

**HB**

**52**

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 52 am  
 () Publish Date: \_\_\_\_\_

Revision Date/Time: 4/30/02 8:33 am Dept. Affected: Corrections  
 Title: "An Act relating to the Interstate Comp BRU: Administration & Operations  
 Adult Offender: Supervision; amending Rules 4 and 24... Component: Community Corrections  
 Sponsor: Rules Committee  
 Requester: Senate Judiciary Committee Component No.: 1382

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	0.0	16.0	16.0	16.0	16.0	16.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>16.0</b>	<b>16.0</b>	<b>16.0</b>	<b>16.0</b>	<b>16.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	16.0	16.0	16.0	16.0	16.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>16.0</b>	<b>16.0</b>	<b>16.0</b>	<b>16.0</b>	<b>16.0</b>

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

All states joining the Interstate Compact for Adult Offender Supervision will be assessed a fee depending on the size of the offender population, etc. The State of Alaska has been tentatively assessed at \$18,000 per year. These fees will pay for the administrative costs of the Compact as well as travel to Washington D.C. for the compact commissioners to attend meetings.

It is now estimated that the fee assessment is not likely to be implemented until FY04 due to the need for the Commission to meet, sets fees, get started and implement the Compact so there is no fiscal impact expected the first year. We currently pay \$2,000 per year for the current compact fees so we there will only be an expected \$16,000 impact per year.

Prepared by: Candace Brower  
 Division: Commissioner's Office  
 Approved by: Margaret Pugh, Commissioner  
 Agency: Department of Corrections

Phone 465-4652  
 Date/Time 4/30/02 10:00 AM  
 Date 4/30/02

# STATE OF ALASKA

**DEPARTMENT OF CORRECTIONS**  
*Commissioner's Office*

TONY KNOWLES, GOVERNOR

431 N. Franklin Street, Suite 400  
Juneau, AK 99801  
PHONE: (907) 465-4652  
FAX: (907) 465-3390

February 22, 2002

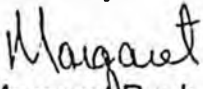
The Honorable Robin Taylor  
Judiciary Committee Chair  
Alaska State Senate  
State Capitol, Room 30  
Juneau, Alaska 99801

Dear Senator Taylor:

I am respectfully requesting that House Bill 52, "An Act relating to the Interstate Compact for Adult Offender Supervision and the State Council for Interstate Adult Offender Supervision; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date" be scheduled for a hearing in Senate Judiciary. The bill was amended and passed out of the House of Representatives on April 28, 2001 with 35 yeas, 4 nays and 1 excused. On May 6, 2001 you, in your capacity as the Judiciary Chair, waived the Senate Judiciary referral and it was referred to Senate Finance. On February 13, 2002 it was heard in Senate Finance and was passed out of committee with Senator Donley, Cochair, and Senators Lemman and Ward signing do pass and Senator Kelly, Cochair, and Senators Green, Austerman, Wilken and Olson signing no recommendation. Senator Donley amended the fiscal note and the bill was given a further committee referral back to Senate Judiciary.

If you have any questions, please feel free to give me a call.

Sincerely,

  
Margaret Pugh  
Commissioner of Corrections

cc: Shari Kochman, Deputy Legislative Director  
Office of the Governor

**REQUEST FOR  
HEARING**

## Journal Text



01-10-2001

House Journal

0054.

The following fiscal note(s) apply:

1. Fiscal, Dept. of Corrections

The Governor's transmittal letter dated January 10, 2001, appears below:

"Dear Speaker Porter:

With this bill I transmit today, Alaska has the opportunity to increase supervision of criminal offenders who travel across state lines, thereby contributing to the growing national interest in protecting victims' rights. This bill allows Alaska to participate in the Interstate Compact for Adult Offender Supervision, joining other states in replacing the now-outdated Interstate Compact on Probation and Parole.

The current compact was enacted in 1937 and can no longer adequately deal with the more than four million offenders on probation and parole, 250,000 of which will cross state lines this year. The proposed new compact provides for an interstate commission to coordinate the transfer and supervision of probationers and parolees between states, as well as enforcement mechanisms for states who fail to abide by the rules of the compact.

A state council would also be created to exercise oversight and advocacy concerning the state's participation in the Interstate Commission as well as to make recommendations to the legislature to facilitate the operations and procedures of the compact within the state.

I urge your prompt and favorable consideration of this bill.

