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**REQUEST FOR COMMENTS ON PROPOSED RULE CHANGES**
*(Comments Due by Thursday, March 13, 2025)*

The Alaska Supreme Court seeks comments on the following proposed rule changes. Proposed changes to existing rules are shown in "legislative" style: new language is underlined, and deleted language is struck through (except see note regarding Civil Rule 45 changes).

*Comments are due by Thursday, March 13, 2025.* Please direct your comments via email to RuleComments@akcourts.gov or use the mailing address shown above. Thank you for your time and consideration.

**Proposed Changes to the Civil Rules**



**Proposed Changes to the Appellate Rules**



**Proposed Changes to the Probate Rules**

**THE CIVIL RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:**

**1. Civil Rule 5 – Service: Serving Default Applications.**

The Civil Rules Committee recommends clarifying that a default application must be served on all parties including the party against whom the default is sought.

Civil Rule 55(a)(1) requires an application for entry of default to be served on all parties, including the party against whom the default is sought "in accordance with Civil Rule 5." But Civil Rule 5(a) only requires the defaulting party to be served with pleadings asserting new or additional claims for relief. It appears that the Rule 5(a) rule language was overlooked when the Rule 55(a)(1) service requirement was amended. Originally, Civil Rule 55 did not require a default application to be served on a party that failed to appear. But that changed in 2012 through Supreme Court Order 1771 that added the Rule 55(a)(1) requirement to serve the default application on all parties including the party against whom the default is sought.

The Civil Rules Committee recommends the following proposal:

**Rule 5. Service and Filing of Pleadings and Other Papers.**

(a) **Service—When Required.** Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties but no service need be made on parties in default for failure to appear except: ~~that~~

(1) an application for default under Rule 55(a)(1) shall be served upon them in the manner provided for service under subsection (b) of this rule; and

(2) pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

In an action begun by seizure of property, whether through arrest, attachment, garnishment or similar process, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) **Service—How Made.** * * * *

**THE CIVIL RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:**

**2. Civil Rule 5.1 – Filing: Allowing Emailed Certified Domestic Violence Protective Orders From Issuing Court.**

Civil Rule 5.1 currently allows a court of another state, tribe, or territory to file, via fax, a certified copy of a foreign domestic violence protective order. The rule proposal would allow the issuing court to send the certified protective order by email. In today's world, email communication is more common than fax. Reviewing Civil Rule 5.1's history, it is unknown why email filing for certified foreign domestic violence protective orders was not included when the other email provisions of the rule were added in 2011 through Supreme Court Order 1766.

The Civil Rules Committee recommends the following proposal:

**Rule 5.1. Filing and Service by Facsimile Transmission and Electronic Mail.**

(a) **Filing by Facsimile Transmission and Electronic Mail.** * * * *

(b) **Filing Foreign Domestic Violence Protective Orders by Facsimile Transmission.** Notwithstanding any general administrative orders concerning fax or electronic filings issued under (a) of this rule, a court shall accept faxed or electronically mailed certified copies of domestic violence protective orders issued by other states, tribes, or territories if (1) the order is faxed or electronically mailed by the issuing court, and (2) the facsimile or electronic mail contains a certification that the faxed or electronically mailed order is a true and correct copy of the original order on file with the issuing court.

(c) **Service by Facsimile Transmission and Electronic Mail.** * * * *

**THE FAMILY RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:**

### 3. Civil Rule 5.2 – Foreign Custody and Support Orders: Serving by First-Class Mail.

Current Civil Rule 5.2 states the court will provide service of a foreign support or custody order registration notice by "first class mail, certified mail, or by any means of personal service authorized by Civil Rule 4." Court administration proposes that the rule should only require the court to serve the registration notice by first-class mail and the other service methods, certified mail and personal service, should be eliminated. The proposal would allow the registering party to give additional notice using a method that shows proof of service. Based on data from 2021 and 2022, about 50 to 60 custody or support orders were registered in each year.

