

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1965

Amending District Court Civil Rules 8, 10, 11, 12, 17, and 21 concerning procedures for small claims including service of process, service of filings, proof of service, default, availability of Handbook, and assistance to litigants; clarifying and modernizing language in Rule 21.

IT IS ORDERED:

1. District Court Civil Rule 8 is amended to read as follows:

Rule 8. Scope and Applicability.

(a) The following procedure applies to a small claim action:

(1) When all parties elect small claims procedure, Procedure in a small claim actionactions, as defined by AS 22.15.040, is governed by:

(A) this Part (Part II of the District Court Rules of Civil Procedure, Small Claims Rules) these rules;

(B) applicable portions of Civil Rules 5, 5.1, 5.3, and 6;
and

(C) other rules specifically incorporated herein by reference referenced in this Part (Part II of the District Court Rules of Civil Procedure, Small Claims Rules);
~~when all parties to the action elect to be governed by them.~~

(2) When the parties do not elect small claim procedure, a small claim action is governed by Part I of the District Court

~~Rules of Civil Procedure governs small claim actions when the parties do not elect small claim procedure.~~

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2. District Court Civil Rule 10 is amended to read as follows:

Rule 10. Pleadings.

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(b) A party defending against a claim shall file an answer on the form provided by the Alaska court system. The answer is a short, plain statement showing the nature of the defense and any claim that the defendant has against the plaintiff arising from the same transaction or occurrence and shall conform with Rule 12 of these rules. The answer must be filed with or mailed to the court where the action was commenced and be signed by the defendant. When the answer or counterclaim is based upon a written document, the document or a copy of it shall be attached to the answer. The defendant's mailing address shall be shown on the answer. The defendant ~~clerk or magistrate judge~~ shall serve ~~mail~~ a copy of the answer on ~~to~~ the plaintiff, and shall ~~maintain a record of the mailing.~~

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3. District Court Civil Rule 11 is amended to read as follows:

Rule 11. Process.

(a) The summons shall be issued and the summons and complaint served, according to the procedures of Civil Rule 4, except that:

~~(1) If personal service is used, the clerk shall deliver the summons for service to a peace officer or to a person specially appointed to serve it.~~

~~(2) If service is by registered or certified mail, the clerk shall mail the summons and a copy of the complaint as provided in Civil Rule 4(h).~~

~~(3) Service by publication or posting shall not be allowed.~~

~~(4) Service on a defendant who is outside the state shall be allowed~~

~~(1)(A) in accordance with AS 34.03.340 of the Landlord-Tenant Act, AS 34.03.340;~~

~~(2)(B) in accordance with AS 09.05.020, entitled Service of Process on Nonresident Owner or Operator of Motor Vehicle; or~~

~~(3)(C) as otherwise permitted under Civil Rule 4.~~

~~(5) The affidavit required by Civil Rule 4(f) is not required in small claims cases and Civil Rule 4(j) shall not apply.~~

~~(b) The summons shall include instructions for accessing the Alaska Small Claims Handbook on the Alaska Court System's website or requesting a printed copy from the clerk. A copy of the Alaska Small Claims Handbook and a A blank answer form shall be served with the summons and complaint.~~

~~(c) If the summons and complaint are served by registered or certified mail, a delivery receipt returnable to the district court shall be required. All returned delivery receipts shall be attached to the copy of the summons retained by the court.~~

~~(c)(e) All parties shall inform the court and other parties of any change in mailing address during the pendency of the action. The parties are deemed to have received all documents mailed to them at the addresses furnished by them.~~

~~(e) Service of any pleading or process, including the summons and complaint, shall be valid even though refused by the~~

~~recipient and returned after such refusal. Upon receiving a returned refused mailing, the clerk shall mail to the refusing party by first class mail a copy of the mailing refused and a notice that service of the original was valid upon refusal and that the case will proceed as if the recipient had accepted the original mailing.~~

(re-letter subsequent subsection)

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4. District Court Civil Rule 12 is amended to read as follows:

Rule 12. Venue.

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(c) The plaintiff shall have twenty days from service ~~the date of mailing receipt~~ of the answer by the defendant clerk or magistrate judge to file a statement opposing an application for change of place of trial. The court shall consider the application upon the statements of the parties, and shall issue an order granting or denying the application. A copy of the order shall be sent to the parties by first class mail at the addresses shown on their pleadings. When the application is granted, the file shall be transferred. When the application is denied, the court shall set the action for trial.

5. District Court Civil Rule 17 is amended to read as follows:

Rule 17. Judgment.

(a) If the defendant fails to answer the complaint within 20 days after service of process or fails to attend trial, the defendant is in default. Default judgment shall be entered only after the plaintiff files an affidavit made upon good faith belief, after diligent inquiry, stating that the defendant is not an infant or otherwise incompetent, and that the defendant is not in the

active military service of the United States or, if the plaintiff is unable to determine whether the defendant is in military service, stating that the plaintiff is unable to determine that fact. Unless proof of service has been previously filed with the court, the plaintiff must attach proof of service showing that the summons and complaint were served on the defendant. The court shall also require proof under oath, made upon personal knowledge or based on business records, of the truth of every essential element of the claim for relief. The clerk may enter a default judgment if the damages alleged are liquidated and no default hearing is required. If the defendant answers but fails to appear at trial, the court may nevertheless consider any relevant and material evidence filed with the answer. The court may allow an answer to be filed after the defendant is in default, but before judgment is entered, upon a showing of good cause. The plaintiff may move the court to enter a default judgment if the defendant is in default. Affidavits or exhibits necessary to the entry of default judgment under this rule shall accompany the motion. The motion, including affidavits and exhibits, must be served on the defendant. Default may not be entered less than seven days following service of the motion.

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6. District Court Civil Rule 21 is amended to read as follows:

Rule 21. Assistance to Litigants—Handbook.

The court system shall prepare the Alaska Small Claims Handbook and make it available on the court system's website. Courts must also have physical copies of the handbook available to the public. Magistrate judges and clerks of any district court are authorized, when ~~where~~ necessary, to assist litigants in the

~~preparation of complaints and answers and service of process forms. First recourse should be had to the Alaska Small Claim Handbook, which shall be available for distribution to prospective litigants at all locations of any court empowered to handle small claims actions, and shall be served upon the defendant with the summons and complaint. If a litigant needs assistance, the clerk or magistrate judge should first refer the litigant to the handbook. If a litigant needs additional assistance because the litigant cannot read or write the English language or is physically unable to write, ~~When a party is illiterate or otherwise unable to write his pleading,~~ and the litigant is unable to obtain assistance from a friend or relative, the clerk or magistrate judge shall write the litigant's information and response ~~it~~ on the appropriate form. A form written by the clerk or magistrate judge shall be signed by the ~~party~~litigant or bear the ~~party's witnessed~~ mark. The clerk or magistrate judge shall note on the form that he or she wrote it for the litigant ~~upon its face the method of preparing the pleading~~ under this rule.~~

DATED: January 14, 2021

EFFECTIVE DATE: April 15, 2021

/s/
Chief Justice Bolger

/s/
Justice Winfree

/s/
Justice Maassen

/s/
Justice Carney

/s/
Justice Borghesan