Sincerely,  
/s/  
Tony Knowles  
Governor"

Bill Root:



TO REPORT PROBLEMS WITH BASIS INQUIRY

LIVE KTOO STREAMS



**Sectional Analysis of HB 52**  
**(An Act Relating to the Interstate Compact for Adult Offender Supervision)**

Section 1. Legislative findings that: (1) the existing Interstate Compact (ICSPP) is the oldest corrections compact among the states and has not been amended since its adoption 63 years ago; (2) the ICSPP currently has jurisdiction over more than a quarter million offenders and is inadequate to address problems associated with interstate movement of probationers and parolees; and (3) acknowledges national recommendations to change the ICSPP to effectively manage interstate movement of probationers/parolees to better address public safety and offender accountability.

Section 2. Repeals and reenacts AS 33.36.110 (current Interstate Compact) as the Interstate Compact For Adult Offender Supervision. [This Compact was drafted by a group sponsored by the National Institute of Corrections.]

- Article I (pages 2-3) – discusses Purpose and Policy of Compact to promote public safety and protect victims' rights through better management, control, and tracking of movement of interstate offenders, and to equitably distribute the costs, benefits and obligations of the Compact among participating states.

Discusses creation of Interstate Commission that will establish uniform procedures to manage and track interstate movement of offenders, improve information systems that will assist in goals of public safety and victim notice, report on activities of Compact to all branches of government, and coordinate training of officials monitoring offenders.

- Article II (pages 3-5) – definitions of terms used in the Compact.
- Article III (pages 5-6) – creates the **Interstate Commission** for Adult Offender Supervision, which consists of representatives from each member state (commissioners) appointed by a **State Council** from each state. Discusses membership of the State Council, which is created in Alaska through AS 33.36.140 in section 3 of this bill (page 20).

Provides that, in addition to the commissioners from each state, who shall be the voting members, the Interstate Commission shall include ex-officio non-voting members, including representatives from governor's organizations, legislators, state chief justices, attorneys general, and crime victims.

Each compacting state has one vote on the Interstate Commission, which shall meet at least once each year. The Interstate Commission shall establish an executive committee to act on its behalf when not in session, except for rule-making and amending the Compact.

- Article IV (pages 6-8) – provides the Powers and Duties of the Interstate Commission, the most important of which include: rule-making authority which shall be binding on the compacting states; oversee, supervise and coordinate the interstate movement of

offenders; enforce compliance with compact provisions; appoint committees and hire staff; provide for dispute resolution among the compacting states; report annually to the legislatures, governors, judiciary and state councils of the compacting states concerning the preceding year's activities of the Interstate Commission; coordinate education, training and public awareness regarding interstate movement of offenders; and establish uniform standards for reporting, collecting and changing data.

- Article V (pages 8-10) – Organization and Operation of the Interstate Commission. The Interstate Commission shall, within 12 months of its first meeting, adopt by-laws to govern its conduct and carry out the purposes of the Compact; lists several areas that must be addressed in by-laws.
- Article VI (pages 10-12) – Activities of the Interstate Commission. Highlights include: each member state shall have one vote; authorizes Interstate Commission to adopt by-law to provide for telephonic or telecommunication or electronic participation in meetings; all meetings shall be open to the public with public notice given, with limited exceptions.
- Article VII (pages 12-14) – Rulemaking Functions of the Interstate Commission. Mandates the Interstate Commission to adopt rules to effectively achieve the purposes of the Compact, including transition rules during the period in which the Compact is being considered and enacted by the states. Rulemaking shall substantially comply with the federal Administrative Procedure Act. A majority of the compacting states can reject a rule through legislative action. Proposed rules must be published, a hearing provided and the opportunity for public comment before they may be enacted.

This section also provides what subjects must be addressed through rulemaking within 12 months of the first meeting of the Interstate Commission, including: notice to victims; offender registration; transfer procedures; restitution; level of supervision; transition rules between effective date of the Compact and date on which the last eligible state adopts the Compact; and mediation and dispute resolution between member states.

Provides that the existing rules for the current Interstate Compact will remain in effect only until 12 months after the first meeting of the Interstate Commission.

- Article VIII (pages 14-15) – Oversight, Enforcement and Dispute Resolution by the Interstate Commission. Requires the Interstate Commission to oversee interstate movement of offenders in compacting states and monitor these activities in non-compacting states that may significantly affect compacting states. Directs the courts and executive agencies in members states to enforce the Compact; and provides that the Interstate Commission is entitled to receive service of process, and has the right to intervene, in all judicial or administrative proceedings that pertain to the Compact and that may affect the powers, responsibilities or actions of the Interstate Commission (implemented by two court rule changes in section 6 of this bill (pages 21-22)).