Court administration proposes this change to address logistical issues when a party electronically files a registration request. These logistical issues cause delays and additional work. For service by certified mail, the court charges a $5 handling fee. A clerk must enter a cost docket in CourtView and then notify the filer (by phone, email, or mail) that they can now pay the fee online or in person. Also, the filer must deliver to the court an envelope addressed to the other party with postage and completed certified mail forms. The clerk must wait until these items are received (and the $5 fee is paid) before the clerk can process the electronically-filed request and mail the notice. For service by a process server located in a city other than the court, the filer must deliver to the court an envelope addressed to the process server with sufficient postage so the clerk can mail the notice, other documents, and a check to the process server. As with service by certified mail, the clerk must wait until these items are received before the clerk can process the electronically-filed request and deliver the notice to the process server for service. Again, these processes add delay. Service by first-class mail by the court would be simpler and would not add these delays. And the filing party would still have the option to provide notice through additional methods.

Two committee members were opposed to the rule change. They expressed concern that a party may not receive actual notice of a custody/support order registration. These committee members favored either Civil Rule 4 service. Or, if the court provided first-class mail service, the registering party should be required to provide additional notice under Civil Rule 4 (certified mail/restricted delivery or process server).

On a vote of 7 (for) to 2 (against), the Family Rules Committee recommends the following proposal:

**Rule 5.2. Foreign Orders and Judgments.**

**(a) Notice of Registration of Support and Child Custody Orders.**

(1) When the court is required by the Uniform Interstate Family Support Act (AS 25.25.101 – .903) or the Uniform Child Custody Jurisdiction and Enforcement Act (AS 25.30.300 – .910) to give notice of registration of a support order, income withholding order, or child custody determination of another state, the court must give the required notice by first class mail~~, certified mail, or by any means of personal service authorized by Civil Rule 4. If the registering party does not request a method of service, the court will use first class mail~~.

(2) The registering party may give additional notice using any method of service allowed by Civil Rule 4. The registering party shall retain proof of service and not file it with the court unless it is needed in future proceedings. ~~If the registering party requests that the court use a method of notice that provides proof of service, the party shall file proof of service with the court.~~

(3) The time period within which the non-registering party may request a hearing begins on the date after the court mails the notice ~~is mailed or personally served~~.

**(b) Notice of Filing Foreign Judgments.** * * * *

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**THE CIVIL RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:**

**4. Civil Rule 45 – Subpoena: Adopting the Federal Model.**

At several meetings, the Civil Rules Committee considered changes to Civil Rule 45. The committee discussion was prompted by three separate rule proposals:

1. Allowing an attorney to issue a subpoena, instead of issuance by the clerk;
2. Allowing subpoenas to produce documents without requiring the witness to appear, like Rule 45 of the Federal Rules of Civil Procedure; and
3. Notice to the opposing party when subpoenaing records from a witness.

The committee favored adopting the streamlined federal Civil Rule 45 addressing subpoenas and making Alaska-specific changes. The federal rule already includes provisions addressing all three rule proposals: the federal rule allows a clerk as well as an attorney to issue a subpoena; the federal rule also requires notice to opposing parties for subpoenas requesting documents; and the federal rule includes a procedure for a witness to produce documents without appearing. A committee member that practices in both state and federal court noted that the federal rule is streamlined and works well.

The committee made additional changes to fit Alaska state court practice. The committee added the current Alaska Civil Rule 45(f) and (g) subsections addressing contempt and enforcement of administrative subpoenas. The committee kept the Alaska 10-day objection period instead of the federal 14-day timeframe. The committee kept the Alaska provision allowing service by mail (restricted delivery) but changed it to allow a party, instead of the court clerk, to serve by mail. The committee kept the current rule's requirement to provide proof of service by affidavit instead of the federal standard that only requires a certified statement.

The committee did not recommend the federal provision that requires the subpoena to include the text from subsections (d) and (e) addressing protecting a person subject to a subpoena and duties in responding to a subpoena.

Regarding the geographical limits of a subpoena, the committee rejected the federal 100-mile limit. Instead, the committee proposed a modified Alaska provision that would limit the reach of the subpoena for a nonparty to (1) the judicial district where the person resides, is employed, or regularly transacts business in person or (2) statewide for a hearing or trial if the person would not incur substantial expense. For a party or party's officer, the subpoena's geographical reach is anywhere within Alaska for a trial, hearing, or deposition.

The committee did not include the nonresident provision in Alaska's current subsection (d)(2) that requires a nonresident to attend a deposition in the judicial district in which the nonresident was served.

Also, the committee did not include the provision in current subsection (d)(2) that prohibits a party from inspecting and copying subpoenaed documents if a party objects to the subpoena and only allows inspection and copying if authorized by court order.

