

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1624

Amending Administrative Rule
44 to revise and clarify
rulemaking procedures.

IT IS ORDERED:

Administrative Rule 44 is amended to read as follows:

Rule 44. Rulemaking.

(a) **Uniform Policy.** The supreme court shall make and promulgate rules governing administration of all courts, and practice and procedure in civil and criminal cases in all courts. The rules shall be uniform throughout the Alaska Court System.

(b) **Request for Rulemaking.** Any person may propose new rules or changes in present rules to the supreme court. Each proposal must:

- (1) ~~B~~be in writing;
- (2) ~~I~~include anythe language proposed for change;
- (3) ~~I~~include the reason for the suggested rule or change; and
- (4) ~~B~~be submitted to the court rules attorney at the Anchorage Office of the Administrative Director of Courts.

The court rules attorney shall review each proposal. If the proposal is unclear or in need of further documentation, the rules attorney shall contact the person submitting the proposal and seek clarification.

~~(c) **Preliminary Analysis.** The rules attorney shall then~~

~~prepare a preliminary legal analysis of each proposal. This shall include an examination of the present Alaska rule including adoption and amendment history, as well as a comparison with the federal rule where appropriate.~~

~~(d) — **Meritless Proposal.** In the unusual case where no further consideration seems merited, the rules attorney shall forward such opinion and the reason for it along with all pertinent supporting information to the chief justice. If the chief justice concurs, a letter shall be sent by the rules attorney to the person submitting the proposal stating the reason it was not accepted.~~

~~(e) — **Notice.** In all other cases notice that a rule is being considered for change, including the nature of the proposed change, shall be published in the Monthly Activity Report of the appellate courts.~~

~~(cf) **Major or Minor Change.** The rules attorney shall determine whether a proposal is a major or minor rule change. All proposals for new rules and all proposals affecting substantial rights of litigants are major. Minor rules changes are those which are technical in nature.~~

~~(dg) **Minor Change.** The rules attorney shall submit a Mminor rules change proposals shall be submitted directly to the supreme court along with a summary of the proposal, any relevant background information, and proposed the preliminary legal analysis and appropriate orders in both plain text signature and legislative form. The chief justice shall calendar a review of the proposal at an appropriate administrative law conference. Following review, the supreme court may adopt or reject the proposal, or refer it to a rules standing or advisory committee for~~

review, to be treated as a major rules change or assign it to the rules attorney for further research or review.

~~(e)~~ **Major Change.** The rules attorney shall refer Mmajor rules change proposals shall be referred by the rules attorney to the appropriate rules standing or advisory committee. The committee shall review the proposal, determine if a draft should be circulated to the bar or other interested persons for comment, and determine whether to support or oppose ~~prepare a written recommendation supporting or opposing the change.~~ If no circulation was made, the reason for this decision shall be conveyed to the supreme court when the rules proposal is referred to the court for consideration. The rules attorney shall prepare a summary of the proposal, the committee's recommendation, any other relevant background information, and proposed orders in both plain text and legislative form for the court's consideration. ~~stated in the recommendation.~~ Where appropriate, ~~the recommendation shall also include proposed orders in signature and legislative form, as well as advisory notes suitable for publication stating the rationale for the rule change.~~ All committee written recommendations shall be forwarded to the supreme court. The chief justice shall calendar a review of proposals that a rules committee recommends the recommendation at an appropriate administrative conference. Following review, the supreme court may adopt or reject the proposal in whole or in part, ~~or~~ refer the proposal to the same or a different committee for further study, direct ~~or additional circulation~~ for comment, or assign the proposal to the rules attorney for further research or review.

(fi) **Public Information.** ~~The original proposal, preliminary legal analysis, circulation material, proposed order and advisory notes shall be made available to the public upon request. Committee minutes, reporter's notes, and other preparatory drafts or memoranda shall not be made public.~~ The following material in rule change files is public information and is available for review by members of the public upon request, unless otherwise ordered by the court:

(1) original rule change proposals;

(2) materials considered by the rules committees, including proposal drafts, memoranda submitted to or prepared by the committee, and correspondence;

(3) meeting minutes;

(4) rules committee summaries circulated to members of the Alaska Bar Association or other persons for comment, and any comments received;

(5) referral memoranda presented to the supreme court by the court rules attorney, along with any supporting materials and proposed orders; and

(6) final supreme court orders adopted in response to rule change proposals.

(gj) **Standing Rules and Advisory Committees.** ~~Standing committees shall be established to review Civil Rules, Criminal Rules and Appellate Rules. The chief justice shall establish standing rules committees to review proposals for amendments to the Rules of Court, except that the administrative director shall~~

review proposals to amend the ~~The administrative senior staff shall act as the standing committee to review Administrative Rules. Advisory committees shall be appointed as needed to review all other rules. All committees shall receive major rules change proposals from the rules attorney or the supreme court. In addition, the rules standing committees shall carry on a continuous study of the operation and effect of the rules of procedure and administration. When specific proposals for change initiate in a committee, notice that the proposal is being considered must be published in the Monthly Activity Report under subsection (e) of this rule. The rules committees shall periodically recommend rules changes to the supreme court if the changes Changes to these rules found by the committees to promote: 1) Simplicity in procedure; 2) Fairness in administration; 3) The just determination of litigation; and 4) The elimination of unjustifiable expense and delay, shall be periodically recommended to the supreme court for its consideration.~~

(hk) **Appointment.** The chief justice shall appoint such members of the judiciary, Alaska Bar Association, and other qualified persons to serve on the rules committees, ~~as it deems advisable.~~ Nominees shall be considered from any source, but solicitation for nominee recommendations shall also be made to the board of governors of the state bar association and the state-wide court clerks conference. Where possible, terms of the committee members will be staggered to preserve committee continuity. The members of the committees shall serve without compensation. However, with prior approval, the members may

be reimbursed for per diem and travel expenses incident to their duties as members of the committees.

(i) **Expedited Emergency Rule Action.** Whenever the supreme court determines that ~~an emergency exists requiring~~ the immediate promulgation of a procedural or administrative rule is necessary, the court may take any action required by the circumstances. The court shall follow all of the requirements of this rule consistent with meeting the nature of the particular emergency ~~circumstances~~.

(j) **Effective Date.** The effective date for each rule change order shall be stated in the order. Normally, the effective date shall be the same as the publisher's distribution date, in order to provide adequate notice to those affected by the rule change. Where this is not practical possible, the effective date shall be set as determined by the supreme court. When this occurs, the supreme court shall determine what additional notice, if any, shall be provided to those affected by the rule change. Notice of the Adoption or rejection of a rules changes proposal shall be posted on the court system's website. ~~published in the Monthly Activity Report.~~

(n) **Rule Application.** ~~All rules and orders in effect on the date of the adoption of this rule remain in effect.~~

DATED: September 18, 2006

EFFECTIVE DATE: April 16, 2007

/s/
Chief Justice Fabe

/s/
Justice Matthews

/s/
Justice Eastaugh

/s/
Justice Bryner

/s/
Justice Carpeneti