Provides procedures for the Interstate Commission to resolve disputes between states, and to enforce the provisions of the Compact using any of the enforcement mechanisms set out in Article XI (pages 16-19).

- Article IX (pages 15-16) – Finance. Obligates the Interstate Commission to pay for the costs it incurs, to levy and collect annual dues from each compacting state to cover operational costs based upon a formula focusing on population of the state and the volume of interstate offender movement [Alaska is projected to be in the group of states with the lowest annual assessment]. Provides that the Interstate Commission must follow usual responsible rules of finance and accounting, and requires an annual audit by a certified or licensed public accountant to be included in annual report.
- Article X (page 16) – Compacting States' Effective Date and Amendments. Provides that the Compact shall become effective after 35 states have enacted it. No amendment to the Compact shall become effective unless it is enacted into law by unanimous consent of the compacting states.
- Article XI (pages 16-19) – Withdrawal, Default, Termination and Judicial Enforcement. A compacting state may withdraw from the compact by enacting a statute repealing the statute that enacted the Compact. Provides authority for the Interstate Commission to impose penalties on a member state that defaults in any of its obligations under the compact, the by-laws or duly adopted rules, including fines, suspension and termination of membership in the Compact, and judicial enforcement of compliance with Compact requirements.
- Article XII (page 19) – Severability and Construction. Standard language re enforceability of remaining provisions if any particular provision is found to be unenforceable.
- Article XIII (pages 19-20) – Binding effect of Compact and other laws. Clarifies relationship between the Compact and any conflicting laws.

Section 3. AS 33.36 is amended to add sections to implement provisions of the Compact in Alaska.

- AS 33.36.130 provides that the governor shall appoint the compact administrator in Alaska, and describes the responsibilities of the compact administrator to manage the state's supervision and transfer of offenders, and to report to the State Council under AS 33.36.140.
- AS 33.36.140 creates the State Council to implement the provisions of the Compact, the State Council is composed of seven members including five voting members; the commissioner of corrections, the compact administrator, and attorney employed in the Department of Law appointed by the governor, two members appointed by the governor from citizens of the state, at least one of whom must be a representative from victim's groups; and on ex officio nonvoting member from the judicial branch selected by the judiciary. (Note: The makeup of the State council is consistent with the requirements of Article III (b) of the Compact on page 5 of the bill.)

The commissioner of corrections or the commissioner's designee serves as the chair of the State Council. The citizen members of the State Council serve for three-year terms, and these members and the Department of law representative serve at the pleasure of the governor.

This section sets out the duties of the State Council, including: designating the compact administrator as the state's commissioner to the Interstate Council, exercising oversight and advocacy concerning the state's participation in the Interstate Commission, and making recommendations to the legislature to facilitate the implementation of the Compact and its rules and bylaws.

- Section 4. Amends AS 39.25.120(c) to place the compact administrator in the partially exempt service.
- Section 5. Repeals AS 33.36.120, the definition section of the current Interstate Compact.
- Section 6. Amends Civil Rule of Procedure 4 to require service of process on the Interstate Commission As required by Article VIII(a)(2) of the Compact (page 14), and makes clear that this section of the Compact takes effect only if it receives a two-thirds majority of each house.
- Section 7. Amends Civil Rule of Procedure 24 to give the Interstate Commission standing to intervene in a judicial proceeding as required by Article VIII(a)(2) of the Compact(page 14), and makes clear that this section of the Compact takes effect only if it receives a two-thirds majority of each house.
- Section 8. Instructs the reviser of statutes to change the name of the Compact to the Interstate Compact for Adult Offender Supervision.
- Section 9. Effective date. Provides that this Act takes effect only if at least 34 other states ratify the Compact, and the effective date will be the day the commissioner of corrections notifies the reviser of statutes that at least 34 other states have ratified the Compact, or July 1, 2001, whichever is later.



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Susan Herman

*Formerly*  
*The National Victim Center*

Mr. Morris L. Thigpen  
Director  
National Institute of Corrections  
320 First Street, N.W.  
Washington, D.C. 20534

Dear Mr. Thigpen:

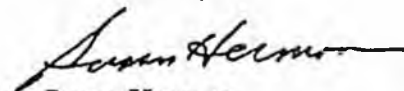
The National Center for Victims of Crime strongly supports the proposed Interstate Compact for Adult Offender Supervision. With an estimated quarter of a million probationers and parolees crossing state borders each year, and no unified national system to monitor their interstate movement, many offenders have been able to move without notification to the receiving state and reside in new communities with little or no supervision.

