

SCOMM

62:12

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER

FIN

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

4/12/89

DATE TURNED INTO OFFICE _____

Mr. President:

OIL & GAS

Committee considered

SB 277

establishing a panel to investigate the Valdez oil discharge disaster
and to recommend changes needed to minimize the possibility and effects
of similar oil discharges; efd

and recommended:

☒ replace with CS Oil & Gas ☐ same title

☐ attached amendment(s) and

☒ new title

☐ _____ letter of intent adopted

☒ do pass

☐ do not pass

☐ no recommendation

☐ individual recommendations

☐ further referral to _____

FISCAL NOTE(S) attached ☐ zero
☐ appropriation no FN attached

☐ fiscal impact
☐ Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

Rick Halford
Al Adams
Tim Keel

OTHER RECOMMENDATIONS

Chair signature and recommendation

☐ Committee backup attached

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act establishing a commission to
investigate the Exxon Valdez oil spill
Sponsor: Faiks, Halford, Kelly, et al.
Requestor: Senator Pearce

Agency Affected: Office of the Governor
BRU: Commissions and Special Offices
Components: Exxon Valdez Oil Spill
Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	100.0	500.0				
TOTAL OPERATING	100.0	500.0	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	100.0	500.0	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	100.0	500.0	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached analysis

Prepared by: Michael A. Nizich, Director
Division: Division of Administrative Services

Phone: 465-3616
Date: 4-18-89

Approved by Commissioner: Garrey M. Peska
Agency: Chief of Staff

Date: 4-18-89

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CS SB 277 (Oil & Gas) Fiscal Analysis:

It is not possible to accurately assess the costs of the proposed commission. They will, however, be substantial and will include personal services, travel, contractual services, supplies and equipment. An estimated total is shown on the miscellaneous line of the fiscal note.

The number of staff the commission would need to hire, including legal counsel, investigative staff, and administrative staff with legal expertise is unknown. The timeframe specified for the commission to complete its investigations and gather information for its final recommendations would indicate a substantial staffing requirement. The number of meetings that will be necessary in order to hear testimony, review documents and depositions, evaluate information and formulate final recommendations are impossible to predict.

The needed funds are indicated from the general fund. As the specified charges of the commission appear to be duplication of the work of existing entities, i.e., the Department of Law, the Department of Environmental Conservation, federal efforts under the Clean Water Act and the T.A.P.S. Act, N.O.A.A.'s long-term impact studies, etc., recovery of commission costs from Exxon is unlikely.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act establishing a commission to
investigate the Exxon Valdez oil spill....
Sponsor: Faiks, Halford, Kelly, et al.
Requestor: Senator Pearce

Agency Affected: Office of the Governor
BRU: Commissions and Special
Offices
Components: Exxon Valdez Oil Spill
Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	100.0	500.0				
TOTAL OPERATING	100.0	500.0	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	100.0	500.0				
FEDERAL FUNDS						
OTHER						
TOTAL	100.0	500.0				

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached analysis

Prepared by: Michael A. Nizich, Director
Division: Division of Administrative Services

Phone: 465-3616
Date: 4-14-89

Approved by Commissioner: Garrey M. Peska
Agency: Chief of Staff

Date: 4-14-89

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CS SB 277 (Oil & Gas) Fiscal Analysis:

It is not possible to accurately assess the costs of the proposed commission. They will, however, be substantial and will include personal services, travel, contractual services, supplies and equipment. An estimated total is shown on the miscellaneous line of the fiscal note.

The number of staff the commission would need to hire, including legal counsel, investigative staff, and administrative staff with legal expertise is unknown. The timeframe specified for the commission to complete its investigations and gather information for its final recommendations would indicate a substantial staffing requirement.

The number of meetings that will be necessary in order to hear testimony, review documents and depositions, evaluate information and formulate final recommendations are impossible to predict. At a minimum, the full commission will receive \$1,500 per day for meetings or commission business in addition to travel and per diem costs.

The needed funds are indicated from the general fund. As the specified charges of the commission appear to be duplication of the work of existing entities, i.e., the Department of Law, the Department of Environmental Conservation, federal efforts under the Clean Water Act and the T.A.P.S. Act, N.O.A.A.'s long-term impact studies, etc., recovery of commission costs from Exxon is unlikely.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act establishing a panel to
investigate the Valdez oil discharge disaster...
Sponsor: Senate Special Com. on Oil & Gas
Requestor: Senate Special Com. on Oil & Gas

Affect Agency Legislative Affairs Agency
BRU: Legislative Council
Legislative Operating Budget
Components Legislative Operating Budget
Session Expenses

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (THOUSANDS OF DOLLARS)

General Fund						
Federal Fund						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

No fiscal impact. Travel costs for legislators absorbed within existing budgets of Session Expenses and the Legislative Operating Budget.