One issue the committee members did not agree on is whether a party should provide notice to the other party of all issued subpoenas (including trial/hearing appearance subpoenas) not just subpoenas for depositions. Six members voted in favor of this new, full notice provision; three members voted against it; and one member abstained.

After discussing the rule proposal at five meetings, the Civil Rules Committee recommends the following proposal (the federal rule, *not* the state rule, serves as the base with the committee's additions and deletions shown in tracked changes):

**Rule 45. Subpoena.**

**(a) In General.**

**(1)** ***Form and Contents*.**

**(A)** *Requirements--In General*. Every subpoena must:

**(i)** state the court from which it issued;

**(ii)** state the title of the action and its civil-action number; and

**(iii)** command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises.~~; and~~

~~**(iv)** set out the text of Rule 45(d) and (e).~~

**(B)** *Command to Attend a Deposition--Notice of the Recording Method*. A subpoena commanding attendance at a deposition must state the method for recording the testimony.

**(C)** *Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information*. A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

**(D)** *Command to Produce; Included Obligations*. A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding person to permit inspection, copying, testing, or sampling of the materials.

**(2)** ***Issuing Court*.** A subpoena must issue from the court where the action is pending.

**(3)** ***Issued by Whom*.** The clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. An attorney also may issue and sign a subpoena if the attorney is authorized to practice in the issuing court.

**(4)** ***Notice to Other Parties*.** ~~***Before Service*.***~~ At the time service of a subpoena is initiated, a copy of the subpoena must be served on all other parties. ~~If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party.~~

**(b) Service.**

**(1)** ***By Whom and How*~~*; Tendering Fees*~~**.** A subpoena may be served as follows:

(A) *Personal Service.* Any person who is at least 18 years old and not a party may serve a subpoena~~. Serving a subpoena requires~~ by delivering a copy to the named person.

(B) *Mail Service.* A party may serve a subpoena by registered or certified mail, return receipt requested, in which case the subpoena must be mailed for restricted delivery only to the person subpoenaed. The return receipt must be addressed so that it is returned to the party serving the subpoena. Service by mail is complete when the return receipt is signed. ~~and,~~

***(2) Tendering Fees***. If a ~~if the~~ subpoena requires that person's attendance at a trial, hearing, or deposition, ~~tendering~~ the fees for 1 day's attendance and the mileage allowed by ~~law~~ Administrative Rule 7 must be tendered to the person at the time of service. Fees and mileage need not be tendered when the subpoena issues on behalf of the state, a municipality, a borough, a city, ~~United States~~ or any of its officers or agencies.

**(3)~~(2)~~ *Service in the State of Alaska~~United States~~*.** A subpoena may be served at any place within the State of Alaska~~United States~~.

~~**(3) *Service in a Foreign Country*.** 28 U.S.C. § 1783 governs issuing and serving a subpoena directed to a United States national or resident who is in a foreign country.~~

**(4) *Proof of Service*.** Proving service, when necessary, requires filing with the issuing court an affidavit stating ~~a statement showing~~ the date and manner of service and the names of the persons served. ~~The statement must be certified by the server.~~

**(c) Place of Compliance.**

**(1) *For a Trial, Hearing, or Deposition*.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

**(A)** within ~~100 miles of~~the judicial district where the person resides, is employed, or regularly transacts business in person; or

**(B)** anywhere within Alaska ~~the state where the person resides, is employed, or regularly transacts business in person~~, if the person

**(i)** is a party or a party's officer; or

**(ii)** is commanded to attend a hearing or trial and would not incur substantial expense.

**(2) *For Other Discovery*.** A subpoena may command:

**(A)** production of documents, electronically stored information, or tangible things at a place within the judicial district in which ~~100 miles of where~~ the person resides, is employed, or regularly transacts business in person, unless otherwise ordered; and

**(B)** inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) *Avoiding Undue Burden or Expense; Sanctions*.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court ~~for the district where compliance is required~~ must enforce this duty and impose an appropriate sanction--which may include lost earnings and reasonable attorney's fees--on a party or attorney who fails to comply.