As you know, the current Interstate Compact for the Supervision of Parolees and Probationers has not been amended since its adoption over 62 years ago. Since the Compact predated most of the state laws enacted to give victims basic rights to be notified, present, and heard during the criminal justice process, and to receive restitution from convicted offenders, we are especially pleased to see that the proposed Compact addresses the implementation of victims' rights along with public safety concerns and offender accountability.

We applaud the victim representation on both the task force that investigated the need for an amended Compact and the drafting committee. The proposed Compact gives victims meaningful roles in the membership of each State Council and on the national Interstate Commission. By including victims in the activities of these governing bodies, we are confident victims' perspectives will be considered as the new Compact is implemented nationwide.

The National Center for Victims of Crime encourages all fifty states and affected territories of the United States to adopt the new, amended Interstate Compact for Adult Offender Supervision.

Best wishes,

  
Susan Herman



# International Community Corrections Association

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**Correctional Services  
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James Murphy  
Ottawa, Ontario • (613) 942-3374

## BOARD RESOLUTION INTERSTATE COMPACT

Whereas: The interstate compact for the supervision of Parolees and Probationers was established in 1937, it is the earliest corrections "compact" established among the states and has not been amended since its adoption over 62 years ago;

Whereas: This compact is the only vehicle for the controlled movement of adult parolees and probationers, and it currently has jurisdiction over more than a quarter of a million offenders;

Whereas: The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision expectations to include currently unregulated practices such as sex offender registration and victim notification requirements.

Whereas: After hearings, national surveys, and a detailed study by a task force appointed by the National Institute of Corrections, the overwhelming recommendation has been to amend the document to bring about a more effective compact that addresses the public safety concerns and offender accountability;

Be it resolved: That the International Community Corrections Association endorse and pledge its support to this effort to amend the compact.

Passed by unanimous vote of the Board  
on March 10, 1999.

Richard J. Billak, Ph.D.  
President

RJB:kjb

**AMERICAN CORRECTIONS ASSOCIATION (ACA)**

**RESOLUTION RELATING TO THE  
INTERSTATE COMPACT FOR THE SUPERVISION  
OF PAROLEES AND PROBATIONERS**

**Whereas:** The interstate compact for the supervision of Parolees and Probationers was established in 1937, it is the earliest corrections "compact" established among the states and has not been amended since its adoption over 62 years ago;

**Whereas:** This compact is the only vehicle for the controlled movement of adult parolees and probationers across state lines, and it currently has jurisdiction over more than a quarter million offenders;

**Whereas:** The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision expectations to include currently unregulated practices such as sex offender registration and victim notification requirements;

**Whereas:** After hearings, national surveys, and a detailed study by a task force appointed by the National Institute of Corrections, the overwhelming recommendation has been to amend the document to bring about a more effective compact that addresses public safety concerns and offender accountability;

**Be it resolved:** That the ACA endorse and pledge its support to this effort to amend the compact.

**Passed:** January 1999

**RESOLUTION OF THE  
AMERICAN PROBATION AND PAROLE ASSOCIATION**

**Whereas,** The interstate compact for the supervision of Parolees and Probationers was established in 1937, it is the earliest corrections "compact" established among the states and has not been amended since its adoption over 62 years ago;

**Whereas,** This compact is the only vehicle for the controlled movement of adult parolees and probationers across state lines, and it currently has jurisdiction over more than a quarter million offenders;

**Whereas,** The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision expectations to include currently unregulated practices such as victim input, victim notification requirements and sex offender notification;

**Whereas,** After hearings, national surveys, and a detailed study by a task force appointed by the National Institute of Corrections, the overwhelming recommendation has been to amend the document to bring about an effective management capacity that addresses public safety concerns and offender accountability.

**BE IT THEREFORE RESOLVED,**

That the Board of Directors of the American Probation and Parole Association hereby endorses and recommends adoption of the amended and newly titled Interstate Compact for Adult Offender Supervision by 50 states and affected territories of the United States of America on this, the first day of November, 1999.

