), Rules of Civil Procedure: Is amended to read as follows:

"Waiver of Defenses and Objections. A defendant waives all defenses and objections not presented as provided in this subdivision (c), but at the hearing or trial of the issue of just compensation, whether or not he has previously appeared or answered, and even though default judgment may have been entered against him, he may present evidence as to the amount of compensation to be paid for his property, and he also may share in the distribution of the award if his claim for compensation is filed before the award is ordered distributed by the court."

Rule 72(h), Rules of Civil Procedure: Is amended to read as follows:

"72(h) Hearing and Trial

- (1) Procedure. The hearing of the allegations and evidence of persons interested, whether before the court, jury, or a master, shall be conducted in the manner prescribed by these rules.
- (2) Hearing Before Master. A master appointed by the court to ascertain the amount to be paid by the plaintiff to each owner or other person interested in the property shall report to the court pursuant to Rule 53(d)(1).
- (3) Notice of Report. Upon the filing of a report by the master, the clerk shall forthwith mail notice of the filing to all parties who have appeared or answered.
- (4) Appeal and Trial De Novo. A party who has appeared or answered before the filing of a master's report may appeal within ten (10) days after being served with notice of the filing of the master's report. Any other interested person desiring to appeal from a master's report must take his appeal within ten (10) days after the filing of such report.
- (5) Notice of Appeal. A party or other interested person may appeal from the master's report by filing with the clerk a notice of appeal in duplicate, with sufficient additional copies for all parties who have appeared or answered. The notice of appeal shall contain the following:
 - [a] The title of the action.
 - [b] The names of the parties taking the appeal.
 - [c] The master's report or part thereof appealed from and the date of its filing.
 - [d] The name of the court to which the appeal is taken.
 - [e] A concise statement of the grounds of appeal.

Notification of the filing of the notice shall be given by the clerk by mailing copies thereof to all parties who have appeared or answered other than the party or parties taking the appeal, but his failure to do so does not affect the validity of the appeal. The notification to a party shall be given by mailing a copy of the notice of appeal to his attorney of record, or if the party is not represented by an attorney, then to the party at his last known address."

Rule 79(b), Rules of Civil Procedure: Is amended to read as follows:

"(b) Items Allowed as Costs. A party entitled to costs may be allowed premiums paid on undertakings, bonds or security stipulations, where the same have been furnished by reason of express requirement of law or on order of the court; the necessary expense of taking depositions for use at trial and producing exhibits; the expense of service and publication of summons or notices, and postage when the same are served by mail; filing fees and other charges made by the clerk of the court and fees for transcripts required in the trial of a case in the superior court. In addition to the items allowed as costs by law and in these rules, a party shall be allowed any other expenses necessarily incurred in order to enable a party to secure some right accorded him in the action or proceeding."

Rule 84(c), Rules of Civil Procedure: Is amended to read as follows:

"(c) Judgment - Notice - Filing. If satisfied that there is no reasonable objection to the assumption of another name by petitioner, the court shall by judgment authorize petitioner to assume such other name after a time to be fixed in the judgment, which shall not be less than thirty (30) days from the date of entry thereof. Within ten (10) days after entry of judgment, a copy thereof shall be published once in the newspaper designated by the court under the provisions of subdivision (b). The court may also require the posting of a copy of the judgment as provided in subdivision (b). Within twenty (20) days after the entry of judgment, proof of publication and of posting shall be filed with the clerk, who may then issue a certificate that the judgment has been entered, and that all requirements for posting a copy of the judgment have been met."

Rule 19, Rules of Criminal Procedure: Is amended by substituting for the citation "AS 26.10.040" in the second line of this rule, the citation "AS 22.10.040".

Rule 1(h), Magistrate Rules of Criminal Procedure: Is amended by substituting for the citation "AS 26.15.140" in the second line, the citation "AS 22.15.140".

Rule 2(a), Magistrate Rules of Criminal Procedure:
Is amended by substituting for the citation "AS
26.15.240" in the second line, the citation "AS
22.15.240".

The Magistrate Rules of Criminal Procedure: Are
amended by the addition of the following:

"Rule 6. Legal Effect of Rules - Procedural
Portions of Statutes Superseded.

These rules are promulgated pursuant to constitutional authority granting rule making power to the supreme court, and to the extent that they are inconsistent with any procedural provisions of any statute not enacted for the specific purpose of changing a rule, shall supersede such statute to the extent of such inconsistency.

Rule 7, Magistrate Rule of Civil Procedure: Is
amended to read as follows:

"Rule 7. THE CLERK: SERVICE OF PROCESS

(a) Appointment of Clerk. A district magistrate may by order appoint a clerk authorized to issue process and to sign and enter the orders set forth in Civil Rule 72(b). In the absence of an order appointing a clerk, process shall be issued and orders signed by the magistrate or by a deputy magistrate.

(b) Service of Summons by Mail. In addition to the methods of service provided by Rule 4, Rules of Civil Procedure, summons may be served within the state by registered or certified mail. Copies of the summons and complaint shall be mailed by the magistrate or clerk for delivery only to the party to whom the summons is directed. A delivery receipt returnable to the magistrate or clerk shall be required and must be signed by the party to whom the summons is directed. All returned delivery receipts shall be attached to the copy of the summons retained by the court."

Rule 21(c)(1), Magistrate Rules of Civil Procedure:
Is amended by adding a new subsection to be numbered
21(c)(1)(d) and reading as follows:

"(d) A direct and concise argument amplifying the reasons for granting the petition as suggested by subdivision (b) of this rule."

Rule 21(f), Magistrate Rules of Civil Procedure: Entitled "Hearing on Review", is renumbered now to read 21(g).

Rule 21(g), Magistrate Rules of Civil Procedure: Entitled "Authority of Superior Court", is renumbered now to read 21(h).

Rule 21(h), Magistrate Rules of Civil Procedure: Entitled "Applicability of Rules Governing Appeals", is renumbered now to read 21(i).

Rule 21, Magistrate Rules of Civil Procedure: Is amended by adding in the place of Rule 21(f) now renumbered Rule 21(g), the following new Rule 21(f):

"(f) Memorandum in Opposition - Reply.

- (1) Memorandum in Opposition. A respondent shall have ten (10) days after service of the petition within which to file a memorandum disclosing any matter or ground why the relief sought by the petition should not be granted.
- (2) Reply Memoranda. Timely reply or supplemental memoranda will be considered, but a determination of the matter will not be delayed pending the filing of such memoranda."

The Magistrate Rules of Civil Procedure: Are amended by the addition of the following:

"Rule 25. Legal Effect of Rules - Procedural Portions of Statutes Superseded.

These rules are promulgated pursuant to constitutional authority granting rule making power to the supreme court, and to the extent that they are inconsistent with any procedural provisions of any statute not enacted for the specific purpose of changing a rule, shall supersede such statute to the extent of such inconsistency.

EFFECTIVE DATE: November 1, 1963

Dist:

S/C Justs (3)
Sup/C Jdgs (2)
Clks/Ct (50)
Dist Mags (5)
Dep Mags (1)
All Members ABA (1)
Probate Master (1)
Adm Dir (50)
Gov (3)
Sec/State (31)
Dept/Pub Sfty (20)
Dept/H&W (15)
Dept/Law (30)
U.S. Dist Jdgs (1)
Leg. Council (10)

s/ Buell A. Nesbett
Chief Justice

s/ Harry O. Arend
Associate Justice

s/ John H. Dimond
Associate Justice