**(2) *Command to Produce Materials or Permit Inspection*.**

**(A)** *Appearance Not Required*. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B)** *Objections*. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises--or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 10 ~~14~~ days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the court ~~for the district where compliance is required~~ for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) *Quashing or Modifying a Subpoena*.**

**(A)** *When Required*. On timely motion, the court ~~for the district where compliance is required~~ must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person to comply beyond the geographical limits specified in Rule 45(c);

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B)** *When Permitted*. To protect a person subject to or affected by a subpoena, the court ~~for the district where compliance is required~~ may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information; or

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

**(C)** *Specifying Conditions as an Alternative*. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1)** ***Producing Documents or Electronically Stored Information*****.** These procedures apply to producing documents or electronically stored information:

**(A)** *Documents*. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B)** *Form for Producing Electronically Stored Information Not Specified*. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C)** *Electronically Stored Information Produced in Only One Form*. The person responding need not produce the same electronically stored information in more than one form.

**(D)** *Inaccessible Electronically Stored Information*. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause~~, considering the limitations of Rule 26(b)(2)(C)~~. The court may specify conditions for the discovery.

**(2)** ***Claiming Privilege or Protection*****.**

**(A)** *Information Withheld*. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B)** *Information Produced*. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

~~**(f) Transferring a Subpoena-Related Motion.** When the court where compliance is required did not issue the subpoena, it may transfer a motion under this rule to the issuing court if the person subject to the subpoena consents~~

~~or if the court finds exceptional circumstances. Then, if the attorney for a person subject to a subpoena is authorized to practice in the court where the motion was made, the attorney may file papers and appear on the motion as an officer of the issuing court. To enforce its order, the issuing court may transfer the order to the court where the motion was made.~~

**(f)~~(g)~~ Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. ~~The court for the district where compliance is required and also, after a motion is transferred, the issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.~~

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| Subsection (f) language is taken from current Civ. R. 45(f). |

**(g) Enforcement of Administrative Subpoenas.** When any officer or agency of the state has the authority to issue subpoenas, enforcement of such subpoenas to compel the giving of testimony or the production of documents may be secured by proceedings brought in the court in the manner provided by the Administrative Procedures Act of the state.

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| Subsection (g) language is taken from current Civ. R. 45(g). |

**Note:** Civil Rule 45.1(c), District Court Rule 11(d), and Administrative Rule 11(c) would be amended to reference the correct Rule 45 subsection.

**THE CIVIL RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:**

**5. Civil Rule 76 – Papers: Redacting SSN, Taxpayer ID, and Financial Acct. Numbers.**

The Civil Rules Committee recommends an amendment to Civil Rule 76 (Form of Papers) that would require a party to partially redact social security, taxpayer identification, and financial account numbers from papers filed with the court.

The initial rule proposal was focused solely on debt collection issues. First, a creditor would have been required under Civil Rule 69 to determine if property to be seized would be exempt from execution. The committee unanimously rejected this proposal. Second, when filing a complaint to reduce a consumer debt to a judgment, the creditor would have been required to prove ownership of the debt and attach proof of ownership to the complaint. The committee majority (6 "no" votes; 4 "yes" votes) rejected this proposal that would have added additional work that is not required in other cases. Third, the proposal would have amended Civil Rule 82 to allow a debtor in a consumer contract case to be awarded attorney fees if the consumer contract contained a unilateral fee provision. The committee unanimously reject this proposal because it is inconsistent with Alaska law. Last, the proposal would have amended District Court Civil Rule 10 to add certain privacy protections i.e., redaction of social security numbers and medical information. The committee considered this proposal and revised it in two ways. The committee expanded the proposal to apply the protections to all civil case types not just debt collection cases. The committee also revised the proposal regarding the types of documents to be protected; the committee recommended that Civil Rule 76 should be amended to require a party to partially redact social security, taxpayer identification, and financial account numbers in court filings.

The Civil Rules Committee recommends the following proposal:

**Rule 76. Form of Papers.**

* * * *

(h) **Redacting Social Security, Taxpayer Identification, and Financial Account Numbers.** Unless a court rule, order, or statute provides otherwise, a filing may include only the last four digits of a social security number, taxpayer identification number, or financial account number. The court may, on its own initiative or at the request of a party or nonparty, order that a noncompliant filing is confidential.

(i)~~(h)~~ **Compliance with Rule.** The clerk may refuse to accept ~~for filing~~ any filing ~~document~~ that does not comply with the requirements of this rule. The judge to whom the case is assigned may, in cases of emergency or necessity, permit departure from the requirements of this rule.