Prepared By: Pamela Stoops, Director
Division: Administrative Services

Pamela Stoops

Phone: 465-3850
Date: 4/14/89

Approved By: Warren Endicott, Executive Director
Agency: Legislative Affairs Agency

Warren W Endicott

Date: 4/14/89

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY (IES)

SENATE BILL NO. 277

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing a panel to investigate the Valdez oil discharge disaster and to recommend changes needed to minimize the possibility and effects of similar oil discharges; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. VALDEZ OIL DISASTER REVIEW PANEL. (a) There is established the Valdez Oil Disaster Review Panel consisting of 14 members. Two members shall be senators appointed by the president of the senate and two members shall be representatives appointed by the speaker of the house of representatives. Ten members shall be appointed by the governor.

(b) Before appointing 10 members to the panel under (a) of this section, the governor shall request the United States Coast Guard, the Environmental Protection Agency, the Alyeska Pipeline Service Company, and the Exxon USA Corporation to each nominate a representative to serve as a member of the panel. If an entity named in this subsection nominates a representative, the governor shall appoint the nominee as one of the 10 members to be appointed by the governor.

(c) After appointing members under (b) of this section, the governor shall appoint additional members up to a total of 10 members, including

- (1) a representative of the merchant shipping industry;
- (2) a representative of environmental groups;
- (3) a representative of fishermen from the Prince William Sound area; and

1 (4) three persons who are recognized nationally or statewide for
2 their expertise in science, technology, or management.

3 (d) The panel members shall elect from among themselves a chair and
4 vice-chair.

5 (e) The panel may hire staff it considers necessary to perform its
6 duties, including legal counsel.

7 (f) Members of the panel serve without compensation, but nongovern-
8 mental members are entitled to per diem and travel expenses authorized for
9 boards and commissions under AS 39.20.180.

10 * Sec. 2. DUTIES OF THE PANEL. (a) The panel shall gather information
11 relating to

12 (1) the events leading up to the Valdez oil disaster that began
13 March 24, 1989;

14 (2) the ensuing efforts to contain and clean up the oil dis-
15 charged;

16 (3) the short-term and long-term effects of the Valdez oil
17 disaster on the natural resources and the economy of the state.

18 (b) By March 1, 1990, the panel shall submit a report to the governor
19 and to the legislature containing its findings and recommendations on

20 (1) the factual chain of events that preceded the grounding of
21 the Exxon Valdez and the extent to which oil industry practices and govern-
22 mental practices or laws should be changed to minimize the potential for
23 future similar events;

24 (2) the containment and cleanup actions that were taken or not
25 taken after the discharge, the extent to which current technology was
26 available and used, and ways to improve oil spill response technology and
27 procedures;

28 (3) the environmental and economic effects of the oil discharge;
29 and

1 (4) recommendations on steps that should be taken by the oil
2 industry and by all levels of government to ensure proper management,
3 handling, and transportation of crude oil and to improve the ability of
4 industry and governmental agencies to respond to oil discharges.

5 * Sec. 3. INVESTIGATIONS; HEARINGS. (a) The panel may issue subpoe-
6 nas, administer oaths, hold hearings, and conduct investigations related to
7 its duties.

8 (b) The panel may compel the attendance of witnesses and production
9 of papers, books, records, accounts, documents, and testimony, and may have
10 the deposition of witnesses taken in a manner prescribed by court rule or
11 law for the taking of depositions in civil actions when consistent with the
12 duties assigned to the panel.

13 (c) On a majority vote of the panel, subpoenas and subpoenas duces
14 tecum may be issued and served in the manner prescribed by AS 44.62.430(b)
15 and (c) and court rule. The failure, refusal, or neglect to obey a sub-
16 poena is punishable as contempt in the manner prescribed by law or court
17 rule. The superior court may compel obedience to the panel's subpoena in
18 the same manner as prescribed for obedience to a subpoena issued by the
19 court.

20 (d) State agencies shall, to the extent permitted by law, cooperate
21 with the panel and provide it with information it requests for carrying out
22 its duties.

23 * Sec. 4. This Act is repealed March 21, 1990.

24 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).
25
26
27
28
29

Alaska State Legislature

JUDICIARY
CHAIRMAN
907-465-4523



JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

Senate Bill 277 Sectional Analysis

Establishing a panel to investigate the Valdez oil discharge disaster and to recommend changes needed to minimize the possibility and effects of similar oil discharges; and providing for an effective date

Section 1. VALDEZ OIL DIASTER REVIEW PANEL.

- (a) A 14 member panel is established consisting of:
 - 2 Senators appointed by President of the Senate
 - 2 Representatives appointed by the House Speaker
- (b) and (c) Ten members appointed by the Governor, representing:
 - 1 United States Coast Guard
 - 1 Environmental Protection Agency
 - 1 Alyeska Pipeline Service Company
 - 1 Exxon USA Corporation
 - 1 merchant shipping industry
 - 1 environmental community
 - 1 fishermen from Prince William Sound area
 - 3 recognized for expertise in science, technology or management
- (d) The panel shall select its chairman and vice chairman.
- (e) The panel may hire staff to perform its duties.

Section 2. DUTIES OF THE PANEL.

- (a) The panel shall gather information relating to:
 - (1) events leading up to the Valdez spill

OUT OF SESSION

- (2) efforts to contain and clean up the oil discharged
- (3) short and long term effects of the spill on the natural resources and the economy of the state.

