

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1569

Amending Civil Rule 16 concerning
scheduling orders and amending Civil
Rule 26 concerning initial disclosures

IT IS ORDERED:

1. Civil Rule 16(b) and (g) are amended to read as follows:

**Rule 16. Pretrial Conferences; Scheduling;
Management.**

* * * *

**(b) Scheduling Order; Mandatory Scheduling
Conference.**

(1) Except in categories of actions exempted under Rule 16(g), the judge shall, after receiving the report from the parties under Rule 26(f), enter a scheduling order that limits or establishes the time:

(A) to join other parties and to amend the pleadings;

(B) under AS. 09.17.080,

(i) to specifically identify potentially responsible persons;

(ii) to move to join specifically identified potentially responsible persons; and

(iii) to move to determine whether a sufficient opportunity to join a potentially responsible person is lacking;

(C) to file motions;

(D) to disclose expert witnesses and reports required under Rule 26(a)(2);

(E) to supplement disclosures required under Rule 26(a);

(F) to identify witnesses and exhibits;

(G) to complete discovery; and

(H) for trial or the trial setting conference.

The scheduling order may also address:

(I) modification of the discovery limitations contained in these rules, including the length of depositions in light of the factors listed in Rule 30(d)(2), and the extent of discovery to be permitted;

(J) the date or dates for conferences before trial;

(K) the use and timing of an alternative dispute resolution procedure;

(L) the time to file any challenges to the reliability of scientific evidence;

(M) any issues related to proceedings to determine the amount of punitive damages; and

(N) any other matters appropriate in the circumstances of the case.

The order shall issue as soon as practicable but in any event within 90 days after the appearance of the defendants. A schedule shall not be modified except upon a showing of good cause and by leave of court.

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(g) **Actions Exempted from Rule 16(b).** The following categories of cases are exempted from the requirement of scheduling conferences and scheduling orders under Rule 16(b):

(1) special proceedings listed in Part XII of these rules, including habeas corpus petitions, forcible entry and detainer claims, and dissolution of marriage and divorce actions;

(2) paternity cases;

(3) custody cases;

(4) small claims cases;

(5) actions to enforce out-of-state judgments;

(6) eminent domain cases;

(7) proceedings for post-conviction relief under Criminal Rule 35.1; and

(8) proceedings to obtain a domestic violence protective order under AS 18.66.100 and AS 18.66.110 or a stalking protective order under AS 18.65.850 and AS 18.65.855.

2. Civil Rule 26(a)(1) is amended by adding a new subparagraph (H) as follows:

**Rule 26. General Provisions Governing Discovery;
Duty of Disclosure.**

(a) **Required Disclosures; Methods to Discover Additional Matter.** Disclosure under subparagraphs (a)(1), (2), and (3) of this rule is required in all civil actions,

except those categories of cases exempted from the requirement of scheduling conferences and scheduling orders under Civil Rule 16(g), adoption proceedings, and prisoner litigation against the state under AS 09.19.

(1) *Initial Disclosures*. Except to the extent otherwise directed by order or rule, a party shall, without awaiting a discovery request, provide to other parties:

(A) the factual basis of each of its claims or defenses;

(B) the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information and whether the attorney-client privilege applies;

(C) the name and, if known, the address and telephone number of each individual who has made a written or recorded statement and, unless the statement is privileged or otherwise protected from disclosure, either a copy of the statement or the name and, if known, the address and telephone number of the custodian;

(D) subject to the provisions of Civil Rule 26(b)(3), a copy of, or a description by category and location of, all documents, data compilations, and tangible things that are relevant to disputed facts alleged with particularity in the pleadings;

(E) subject to the provisions of Civil Rule 26(b)(3), all photographs, diagrams, and videotapes of persons,

objects, scenes and occurrences that are relevant to disputed facts alleged with particularity in the pleadings;

(F) each insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment;

(G) all categories of damages claimed by the disclosing party, and a computation of each category of special damages, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such claims are based, including materials bearing on the nature and extent of injuries suffered; and

(H) the identity, with as much specificity as may be known at the time, of all potentially responsible persons within the meaning of AS 09.17.080, and whether the party will choose to seek to allocate fault against each identified potentially responsible person.

Unless otherwise directed by the court, these disclosures shall be made at or within 10 days after the meeting of the parties under subsection (f). A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

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DATED: May 25, 2005

EFFECTIVE DATE: October 15, 2005

Chief Justice Bryner

Justice Matthews

Justice Eastaugh

Justice Fabe

Justice Carpeneti