**The Council of State Governments  
Executive Committee**

**“Interstate Compact for Adult Offender Supervision”**

**Whereas, The interstate compact for the supervision of Parolees and Probationers was established in 1937, it is the earliest corrections “compact” established among the states and has not been amended since its adoption over 62 years ago; and**

**Whereas, This compact is the only vehicle for the controlled movement of adult parolees and probationers across state lines, and it currently has jurisdiction over more than a quarter million offenders; and**

**Whereas, The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision expectations to include currently unregulated practices such as victim input, victim notification requirements and sex offender registration; and**

**Whereas, After hearings, national surveys, and a detailed study by a task force appointed by the National Institute of Corrections, the overwhelming recommendation has been to amend the document to bring about an effective management capacity that addresses public safety concerns and offender accountability.**

**BE IT THEREFORE RESOLVED, That the Council of State Governments’ Corrections and Public Safety Task Force endorse and recommends adoption of the Interstate Compact for Adult Offender Supervision by all member states and territories.**

*Adopted December 1999, CSG Annual Meeting & State Leadership Forum*

effective December 15, 1986; by SCO 811 effective August 1, 1987; by SCO 1097 effective January 15, 1993; by SCO 1128 effective July 15, 1993; and by SCO 1269 effective July 15, 1997)

**Note to SCO 1269:** Civil Rule 3(h) was added by § 68 ch. 64 SLA 1996. Section 8 of this order is adopted for the sole reason that the legislature has mandated the amendment.

**Note:** In 1996, the legislature enacted AS 37.15.583(b), which requires that certain actions pertaining to Alaska clean water fund revenue bonds be commenced and conducted in the superior court at Juneau. According to § 13 ch. 141 SLA 1996, this statute has the effect of amending Civil Rule 3.

### Cross References

**CROSS REFERENCE:** AS 09.10.010

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### Rule 4. Process.

(a) **Summons -- Issuance.** Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver it to the plaintiff or the plaintiff's attorney, who shall cause the summons and a copy of the complaint to be served in accordance with this rule. Upon request of the plaintiff separate or additional summonses shall issue against any defendants.

### (b) Summons -- Form.

(1) The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of defendant's failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint.

(2) The summons must be on a form developed by the administrative director or a duplicate of the court form. A party or attorney who lodges a duplicate certifies by lodging the duplicate that it conforms to the current version of the court form.

### (c) Methods of Service -- Appointments to Serve Process -- Definition of Peace Officer.

(1) Service of all process shall be made by a peace officer, by a person specially appointed by the Commissioner of Public Safety for that purpose or, where a rule so provides, by registered or certified mail.

(2) A subpoena may be served as provided in Rule 45 without special appointment.

(3) Special appointments for the service of all process relating to remedies for the seizure

of persons or property pursuant to Rule 64 or for the service of process to enforce a judgment by writ of execution shall only be made by the Commissioner of Public Safety after a thorough investigation of each applicant, and such appointment may be made subject to such conditions as appear proper in the discretion of the Commissioner for the protection of the public. A person so appointed must secure the assistance of a peace officer for the completion of process in each case in which the person may encounter physical resistance or obstruction to the service of process.

(4) Special appointments for the service of all process other than the process as provided under paragraph (3) of this subdivision shall be made freely when substantial savings in travel fees and costs will result.

(5) The term "peace officer" as used in these rules shall include any officer of the state police, members of the police force of any incorporated city, village or borough, United States Marshals and their deputies, other officers whose duty is to enforce and preserve the public peace, and within the authority conferred upon them, persons specially appointed pursuant to paragraph (3) of this subdivision.

(d) **Summons -- Personal Service.** The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) *Individuals.* Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to the individual personally, or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(2) *Infants.* Upon an infant, by delivering a copy of the summons and complaint to such infant personally, and also to the infant's father, mother or guardian, or if there be none within the state, then to any person having the care or control of such infant, or with whom the infant resides, or in whose service the infant is employed; or if any service cannot be made upon any of them, then as provided by order of the court.

(3) *Incompetent Persons.* Upon an incompetent person, by delivering a copy of the summons and complaint personally --

[a] To the guardian of the person or a competent adult member of the person's family with whom the person resides, or if the person is living in an institution, then to the director or chief executive officer of the institution, or if service cannot be made upon any of them, then as provided by order of the court; and

[b] Unless the court otherwise orders, also to the incompetent.

(4) *Corporations.* Upon a domestic or foreign corporation, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process.