(b) The panel's report shall be submitted by March 1, 1990 and will include findings and recommendations on:

(1) factual chain of events preceding the grounding of the Exxon Valdez and the extent oil industry and governmental practices or law should be changed to minimize the potential for future similar events;

(2) containment and clean up actions, the extent to which current technology was available and used, and ways to improve spill response;

(3) environmental and economic effects of the oil discharge;

(4) recommendations on steps to be taken to ensure proper management, handling, and transportation of crude oil in the future

Section 3. INVESTIGATIONS; HEARINGS.

(a) - (c) The panel may issue subpoenas, administer oaths, hold hearings and conduct investigations related to its duties.

(d) State agencies shall, to the extent permitted by law, cooperate with the panel and provide information requested.

Section 4. Panel Termination

The panel sunsets twenty days after submission of its report (March 21, 1990).

Section 5. Effective Date

Immediate effective date.

Alaska State Legislature

JUDICIARY
CHAIRMAN
907-465-4523



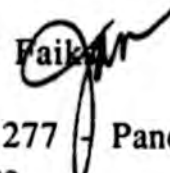
JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

April 12, 1989

MEMORANDUM

TO: Senator Drue Pearce, Chairman
Senate Oil and Gas Committee

FROM: Senator Jan Faiks 

SUBJECT: Senate Bill 277 - Panel to Investigate the Valdez
Oil Discharge

Senate Bill 277 is modeled after the executive order which established the Presidential Commission on the Space Shuttle Challenger Accident. It is my hope that by establishing a similar mechanism, Alaskans will be able to examine the facts and circumstances leading to the spill as well as develop recommendations on steps which can be taken to minimize the possibility of a similar accident occurring again in the future.

For your reference, attached is a sectional analysis of the bill, as well as a copy of the Presidential Commission's executive order and summary of the commission's report on the Challenger accident.

OUT OF SESSION

3111 C STREET ANCHORAGE, ALASKA 99503 907-561-7610

January 2, 1986, which established
the Presidential Commission on the Space Shuttle Challenger Accident

EXECUTIVE ORDER

PRESIDENTIAL COMMISSION ON THE
SPACE SHUTTLE CHALLENGER ACCIDENT

By the authority vested in me as President by the Constitution and statutes of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to establish a commission of distinguished Americans to investigate the accident to the Space Shuttle Challenger, it is hereby ordered as follows:

Section 1. Establishment. (a) There is established the Presidential Commission on the Space Shuttle Challenger Accident. The Commission shall be composed of not more than 20 members appointed or designated by the President. The members shall be drawn from among distinguished leaders of the government, and the scientific, technical, and management communities.

(b) The President shall designate a Chairman and a Vice Chairman from among the members of the Commission.

Sec. 2. Functions. (a) The Commission shall investigate the accident to the Space Shuttle Challenger, which occurred on January 28, 1986.

(b) The Commission shall:

(1) Review the circumstances surrounding the accident to establish the probable cause or causes of the accident; and

(2) Develop recommendations for corrective or other action based upon the Commission's findings and determinations.

(c) The Commission shall submit its final report to the President and the Administrator of the National Aeronautics and Space Administration within one hundred and twenty days of the date of this Order.

sec. 3. Administration. (a) The heads of Executive departments and agencies shall, to the extent permitted by law, provide the Commission with such information as it may require for purposes of carrying out its functions.

(b) Members of the Commission shall serve without compensation for their work on the Commission. However, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the government service (5 U.S.C. 5701-5707).

(c) To the extent permitted by law, and subject to the availability of appropriations, the Administrator of the National Aeronautics and Space Administration shall provide the Commission with such administrative services, funds, facilities, staff, and other support services as may be necessary for the performance of its functions.

Sec. 4. General Provisions. (a) Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act which are applicable to the Commission, except that of reporting annually to the Congress, shall be performed by the Administrator of the National Aeronautics and Space Administration, in accordance with guidelines and procedures established by the Administrator of General Services.

(b) The Commission shall terminate 60 days after submitting its final report.

Ronald Reagan

THE WHITE HOUSE,

February 3, 1986.

Report to the President

By The
**PRESIDENTIAL
COMMISSION**
*on the Space Shuttle
Challenger Accident*

June 6th, 1986
Washington, D.C.

Presidential Commission on the Space Shuttle Challenger Accident

William P. Rogers, Chairman

Former Secretary of State under President Nixon (1969-1973), and Attorney General under President Eisenhower (1957-1961), currently a practicing attorney and senior partner in the law firm of Rogers & Wells. Born in Norfolk, New York, he was awarded the Medal of Freedom in 1973. He holds a J.D. from Cornell University (1937) and served as LCDR, U.S. Navy (1942-1946).

Neil A. Armstrong, Vice Chairman

Former astronaut, currently Chairman of the Board of Computing Technologies for Aviation, Inc. Born in Wapakoneta, Ohio, Mr. Armstrong was spacecraft commander for Apollo 11, July 16-24, 1969, the first manned lunar landing mission. He was Professor of Aeronautical Engineering at the University of Cincinnati from 1971 to 1980 and was appointed to the National Commission on Space in 1985.