**THE CIVIL RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:**

**6. Civil Rule 77 – Motions: Eliminating Proposed Orders for Self-Represented Litigants.**

The Alaska Court System's Access to Justice Services (AJS) proposes an amendment to Civil Rule 77(b)(3) and (c)(iii) that currently requires a party to file a proposed order with the party's motion or opposition. AJS proposes that self-represented litigants (SRLs) should be exempted from the requirement to file a proposed order when filing a motion or opposition. Requiring proposed orders from a self-represented litigant can pose barriers and impede a self-represented litigant's access to justice in the court system. AJS's proposal to eliminate the proposed order requirement is consistent with a recommendation by the Conference of Chief Justices and Conference of State Court Administration. Those organizations are urging courts across the country to simplify court processes. One of the specific recommendations is to make filing proposed orders permissive for self-represented litigants.

AJS's proposal is a narrower than its previous proposal to eliminate proposed orders for all parties, attorney-represented and self-represented. The Civil Rules Committee majority did not recommend the previous broader proposal.

The committee discussed the time and expense of clerks sending deficiency notices when a party does not file a proposed order. In most cases, it is a SRL that fails to file a proposed order. One member suggested that instead of spending time generating and sending a deficiency notice, a clerk could simply generate a form order for the judge. The member, who is a judge, also commented that even after sending a deficiency notice, the SRL doesn't always submit the proposed order.

After further discussion, the Civil Rules Committee unanimously recommended the following proposal (the subparagraphs are re-lettered to conform to the current rule-drafting protocols):

**Rule 77. Motions.**

(a) **Service.** * * * *

(b) **Requirements.** There shall be served and filed with the motion:

(1) legible copies of all photographs, affidavits and other documentary evidence which the moving party intends to submit in support of the motion;

(2) a brief, complete written statement of the reasons in support of the motion, which shall include a memorandum of the points and authorities upon which the moving party will rely; and

(3) an appropriate order for the court's signature in the event that the motion is granted except a self-represented party is not required to file a proposed order.

(4) In addition, if a motion is filed and served on a defendant before an answer to the complaint is due under the rules, the motion must be accompanied by a notice advising the defendant of the right to file a written opposition to the motion, the time within which the opposition must be filed under Civil Rule 77(c)(2)(i), and the place where it must be filed.

(c) **Opposition.** Unless otherwise ordered by the court or otherwise stipulated by the parties with court approval, opposition to the motion or other application shall be made as follows:

(1) *Form.* Each party opposing the motion or other application shall serve and file either:

(A)~~(i)~~ legible copies of all photographs, affidavits and other documentary evidence upon which the party intends to rely; and

(B)~~(ii)~~ a brief, complete written statement of the reasons in opposition to the motion, which shall include an adequate answering brief of points and authorities; and

(C)~~(iii)~~ an appropriate order for the court's signature in the event that the motion is denied except a self-represented party is not required to file a proposed order; or

(D)~~(iv)~~ a written statement that the party does not oppose the motion.

(2) *Time.* The time for filing opposition to the motion or other application shall be 10 days from the date of service of the motion or application, except as follows:

(A)~~(i)~~ for motions or other applications filed and served on defendant before an answer to the complaint is due under the rules, the time for filing opposition shall be either 10 days from the date of service, or the date the defendant's answer is due under the rules, whichever is later;

(B)~~(ii)~~ for motions to dismiss, motions for summary judgment and motions for judgment on the pleadings, the time for filing opposition shall be either 15 days from the date of service or, if the plaintiff is the movant, the date the defendant's answer is due under the rules, whichever is later; and

(C)~~(iii)~~ for motions filed under Civil Rules that prescribe their own response times (for example, Civil Rule 88 and Civil Rule 89) or that authorize expedited relief (for example, Civil Rule 77(g) or Civil Rule 65), the time for filing opposition shall be governed by the specific rule under which the motion is filed.

(d) **Reply.** * * * *

**THE CIVIL RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:**

**7. Civil Rule 79 – Costs: Specifying Exception.**

The Civil Rules Committee considered a rule proposal to clarify Civil Rule 79 addressing costs – that the rule should contain express language that it does not apply if a statute or other law governs the award of costs. This exception is already specifically listed in Rule 82 governing attorney fees. Civil Rule 82 begins with the lead in phrase "Except as otherwise provided by law or agreed to by the parties".

