

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 262

Amending Rule 42(c), Rules
of Civil Procedures.

IT IS ORDERED:

Rule 42(c), Rules of Civil Procedure, is amended to read:

(c) Change of Judge as a Matter of Right. In all courts of the state, a judge or master may be peremptorily challenged as follows:

(1) Nature of Proceeding. In an action pending in the Superior or District Courts, each side is entitled as a matter of right to a change of one judge and of one master. Two or more parties aligned on the same side of an action, whether or not consolidated, shall be treated as one side for purposes of the right to a change of judge, but the presiding judge may allow an additional change of judge to a party whose interests in the action are hostile or adverse to the interests of another party on the same side. A party wishing to exercise his right to change of judge shall file a pleading entitled "Notice of Change of Judge." The notice may be signed by an attorney, it shall state the name of the judge to be changed, and it shall neither specify grounds nor be accompanied by an affidavit. A judge may honor an informal request for change of judge. When he does so, he shall enter upon the record the date of the request and the name of the party or parties requesting change of judge. Such action shall constitute an exercise of the requesting party's right to change of judge.

(2) Filing and Service. The notice of change of judge shall be filed and copies served on the parties, the presiding judge, and the area court administrator, if any, in accordance with Rule 5, Alaska Rules of Civil Procedure.

(3) Timeliness. Failure to file a timely notice precludes change of judge as a matter of right. Notice of change of judge is timely if filed before commencement of trial and within five days after notice that the case has been assigned to a specific judge. In a court location having a single resident judge of the level of court in which the case is filed, the case shall be assigned to that judge when it is at issue upon a question of fact and the clerk shall immediately notify the parties in writing of such assignment. Where a party enters an action after the case has been assigned to a specific judge, a notice of change of judge shall also be timely if filed by the party before the commencement of trial and within five days after he appears or files a pleading in the action.

(4) Waiver. A party waives his right to change a particular judge as a matter of right when he knowingly participates before that judge in:

(i) Any judicial proceeding which concerns the merits of the action and involves the consideration of evidence or of affidavits;

or

(ii) A pretrial conference; or

(iii) The commencement of trial; or

(iv) If the parties agree upon a judge to whom the case is to be assigned. Such waiver is to apply only to the agreed-upon judge.

(5) Assignment of Action. After a notice of change of judge is timely filed, the presiding judge shall immediately assign the matter to a new judge within that judicial district. Should that judge be

challenged, the presiding judge shall continue to assign the case to new judges within the judicial district until all parties have exercised or waived their right to change of judge or until all Superior Court judges, or all District Court judges, within the judicial district have been challenged peremptorily or for cause. Should all such judges in the district be disqualified, the presiding judge shall immediately notify the Administrative Director in writing and request that he obtain from the Chief Justice an order assigning the case to another judge.

If a judge to whom an action has been assigned later becomes unavailable because of death, illness, or other physical or legal incapacities, the parties shall be restored to their several positions and rights of this rule as they existed immediately before the assignment of the action to such judge.

DATED: October 22, 1976

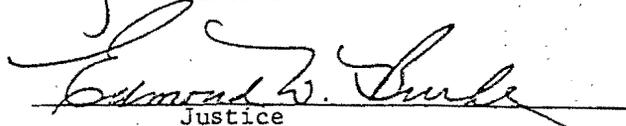
EFFECTIVE DATE: December 31, 1976


Chief Justice


Justice


Justice


Justice


Justice