David C. Acheson

Former Senior Vice President and General Counsel, Communications Satellite Corporation (1967-1974), currently a partner in the law firm of Drinker Biddle & Reath. Born in Washington, DC, he previously served as an attorney with the U.S. Atomic Energy Commission (1948-1950) and was U.S. Attorney for the District of Columbia (1961-1965). He holds an LL.B. from Harvard University (1948) and served as LT, U.S. Navy (1942-1946).

Dr. Eugene E. Covert

Educator and engineer. Born in Rapid City, South Dakota, he is currently Professor and

Head, Department of Aeronautics and Astronautics, at Massachusetts Institute of Technology. Member of the National Academy of Engineering, he was a recipient of the Exceptional Civilian Service Award, USAF, in 1973 and the NASA Public Service Award in 1980. He holds a Doctorate in Science from Massachusetts Institute of Technology.

Dr. Richard P. Feynman

Physicist. Born in New York City, he is Professor of Theoretical Physics at California Institute of Technology. Nobel Prize winner in Physics, 1965, he also received the Einstein Award in 1954, the Oersted Medal in 1972 and the Niels Bohr International Gold Medal in 1973. He holds a Doctorate in Physics from Princeton (1942).

Robert B. Hotz

Editor, publisher. Born in Milwaukee, Wisconsin. He is a graduate of Northwestern University. He was the editor-in-chief of *Aviation Week & Space Technology* magazine (1953-1980). He served in the Air Force in World War II and was awarded the Air Medal with Oak Leaf Cluster. Since 1982, he has been a member of the General Advisory Committee to the Arms Control and Disarmament Agency.

Major General Donald J. Kutyna, USAF

Director of Space Systems and Command, Control, Communications. Born in Chicago, Illinois, and graduate of the U.S. Military Academy, he holds a Master of Science degree from Massachusetts Institute of Technology (1965). A command pilot with over 4,000 flight

hours, he is a recipient of the Distinguished Service Medal, Distinguished Flying Cross, Legion of Merit and nine air medals.

Dr. Sally K. Ride

Astronaut. Born in Los Angeles, California, she was a mission specialist on STS-7, launched on June 18, 1983, becoming the first American woman in space. She also flew on mission 41-G launched October 5, 1984. She holds a Doctorate in Physics from Stanford University (1978) and is still an active astronaut.

Robert W. Rummel

Space expert and aerospace engineer. Born in Dakota, Illinois, and former Vice President of Trans World Airlines, he is currently President of Robert W. Rummel Associates, Inc., of Mesa, Arizona. He is a member of the National Academy of Engineering and is holder of the NASA Distinguished Public Service Medal.

Joseph F. Sutter

Aeronautical engineer. Currently Executive Vice President of the Boeing Commercial Airplane Company. Born in Seattle, he has been with Boeing since 1945 and was a principal figure in the development of three generations of jet aircraft. In 1984, he was elected to the National Academy of Engineering. In 1985, President Reagan conferred on him the U.S. National Medal of Technology.

Dr. Arthur B. C. Walker, Jr.

Astronomer. Born in Cleveland, Ohio, he is currently Professor of Applied Physics and was formerly Associate Dean of the Graduate Divi-

sion at Stanford University. Consultant to Aerospace Corporation, Rand Corporation and the National Science Foundation, he is a member of the American Physical Society, American Geophysical Union, and the American Astronomy Society. He holds a Doctorate in Physics from the University of Illinois (1962).

Dr. Albert D. Wheelon

Physicist. Born in Moline, Illinois, he is currently Executive Vice President, Hughes Aircraft Company. Also a member of the President's Foreign Intelligence Advisory Board, he served as a consultant to the President's Science Advisory Council from 1961 to 1974. He holds a Doctorate in Physics from Massachusetts Institute of Technology (1952).

Brigadier General Charles Yeager, USAF (Retired)

Former experimental test pilot. Born in Myra, West Virginia, he was appointed in 1985 as a member of the National Commission on Space. He was the first person to penetrate the sound barrier and the first to fly at a speed of more than 1,600 miles an hour.

Dr. Alton G. Keel, Jr., Executive Director

Detailed to the Commission from his position in the Executive Office of the President, Office of Management and Budget, as Associate Director for National Security and International Affairs; formerly Assistant Secretary of the Air Force for Research, Development and Logistics; and Senate Staff. Born in Newport News, Virginia, he holds a Doctorate in Engineering Physics from the University of Virginia (1970).

	Executive Secretary	White House MAJ, USA/OMB
Special Assistants		
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M. M. Black	Personal Secretary to Vice Chairman & Executive Director	OMB
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Randy R. Kehrli	Evidence Analysis	DOJ Atty.
E. Thomas Almon	Investigator	Special Agent, FBI
Patrick J. Maley	Investigator	Special Agent, FBI
John R. Molesworth, Jr.	Investigator	Special Agent, FBI
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Dr. R. Curtis Graeber	Human Factors Specialist	LTC, USA/NASA
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Wilbur W. Wells	Rocket Propulsion Lab	USAF
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Laddie E. Dufka	Aerospace Corp	Pro Bono
Mohan Aswani	Aerospace Corp	Pro Bono
Michael L. Marx	Metallurgist	NTSB

An Overview

President Reagan, seeking to ensure a thorough and unbiased investigation of the Challenger accident, announced the formation of the Commission on February 3, 1986. The mandate given by the President, contained in Executive Order 12546, required Commission members to:

- (1) Review the circumstances surrounding the accident to establish the probable cause or causes of the accident; and
- (2) Develop recommendations for corrective or other action based upon the Commission's findings and determinations.