After a short discussion, the Civil Rules Committee recommended the following proposal:

> **Rule 79. Costs—Taxation and Review.**
>
> (a) **Allowance to Prevailing Party.** Except as otherwise provided by law or ~~Unless~~ directed by the court ~~otherwise directs~~, the prevailing party is entitled to recover costs allowable under paragraph (f) that were necessarily incurred in the action. The amount awarded for each item will be the amount specified in this rule or, if no amount is specified, the cost actually incurred by the party to the extent this cost is reasonable.
>
> (b) **Cost Bill.** * * * *

**THE CIVIL RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:**

**8. Civil Rule 84 – Name Change: Requiring Date of Birth.**

This rule proposal initially began with a request from the Department of Public Safety (DPS) to the Alaska Court System for copies of name change judgments to ensure the accuracy of names listed in the Alaska Public Safety Information Network (APSIN).[1] But the name change judgments needed additional personal identifying information, such as a date of birth, social security number, and a drivers license number, to link different names to the same person. In addition to requiring the person's date of birth on the judgment, the proposal would have required the person to provide the following information that would be kept on a confidential form:

- Petitioner's full legal name, including middle name;
- The name petitioner seeks to adopt;
- Petitioner's date of birth;
- Petitioner's social security number (SSN); and
- Petitioner's driver's license or state identification number, including issuing state.

Following a discussion, the committee voted unanimously against a new subsection that would have required a person requesting a name change to file certain confidential information, specifically an SSN and drivers' license number, on a confidential information sheet.

But the committee voted unanimously in favor of adding the date of birth requirement in Rule 84(a) and (c).

The Civil Rules Committee's recommendation is as follows:

> **Rule 84. Change of Name.**
>
> (a) **Petition.** Every action for change of name shall be commenced by filing a verified petition entitled in the name of petitioner, showing the name which petitioner desires to adopt, the petitioner's date of birth, and setting forth the reasons for requesting a change of name.
>
> * * * *
>
> (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 30 days after the date shown in the clerk's certificate of distribution on the judgment. The judgment must include the petitioner's date of birth. Except in cases where notice is not required under subsection (b), within 10 days after the date shown in the clerk's certificate of distribution on the judgment, a copy thereof shall be posted on the Alaska Court System's legal notice website for one week. Proof of posting to the legal notice website shall be made as prescribed in Rule 4(e)(6)(A).
>
> The court may also require publication of a copy of the judgment as provided in subdivision (b). Within 20 days after the date shown in the clerk's certificate of distribution on the judgment, proof of publication shall be filed with the clerk. The petitioner may then submit a certificate to be issued by the clerk stating that the judgment has been entered and that all requirements for posting a copy of the judgment have been met.
>
> (d) **Applicability.** * * * *

[1] After the committee considered the rule proposal, the name change statute, AS 09.55.010, was amended to address DPS's concerns.

**THE APPELLATE RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:**

**9. Appellate Rule 209 – Appeals at Public Expense: Revising the Cost of Appointed Counsel for Interlocutory Appeals.**

The Appellate Rules Committee recommends clarifying Appellate Rule 209 based on *Alexiadis v. State*[2] that found that an indigent criminal defendant should not be charged the cost of appointed counsel for pursuing interlocutory appellate review. The cost of pursing interlocutory review should be treated like the other work performed by the attorney appointed to represent the defendant in the trial work; it should be covered by the "package" fee set under Criminal Rule 39(d)'s schedule of costs. If the indigent defendant is convicted, the trial court will order the defendant to pay the scheduled amount.

For Appellate Rule 209(b)(6)'s schedule of costs, the committee recommends specifically eliminating the catchall of "Other Appellate Actions (Petition for Review, Petition For Hearing, etc." with "Petition for Hearing when full briefing is ordered and filed (unless the petition for hearing arises from a petition for review)". Plus, for all appellate cases, a new provision is added that the cost of appointed counsel will not be assessed if the case is withdrawn or dismissed prior to issuance of the court's decision.

The committee also recommends adding "or the court otherwise orders" in subparagraph (b)(6) so the clerk of the appellate court would not be required to enter a judgment against an indigent defendant for the cost of appointed counsel as outlined in the cost schedule if the court so orders (or the defendant's conviction is reversed — that provision is in the current rule and would remain.).

(Note: The committee is continuing to review the rule to address other issues such as whether the cost of appointed counsel should be assessed in certain dismissed post-conviction relief cases and whether the rule should require a more detailed notice to the defendant regarding the cost of appointed including the option to request relief. If the committee recommends additional changes, those changes will be posted for public comment.)