(5) *Partnerships.* Upon a partnership, by delivering a copy of the summons and of the

complaint personally to a member of such partnership, or to a managing or general agent of the partnership, or to any other agent authorized by appointment or by law to receive service of process, or to a person having control of the business of the partnership; or if service cannot be made upon any of them, then as provided by order of the court.

(6) *Unincorporated Associations.* Upon an unincorporated association, by delivering a copy of the summons and the complaint personally to an officer, a managing or general agent, or to any other person authorized by appointment or by law to receive service of process; or if service cannot be made upon any of them, then as provided by order of the court.

(7) *State of Alaska.* Upon the state, by sending a copy of the summons and the complaint by registered or certified mail to the Attorney General of Alaska, Juneau, Alaska, and

[a] to the chief of the attorney general's office in Anchorage, Alaska, when the matter is filed in the Third Judicial District; or

[b] to the chief of the attorney general's office in Fairbanks, Alaska, when the matter is filed in the Fourth Judicial District.

(8) *Officer or Agency of State.* Upon an officer or agency of the state, by serving the State of Alaska as provided in the preceding paragraph of this rule, and by delivering a copy of the summons and of the complaint to such officer or agency. If the agency is a corporation, the copies shall be delivered as provided in paragraph (4) of this subdivision of this rule.

(9) *Public Corporations.* Upon a borough or incorporated city, town, school district, public utility district, or other public corporation in the state, by delivering a copy of the summons and of the complaint to the chief executive officer or chief clerk or secretary thereof.

(10) *Unknown Parties.* Upon unknown persons who may be made parties in accordance with statute and these rules, by publication as provided in subdivision (e) of this rule.

(11) *Officer or Agency of State as Agent for Non-governmental Defendant.* Whenever, pursuant to statute, an officer or an agency of the State of Alaska has been appointed as agent to receive service for a non-governmental defendant, or whenever, pursuant to statute, an officer or agency of the State of Alaska, has been deemed, considered or construed to be appointed as agent for a non-governmental defendant by virtue of some act, conduct or transaction of such defendant, service of process shall be made in the manner provided by statute.

(12) *Personal Service Outside State.* Upon a party outside the state in the same manner as if service were made within the state, except that service shall be made by a sheriff, constable, bailiff, peace officer or other officer having like authority in the jurisdiction where service is made, or by a person specifically appointed by the court to make service, or by service as provided in subsection (h) of this rule. In an action to enforce any lien upon or claim to, or to remove any encumbrance or lien or cloud upon the title to, real or personal property within the state, such service shall also be made upon the person or persons in possession or in charge of such property, if any. Proof of service shall be in accordance with (f) of this rule.

(e) **Other Service.** When it shall appear by affidavit of a person having knowledge of the

facts filed with the clerk that after diligent inquiry a party cannot be served with process under (d) of this rule, service may be made by publication or as otherwise directed by the court as provided in this subdivision. Service by publication will be allowed in adoption cases only if ordered by the court for compelling reasons.

(1) *Diligent Inquiry.* Inquiry as to the absent party's whereabouts shall be made by the party who seeks to have service made, or by the party's attorney actually entrusted with the conduct of the action, or by the agent of the attorney. It shall be made of any person who the inquirer has reason to believe possesses knowledge or information as to the absent party's residence or address or the matter inquired of. The inquiry shall be undertaken in person or by letter, and the inquirer shall state that an action has been or is about to be commenced against the party inquired for, that the object of the inquiry is to give such party notice of the action in order that such party may appear and defend it. When the inquiry is made by letter, postage shall be enclosed sufficient for the return of an answer. The affidavit of inquiry shall be made by the inquirer. It shall fully specify the inquiry made and of what persons and in what manner so that by the facts stated therein it may appear that diligent inquiry has been made for the purpose of effecting actual notice.

(2) *Service by Publication.* A notice shall be published four times during four consecutive calendar weeks, once in each week, in a newspaper published in the district in which the action is pending, or if none be published therein, then in a newspaper published in this state circulating in such district. Prior to the last publication a copy of the notice and the complaint or the pleading shall be sent by registered or certified mail, with return receipt requested, with postage prepaid, to the absent party, addressed in care of such party's residence or the place where such party usually receives mail, unless it shall appear by affidavit that such residence or place is unknown or cannot be ascertained after inquiry.

(3) *Other Service.* In its discretion the court may allow service of process to be made upon an absent party in any other manner which is reasonably calculated to give the party actual notice of the proceedings and an opportunity to be heard, if an order permitting such service is entered before service of process is made.