Following their swearing in by Chairman Rogers on February 6th, Commission members immediately began a series of hearings during which NASA officials outlined agency procedures covering the Shuttle program and the status of NASA's investigation of the accident.

Shortly thereafter, on February 10th, Dr. Alton G. Keel, Jr., Associate Director of the Office of Management and Budget, was appointed Executive Director. Dr. Keel began gathering a staff of 15 experienced investigators from various government agencies and the military services, and administrative personnel to support Commission activities.

During a closed session on February 10, 1986, the Commission began to learn of the troubled history of the Solid Rocket Motor joint and seals. Moreover, it discovered the first indication that the contractor, Morton Thiokol, initially recommended against launch on January 27, 1986, the night before the launch of 51-L, because of con-

cerns regarding low temperature effects on the joint and seal. To investigate this disturbing development, additional closed sessions were scheduled for February 13th and 14th at Kennedy. The February 13, 1986, session was an extensive presentation of film, video and telemetry data relating to the Challenger accident. It provided the Commission the first evidence that the Solid Rocket Motor joint and seal may have malfunctioned, initiating the accident.

The session on February 14th included NASA and contractor participants involved in the discussion on January 27, 1986, not to launch 51-L. After testimony was received, an executive session of the Commission was convened. The following statement was subsequently issued by the Chairman on February 15, 1986, reflecting the conclusion and view of the Commission:

"In recent days, the Commission has been investigating all aspects of the decision making process leading up to the launch of the Challenger and has found that the process may have been flawed. The President has been so advised.

"Dr. William Graham, Acting Administrator of NASA, has been asked not to include on the internal investigating teams at NASA, persons involved in that process.

"The Commission will, of course, continue its investigation and will make a full report to the President within 120 days."

The role of the Commissioners thus changed from that of overseers to that of active investigators and analysts of data presented by NASA and its contractors.

The Commission itself divided into four investigative panels:

1. Development and Production, responsible for investigating the acquisition and test and evaluation processes for the Space Shuttle elements;
2. Pre-Launch Activities, responsible for assessing the Shuttle system processing, launch readiness process and pre-launch security;
3. Mission Planning and Operations, responsible for investigating mission planning and operations, schedule pressures and crew safety areas; and
4. Accident Analysis, charged with analyzing the accident data and developing both an anomaly tree and accident scenarios.

By February 17th, the panel organization had been finalized and, on February 18th, Chairman Rogers described the Commission's new approach before Congress. Working groups were sent to Marshall, Kennedy and Thiokol to analyze data relating to the accident and to redirect efforts. NASA's investigation was also reorganized to reflect the structure of the Commission's panels.

A series of public hearings were planned on February 25th, 26th and 27th to assure an orderly and fair presentation of all the facts that the Commission had discovered concerning the launch decision making process for flight 51-L. At these hearings, additional information about the launch decision was obtained from the testimony of Thiokol, Rockwell and NASA officials. Details about the history of problems with the then suspect Solid Rocket Motor joints and seals also began emerging and served to focus the Commission's attention on a need to document fully the extent of knowledge and awareness about the problems within both Thiokol and NASA.

Following these hearings, a substantial portion of the investigative efforts of the Commission was conducted by the separate panels in parallel with full Commission hearings.

The Accident Analysis Panel, chaired by Major General Donald Kutyna, made several trips to both Kennedy and Marshall and traveled to Thiokol facilities in Utah to review photographic and telemetric evidence as well as the results of the salvage operation and to oversee the tests being conducted by NASA and Thiokol engineers.

The Accident Analysis Panel followed standard investigative procedures. An extensive effort

was needed to establish the design, manufacturing and processing baseline configuration of the Shuttle vehicle for STS 51-L. A data base was established for the examination and analysis of information related to all flight elements and segments. From these data and a compilation of possible and observed deviations from the norm, scenarios that might have led to the accident were developed. Tests and analyses were then performed to determine the specific scenarios most likely to have caused loss of Challenger.

Early in March, at the request of the Chairman, this group assembled and directed the Commission's independent team of technical observers with extensive experience in Solid Rocket Motor technology and accident investigation to validate and interpret the tests and analyses performed on the Thiokol motor by NASA and Thiokol.

The Development and Production Panel, chaired by Joseph Sutter, centered its investigation on the production and testing activities of the Shuttle element contractors. Starting at Johnson, the panel and staff investigators looked at how these contractors and their NASA counterparts interact.