The Appellate Rules Committee's recommendation is as follows:

**Rule 209 Appeals at Public Expense**

* * * *

**(b) Criminal Matters.**

(1) In criminal matters the appellate court shall authorize appellate proceedings ~~appeals and petitions for review~~ at public expense on behalf of defendants who are "indigent," as defined by statute, in accordance with the rules and decisions of the appellate courts of Alaska, and where such proceedings are required to be provided by state courts by decisions of the Supreme Court of the United States. Where a proceeding ~~an appeal or petition for review~~ at public expense is authorized by the court, the costs which shall be borne at public expense include those of providing counsel and of preparing a transcript and briefs.

(2) If a defendant is allowed to proceed at public expense, the clerk of the appellate courts shall send the defendant a written notice and order, to the address provided under Appellate Rule 204(b), that

(A) advises defendant that, if the defendant's conviction is not reversed, the defendant will be ordered to repay the prosecuting authority

[2] *Alexiadis v. State*, 369 P.3d 561 (Alaska App. 2016).

for the cost of appointed counsel, in accordance with the schedule of costs set out in ~~sub~~paragraph 209(b)(6); and

(B) orders the defendant to apply for permanent fund dividends every year in which the defendant qualifies for a dividend until the cost is paid in full.

Paragraph (b)(2) applies only to proceedings that are covered by the schedule of costs at paragraph (b)(6).

(3) A defendant authorized to proceed at public expense in the trial court is presumed to be entitled to proceed in the appellate courts ~~appeal or petition for review~~ at public expense.

(4) Counsel appointed to represent a defendant in the trial court pursuant to Criminal Rule 39 shall remain as appointed counsel throughout the appellate proceeding ~~an appeal or petition for review~~ at public expense authorized under ~~this paragraph~~ subsection (b) and shall not be permitted to withdraw except upon the grounds authorized in Appellate Rule 517.1. An attorney appointed by the court under Administrative Rule 12(b)(1)(B) will be permitted to withdraw upon a showing that either the Public Defender Agency or the Office of Public Advocacy is able to represent the defendant in the appellate proceeding.

(5) At the conclusion of the appellate proceeding, the clerk of the appellate courts shall enter judgment against the defendant for the cost of appointed appellate counsel, unless the defendant's conviction was reversed by the appellate court or the court otherwise orders. The amount of the judgment shall be determined by reference to the schedule in ~~sub~~paragraph 209(b)(6). Before entering judgment, the clerk shall mail, to the defendant's address of record, a notice that sets out the amount of the proposed judgment. The defendant may oppose entry of the judgment by filing a written opposition within 45 days after the date shown in the clerk's certificate of distribution on the notice. The opposition shall specifically set out the grounds for opposing entry of judgment. The prosecuting authority may oppose the amount of the judgment by filing a written opposition within the same deadline. Criminal Rule 39(c)(1)(B)-(C) and (c)(2) shall apply to judgments entered under the ~~sub~~paragraph.

(6) The following schedule governs the cost of appointed appellate counsel.

| **Type of Appellate Proceeding** | **Misdemeanor** | **Felony** |
|---|---|---|
| Sentence Appeal or Petition for Sentence Review | $ 250 | $ 500 |
| Merit Appeal or Appeal from Post-Conviction Relief Proceedings | 750 | 1,500 |
| Combined Merit Appeal and Sentence Appeal or Petition for Sentence Review | 1,000 | 2,000 |
| Petition for Hearing when full briefing is ordered And filed (unless petition for hearing arises from a petition for review). | 500 | 1,000 |
| ~~Other Appellate Actions (Petition for Review, Petition For Hearing, etc.)~~ | ~~500~~ | ~~1,000~~ |

Cost of appointed appellate counsel shall not be assessed in other appellate actions. Cost of appointed appellate counsel shall not be assessed if a case is withdrawn or dismissed prior to issuance of the court's decision.

(c) **Costs.** Costs, attorney's fees, damages, and interest may be allowed as in other cases, but the state shall not be liable for any of them.

* * * *

**Note**: Rule 209(b) was amended through SCO XXXX following *Alexiadis v. State*, 369 P.3d 561 (Alaska Ct. App. 2016).

**THE GUARDIANSHIP/CONSERVATORSHIP RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:**

### 10. Probate Rule 16 – Guardianship: Eliminating Plan Requirement.

The Guardianship/Conservatorship Rules Committee considered a rule proposal to streamline the guardianship procedure by eliminating the requirement for the guardian to file a proposed guardianship plan.