(4) *Form and Contents of Notice -- Time.* The notice referred to in paragraph (2) of this subdivision shall be in the form of a summons. It shall state briefly the nature of the action, the relief demanded, and why the party to whom it is addressed is made a party to the action. Where the action concerns real property or where real property of a party has been attached, the notice shall set forth a legal description of the property, shall state the municipality or district in which it is located, and the street or road on which the property is situated, if the property is improved, it shall state the street number of the same. Where personal property of a party has been attached, the notice shall generally describe the property. If a mortgage is to be foreclosed, the notice shall state the names of all parties thereto and the dates that the mortgage was executed. The notice shall specify the time within which the absent party has to appear or answer or plead, which shall not be less than 20 days after personal service or, if service is made by publication, not less than 30 days after the last date of publication, and shall state the effect of a failure to appear or answer or plead. If the absent party does not appear or answer or plead within the time specified within the notice, the court may proceed as if such party had been served with process within the state.

(5) *Proof of Service.* If service is made by publication, proof of publication shall be made by

the affidavit of the newspaper's publisher, printer, manager, foreman, or principal clerk, or by the certificate of the attorney for the party at whose instance the service was made, to which affidavit or certificate shall be attached a printed copy of the published notice with the name and the dates of the newspaper marked therein. Proof of mailing shall be made by affidavit of a deposit in a post office of the copies of the notice and the complaint or other pleadings.

(f) **Proof of Service.** Proof of service of all papers required or permitted to be served, other than those for which a particular method of proof is prescribed in these rules, must state the name of each person who has been served, must show the day and manner of service, and may be by written acknowledgment of service, by certificate of an attorney, an authorized agent of the attorney, or a pro se litigant, by affidavit of the person who served the papers, or by any other proof satisfactory to the court. Proof of service must be made promptly and in any event before action is to be taken on the paper served by the court or the parties. Failure to make the proof of service required by this subdivision does not affect the validity of service; and the court may at any time allow the proof of service to be amended or supplied unless it clearly appears that to do so would result in material prejudice to the substantial rights of any party.

(g) **Amendment.** At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the parties against whom the process issued.

(h) **Service of Process by Mail.** In addition to other methods of service provided for by this rule, process may also be served within this state or the United States or any of its possessions by registered or certified mail, with return receipt requested, upon an individual other than an infant or an incompetent person and upon a corporation, partnership, and unincorporated association. In such case, copies of the summons and complaint or other process shall be mailed for restricted delivery only to the party to whom the summons or other process is directed or to the person authorized under federal regulation to receive the party's restricted delivery mail. All receipts shall be so addressed that they are returned to the party serving the summons or process or the party's attorney. Service of process by mail under this paragraph is complete when the return receipt is signed.

(i) **Service on Custody Investigator and Guardian Ad Litem.** In all cases involving the custody or visitation of a minor in which a custody investigator or a guardian ad litem has been appointed, the parties shall serve the custody investigator and the guardian ad litem with all pleadings involving the care, custody, or control of the minor.

(j) **Summons -- Time Limit for Service.** The clerk shall review each pending case 120 days after filing of the complaint to determine whether all defendants have been served. If any defendant has not been served, the clerk shall send notice to the plaintiff to show good cause in writing why service on that defendant is not complete. If good cause is not shown within 30 days after distribution of the notice, the court shall dismiss without prejudice the action as to that defendant. The clerk may enter the dismissal if the plaintiff has not opposed dismissal. If the court finds good cause why service has not been made, the court shall establish a new deadline by which plaintiff must file proof of service or proof that plaintiff has made diligent efforts to serve.

(Adopted by SCO 5 October 9, 1959; amended by SCO 49 effective January 1, 1963; by SCO 66 effective July 1, 1964; by SCO 90 effective July 24, 1967; by SCO 168 dated June 25, 1973; by SCO 215 effective May 23, 1975; by SCO 266 effective March 31, 1977; by SCO 282 effective November 15, 1977; by SCO 306 effective April 11, 1978; by SCO 357 effective June 30, 1978; by SCO 373 effective August 15, 1979; by SCO 465 effective June 1, 1981; by SCO 591 effective July 1, 1984; by SCO 679 effective June 15, 1986; by SCO 697 effective September 15, 1986; by SCO 714 effective September 15, 1986; by SCO 788 effective March 15, 1987; by SCO 815 effective August 1, 1987; by SCO 836 effective August 1, 1987; by SCO 1025 effective July 15, 1990; by SCO 1128 effective July 15, 1993; by SCO 1153 effective July 15, 1994; by SCO 1269 effective July 15, 1997; by SCO 1295 effective January 15, 1998; and by SCO 1445 effective October 15, 2001)

**Note:** In 1996, the legislature enacted AS 18.66.160, which relates to service of process in a proceeding to obtain a domestic violence protective order. According to § 77 ch. 64 SLA 1996, this statute has the effect of amending Civil Rule 4.