They next traveled to the Wasatch plant of Thiokol in Promontory, Utah. Thiokol personnel briefed the group on the details of the design, manufacturing, verification and certification of the Solid Rocket Motors. Similar sessions took place in April in Downey, California, at the headquarters of Rocketdyne, Inc., the Shuttle main engine contractor; in Canoga Park, California, at the facilities of Rockwell International, the Orbiter contractor; in Michoud, Louisiana, at the plant of Martin Marietta, the External Tank contractor; and in Berea, Kentucky, at the facilities of Parker Seal Company, the manufacturers of the O-ring seals of the Thiokol Solid Rocket Motors.

In addition, the panel traveled to Marshall to learn about Marshall's interaction with Thiokol and to discuss issues that had been raised during the visits to the contractors' plants.

The Pre-Launch Activities Panel, chaired by David Acheson, centered its investigation at Kennedy where the Shuttle elements are assembled and all other final launch preparations are completed. This panel, in conjunction with the Mission Planning and Operations Panel, chaired by Dr. Sally Ride, met with its NASA counterparts in early March. This series of meetings identified for the Commission the various aspects of the pre-

launch process that required thorough review, not only for the purpose of the Challenger accident investigation but also to increase safety margins for the future.

Later in March the Pre-Launch Panel again met at Kennedy to receive the NASA Team's preliminary reports and to focus on the spare parts issue and Solid Rocket Booster assembly operations. Panel members also met with contractor personnel involved in Shuttle processing and Kennedy security work.

After the joint meeting at Kennedy with the Pre-Launch Activities Panel, the Mission Planning and Operations Panel traveled to Johnson to begin working with its NASA counterparts and to initiate its own investigative efforts. A specific focus of its work was the mission planning and crew preparation for STS 51-L and details of NASA's safety, reliability and quality assurance programs. Later meetings at both Johnson and Marshall dealt with range safety, weather criteria for launch, flight delays and hardware testing.

While the work of the individual panels and their investigative staffs was ongoing, a general investigative staff began a series of individual interviews to document fully the factual background of various areas of the Commission's interest, including the telecon between NASA and Thiokol officials the night before the launch; the history of joint design and O-ring problems; NASA safe-

ty, reliability and quality assurance functions; and the assembly of the right Solid Rocket Booster for STS 51-L. Subsequent investigative efforts by this group were directed in the area of the effectiveness of NASA's organizational structure, particularly the Shuttle program structure, and allegations that there had been external pressure on NASA to launch on January 28th.

More than 160 individuals were interviewed and more than 35 formal panel investigative sessions were held generating almost 12,000 pages of transcript (Table 1 and Table 2). Almost 6,300 documents, totaling more than 122,000 pages, and hundreds of photographs were examined and made a part of the Commission's permanent data base and archives. These sessions and all the data gathered added to the 2,800 pages of hearing transcript generated by the Commission in both closed and open sessions.

In addition to the work of the Commission and the Commission staff, NASA personnel expended a vast effort in the investigation. More than 1,300 employees from all NASA facilities were involved and were supported by more than 1,600 people from other government agencies and over 3,100 from NASA's contractor organizations. Particularly significant were the activities of the military, the Coast Guard and the NTSB in the salvage and analysis of the Shuttle wreckage.

Table 1
Commission Investigative Interviews

Interviews of January 27, 1986

Teleconference (8:15 PM EST)

Participants

Ben Powers	John Schell	William Macbeth	Jerry E. Mason
Frank Adams	Keith Coates	Brian Russell	Robert Lund
Larry Wear	George Hardy	Jack Kapp	Joseph Kilminster
James Smith	Jud Lovingood	Ron Ebeling	Roger Boisjoly
Boyd Brinton	Jack Buchanan	Calvin Wiggins	Arnold Thompson
Robert Schwinghamer	Allan McDonald	Larry Sayer	Jerry Peoples
William Reihl	Carver Kennedy	Joel Maw	James Kingsbury
Wayne Little	Cecil Houston	Kyle Speas	
John Q. Miller	Lawrence Mulloy	Jerry Burn	
John McCarty	Stanley Reinartz	Don Keiner	

(c) Every official and employee shall, unless otherwise authorized by law to travel outside the state, obtain prior approval for travel outside the state from the head of the official's or employee's department or from an immediate supervisor, or from the Department of Administration if the official or employee is not within a department or is not under the direct supervision of an official or supervisor. If an employee deviates materially from the travel authorized under this section, the employee must obtain approval for the deviation from the person who approved the travel before the Department of Administration may reimburse the employee for the travel. (§ 7 ch 60 SLA 1957; am § 1 ch 83 SLA 1962)

Sec. 39.20.150. Advances and recovery. (a) An agency may advance, through proper disbursing methods, to a person entitled to per diem or mileage allowance under AS 39.20.110 — 39.20.170 the sums considered advisable considering the character and probable duration of the travel to be performed.