Current Probate Rule 16 requires the guardian to file a proposed guardianship plan within 30 days after being appointed the guardian. The guardian must also file an implementation report no later than 90 days after appointment. Frequently, the court will waive filing of the guardianship plan because the same information, as well as additional, more detailed information, is filed in the subsequent implementation plan. Some judicial officers as well as others involved in a guardianship case find that the guardianship plan is not helpful. The committee agreed. The guardianship order and the plan are redundant. Eliminating the requirement to file the plant would make the guardianship process simper and reduce paperwork.

The Guardianship/Conservatorship Rules Committee's recommendation is as follows:

**Rule 16. Guardianship of Incapacitated Persons.**

*** * * ***

(g) **Reporting.**

(1) *By the Guardian.*

(A) *Guardianship ~~Plan and~~ Implementation Report.* The guardian must file ~~a guardianship plan within 30 days after distribution of the order of appointment as guardian and~~ an implementation report no later than 90 days after distribution of the order of appointment as guardian.

(B) *Annual Report.* * * * *

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**THE GUARDIANSHIP/CONSERVATORSHIP RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:**

**11. Probate Rule 17 – Conservatorship: Revising Annual Report Requirements.**

The Guardianship/Conservatorship Rules Committee considered and recommended a rule proposal to require more detail and information for the reporting requirements in conservatorship and minor settlements. First, the committee recommended separating the implementation report and inventory from the annual reporting requirements. Second, for the annual reporting requirements, the committee recommended changing the reporting period from "calendar year" to the "12-month reporting period" because the reporting period is not tied to the calendar year; the reporting period is a 12-month period tied to the appointment date. Third, the committee recommended adding additional detail to item (g)(1)(B)(5) changing the current generic wording asking about the "actions of the conservator during the year regarding the protected funds" to asking broader and more detailed information about the "actions of the conservator and other events and changes during the reporting period involving the protected person's property or financial affairs". Fourth, the committee recommended that the conservator should also provide relevant account statements for the reporting period. Last, the committee recommended a catch-all provision requiring the conservator to provide any other information requested by the court.

The Guardianship/Conservatorship Rules Committee's recommended amendments to Rule 17 are as follows:

**Rule 17. Conservatorships, Protective Proceedings, and Minor Settlements.**

* * * *

(g) Reporting.

(1) *By the Conservator.*

(A) *Implementation Report and Inventory.* Within 90 days after distribution of the order of appointment, the conservator must file a conservator implementation report and an inventory pursuant to AS 13.26.505~~AS 13.26.250~~.

(B) *Annual Report.* The conservator ~~also~~ must file an annual report with the court within 30 days after the anniversary of the conservatorship order or as otherwise ordered by the court. The annual report ~~must include~~ must include the following information for the 12-month reporting period:

1. the total assets at the beginning and end of the ~~calendar year~~reporting period;

2. the total liabilities at the beginning and end of the ~~calendar year~~reporting period;

3. income received from all sources;

4. a detailed report on all disbursements with explanations; and

5. actions of the conservator and other events and changes during the reporting period ~~year~~ involving ~~regarding~~ the protected person's property or financial affairs ~~funds.~~;

6. relevant account statements for the reporting period; and

7. any other information requested by the court.

(2) *By the Court Visitor.* * * * *

**THE GUARDIANSHIP/CONSERVATORSHIP RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:**

## 12. Probate Rule 17 – Conservatorship: Prohibiting Commingling Funds.

The Guardianship/Conservatorship Rules Committee considered a rule proposal that would allow an organizational guardianship to use a collective account to manage the funds of many different wards only after obtaining court approval. After discussing several issues related to the proposal, the committee determined the better approach would be for the rule to prohibit the conservator from commingling the ward's funds with other funds without obtaining a prior court order. In addition to protecting the ward, this change could improve judicial efficiency. The court has continued oversight in a guardianship case and the court cannot efficiently review the financial accounting if the guardian comingled funds.

The Guardianship/Conservatorship Rules Committee's recommended a new subsection (g) as follows:

**Rule 17. Conservatorships, Protective Proceedings, and Minor Settlements.**

* * * *

(f) **Compensation.** * * * *

(g) The conservator shall not commingle the ward's funds absent prior court order.

(h)~~(g)~~ **Reporting.** * * * *

(re-letter subsequent subsections)