**Note:** AS 10.06.580(b), as enacted by ch. 166, § 1, SLA 1988, amended Civil Rule 4 by allowing a corporation in an action brought under AS 10.06.580 to serve non-resident dissenting shareholders by certified mail and publication without satisfying the conditions under which certified mail and publication can be used under Civil Rule 4. AS 10.06.638, as enacted by ch. 166, § 1, SLA 1988, amended Civil Rule 4 by changing (1) the requirements for service by publication, and (2) how long a corporation has to respond to a complaint in an involuntary dissolution proceeding before the Commissioner of Commerce and Economic Development may take a default judgment against the corporation.

**Note:** Section 132 of ch. 87 SLA 1997 adds AS 25.27.265(c) which authorizes the court to allow CSED to serve a party by mailing documents to the last known address on file with the agency. This is permitted only if the court finds that CSED has made diligent efforts to serve documents in the appropriate manner. According to § 153 of the Act, § 132 has the effect of amending Civil Rules 4 and 5 by allowing service at the opposing party's last known address on file with the child support enforcement agency in certain circumstances.

### Cross References

(d) **CROSS REFERENCE:** AS 09.05.010

(e)(5) **CROSS REFERENCE:** AS 09.25.070

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### 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

shareholders or class or classes of shareholders whose interests will be affected. If the court directs notice to be given, it shall determine which of the parties to the action shall bear the expense of giving the notice in an amount the court determines to be reasonable in the circumstances. The amount shall be awarded as special costs of the action.

(j) If the derivative action is successful, in whole or in part, or if anything is received as a result of the judgment, compromise, or settlement of that action, the court may award to the plaintiff or plaintiffs reasonable expenses, including reasonable attorney fees, and shall direct an accounting to the corporation for the remainder of the proceeds. This subsection does not apply to a judgment rendered only for the benefit of injured shareholders and limited to a recovery of the loss or damage sustained by them.

(Added by SCO 258 effective November 15, 1976; amended by Chief Justice Special Order No. 2052a effective July 1, 1989)

**Note:** Civil Rule 23.1 in its entirety was adopted by the Alaska Legislature in ch. 166, §§ 1, 17, SLA 1988, rather than by the Alaska Supreme Court.

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#### Rule 23.2. Actions Relating to Unincorporated Associations.

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interest of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23 (d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e).

(Added by SCO 258 effective November 15, 1976)

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#### Rule 24. Intervention.

(a) **Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) **Permissive Intervention.** Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the

rights of the original parties.

**(c) Procedure.** A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the ground therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. When the constitutionality of a state statute affecting the public interest is drawn in question in any action to which the state or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of Alaska of such fact, and the state shall be permitted to intervene in the action.

(Adopted by SCO 5 October 9, 1959; amended by SCO 258 effective November 15, 1976; corrected January, 1993; amended by SCO 1153 effective July 15, 1994; and by SCO 1342 effective September 15, 1998)

**Note:** AS 10.06.628, as enacted by ch. 166, § 1, SLA 1988, amended Civil Rule 24 by allowing a shareholder or creditor of a corporation to intervene in an action for involuntary dissolution of the corporation under AS 10.06.628.

**Note:** Chapter 105 SLA 1998 adopts AS 13.36.175 pertaining to contract actions against a trustee. According to section 23 of the act, subsection (c) of this statute amends Civil Rule 24 by allowing a beneficiary, or the attorney general and certain corporations under certain circumstances, to intervene in a contract action against a trustee without satisfying the criteria in the court rule. The act also adopts AS 13.36.185 pertaining to the tort liability of a trust. According to section 23 of the act, subsection (d) of this statute also amends Civil Rule 24 by allowing a beneficiary to intervene in a tort action against a trust without satisfying the criteria in the court rule.

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## Rule 25. Substitution of Parties.

### (a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

**(b) Incompetency.** If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against the party's representative.

**(c) Transfer of Interest.** In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service