(b) Sums advanced and not used for allowable travel expense are recoverable by setoff against salary due, or otherwise, from the person to whom advanced, or the person's estate, by deduction from any amount due from the state, or by other legal methods of recovery that may be necessary. (§ 8 ch 60 SLA 1957)

Sec. 39.20.160. Regulations. The fixing and payment under AS 39.20.110 — 39.20.170 of travel and per diem allowances and of advances and recovery and reimbursement of travel expenses shall be in accordance with regulations adopted by the commissioner of administration. The regulations shall be uniform for all officials and employees, and all agencies and departments. The regulations shall also govern the use of public transportation facilities by officials and employees. The regulations relate to the internal management of state agencies and their adoption is not subject to the Administrative Procedure Act (AS 44.62). (§ 9 ch 60 SLA 1957; am § 2 ch 13 SLA 1963)

Sec. 39.20.170. Construction of AS 39.20.110 — 39.20.170. AS 39.20.110 — 39.20.170 may not be construed to modify or repeal a law providing for the travel expenses of the governor, or members of the legislature, or members of boards or commissions of the state government. (§ 10 ch 60 SLA 1957)

Sec. 39.20.180. Transportation and per diem expenses for members of boards, commissions, etc. Except as otherwise provided by law, from and after March 27, 1962, the provisions in this section relating to per diem and transportation govern exclusively and supersede all other provisions of law with respect to a member of a state board, commission, committee, judicial council, or other similar

body of persons of the state organized or established under the authority of law, but excluding any other state employee other than a legislator, who is otherwise entitled by law to receive from the state payments for expenses of transportation, and for reimbursement or for per diem in lieu of reimbursement for other expenses incident to duties as such member:

(1) For transportation, the member is entitled either to the use of state transportation requests, or to be reimbursed for expenses of transportation to the same extent, in the same manner, and under the same conditions as provided for state officials and employees by the provisions of AS 39.20.110 — 39.20.170.

(2) For reimbursement for other expenses, the member is entitled to a per diem allowance prescribed by the commissioner of administration under the regulatory authority set out in AS 39.20.160 for each day or portion of a day spent in actual meeting or on authorized official business incident to duties as a member. (§ 1 ch 130 SLA 1953; am § 1 ch 34 SLA 1960; am § 1 ch 37 SLA 1962; am § 5 ch 136 SLA 1967; am § 12 ch 47 SLA 1974)

Cross references. — For coverage of state board and commission members under the Worker's Compensation Act, see AS 23.30.242.

Opinions of attorney general. — In order to recover an allowance for non-meeting activity, an occupational licensing board member must be engaged in an activity within the scope of the applicable board's powers. November 6, 1984 Op. Att'y Gen.

* An occupational licensing board member cannot receive a per diem allowance for conducting an activity that should be performed by division personnel; any activity approved must be specifically defined by statute as a board duty and

should be an activity that cannot be accomplished within the confines of a board meeting. If the task can be performed during a meeting, then per diem should not be paid for time unnecessarily spent by a board member outside a board meeting. It is important, of course, for budgetary reasons, that board activity for which per diem compensation is sought be kept to a minimum. November 6, 1984 Op. Att'y Gen.

The Alaska Power Authority may reimburse a member only for (1) time spent in actual meeting or (2) time spent on authorized official business incident to his duties as a member. April 19, 1984 Op. Att'y Gen.

NOTES TO DECISIONS

Cited in Laborers & Hod Carriers Local (File Nos. 1435, 1459), 494 P.2d 808 341 v. Groothuis, Sup. Ct. Op. No. 773 (1972).

Sec. 39.20.185. State employees who are members of certain boards. A state official or employee who is a member of the judicial council or a state official or employee appointed by the governor to a state board, commission, or committee established under the authority of law is not entitled to per diem when the meeting or other business takes place in the community of which the member is a resident. (§ 1 ch 139 SLA 1968)

Collateral references. — 2 Am. Jur. 73 C.J.S., Public Administrative Law and Procedure, § 405.

Sec. 44.62.420. Form of notice of hearing. (a) The agency shall deliver or mail a notice of hearing to all parties at least 10 days before the hearing. The hearing shall not be held before the expiration of the time within which the respondent is entitled to file a notice of defense.

(b) The notice to respondent shall be substantially in the following form but may include other information:

You are notified that a hearing will be held before (here insert name of agency) at (here insert place of hearing) upon the day of, 19..., at the hour of, upon the charges made in the accusation served upon you. You may be present at the hearing, may be but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You may have subpoenas issued to compel the attendance of witnesses and the production of books, documents or other things by applying to (here insert appropriate office or agency). (§ 10 (ch 2) ch 143 SLA 1959)

Sec. 44.62.430. Subpoena. (a) Before the hearing begins the agency shall issue subpoenas and subpoenas duces tecum at the request of a party in accordance with the rules of civil procedure. After the hearing begins the agency hearing a case or a hearing officer sitting alone may issue subpoenas and subpoenas duces tecum.

(b) A subpoena issued under (a) of this section extends to all parts of the state and shall be served in accordance with the rules of civil procedure. A witness is not obliged to attend at a place out of the election district in which the witness resides unless the distance is less than 100 miles from the place of residence, except that the agency, upon affidavit of a party showing that the testimony of the witness is material and necessary, may endorse on the subpoena an order requiring the attendance of the witness.

(c) A witness who is not a party and who appears under a subpoena is entitled to receive

- (1) fees, except a witness who is an officer or employee of the state or a political subdivision of the state;
- (2) mileage in the same amount and under the same circumstances as prescribed by law for a witness in a civil action in a superior court;
- (3) an additional fee and mileage to a per diem compensation of \$15 for expenses of subsistence for each day of actual attendance and for each day necessarily occupied in traveling to and from the hearing, if the witness attends a hearing at a point so far removed from the residence of the witness as to prohibit return to the residence from day to day.

(d) Fees, mileage, and expenses of subsistence shall be paid by the party at whose request the witness is subpoenaed. (§ 11 (ch 2) ch 143 SLA 1959)

Opinions of attorney general. AS 23.30.115 and 23.30.135 cover much the same ground as AS 44.62.430, 44.62.440 and AS 44.62.460 of the earlier Administrative Procedure Act. This would have been unnecessary if the intent had been that the Administrative Procedure Act should govern the procedure for hearings in workers' compensation hearings. 1959 Op. Att'y Gen., No. 24.

The Alaska Police Standards Council cannot request the issuance of subpoenas for investigative police reports or documents from other agencies without having initiated proceedings for revocation of a certificate under the Administrative Procedure Act November 24, 1980, Op. Att'y Gen.

NOTES TO DECISIONS

Applied in Commercial Union Cos. v. Smallwood, Sup. Ct. Op. No. 1246 (File No. 2443), 550 P.2d 1261 (1976).

Collateral references. — 1 and 2 Am. Jur. 2d, Administrative Law, §§ 89 to 91, 263 to 272.
73 C.J.S., Public Administrative Law and Procedure, §§ 131, 132.

Power of administrative agency, in investigation of nonjudicial nature, to issue subpoenas against persons not subject to agency's regulatory jurisdiction. 27 ALR2d 1208.

Sec. 44.62.440. Depositions. (a) On verified petition of a party, an agency may order that the testimony of a material witness residing inside or outside the state be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set out (1) the nature of the pending proceeding; (2) the name and address of the witness whose testimony is desired; (3) a showing of the materiality of the testimony; (4) a showing that the witness will be unable or cannot be compelled to attend; and (5) a request for an order requiring the witness to appear and testify before an officer named in the petition for that purpose.

(b) If the witness resides outside the state and if the agency orders the taking of the testimony of the witness by deposition, the agency shall obtain an order of court to that effect by filing a petition for the taking of the deposition in the superior court nearest to the principal office of the agency. The proceedings on this order shall be in accordance with provisions governing the taking of depositions in the superior court in a civil action. (§ 12 (ch 2) ch 143 SLA 1959)

Opinions of attorney general. — AS 23.30.115 and 23.30.135 cover much the same ground as AS 44.62.430, 44.62.440 and AS 44.62.460 of the earlier Administrative Procedure Act. This would have

been unnecessary if the intent had been that the Administrative Procedure Act should govern the procedure for hearings in workers' compensation hearings. 1959 Op. Att'y Gen., No. 24.

(4) *Use of Deposition.* If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the United States or of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in a court of this state, in accordance with the provisions of Rule 32(a).

(b) *Pending Appeal and Review.* The court in which a judgment, order or decision has been rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the court, as follows:

- (1) If an appeal has been taken from a judgment.
- (2) If a petition for review of an order or decision of the court has been filed with the supreme court.
- (3) If before the taking of an appeal or filing a petition for review, the time therefor has not expired.

In any case the party who desires to perpetuate the testimony may make a motion in the court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the court. The motion shall show (i) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each; (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the court.

(c) *Testimony for Use in Foreign Jurisdictions.* When the deposition of any person is to be taken in this state pursuant to the laws of another state, or of the United States or of another country, for use in proceedings in such other state, the United States or other country, the court upon motion may order issuance of subpoena in aid of taking such deposition, as provided in Rule 45(d).

(Adopted by SCO 5 October 9, 1959; amended by SCO 90 effective July 24, 1967, by SCO 158 effective February 15, 1973; and by SCO 888 effective July 15, 1988)

Annotations

Cases

Petition to perpetuate testimony, filed before complaint, does not commence an action. *Chiei v. Stern*, Op. No. 1400, 561 P2d 1216 (Alaska 1977).

Where plaintiff sought to take deposition before end of limitation period but filed complaint after end of limitation period, action was barred. *Chiei v. Stern*, Op. No. 1400, 561 P2d 1216 (Alaska 1977).

Rule 28. Persons Before Whom Depositions May be Taken.

(a) *Within the State.* Within the state, depositions shall be taken before an officer authorized by the laws of this state to administer oaths, or before a person appointed by the court in which the action is pending. A person appointed has power to administer oaths and take testimony.

(b) *Without the State but Within the United States.* Without the state but within the United States, or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(c) *In Foreign Countries.* In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [here name the country]." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

(d) *Disqualification for Interest.* No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action, except that in the case of an audio or audio-visual deposition, an attorney involved in the case may also operate or direct the operation of the recording machinery.

(Adopted by SCO 5 October 9, 1959; amended by SCO 158 effective February 15, 1973; and by SCO 733 effective December 15, 1986)

Rule 29

ALASKA RULES OF COURT

Rule 29. Stipulations Regarding Discovery Procedure.

Unless the court orders otherwise, the parties may by written stipulation: (1) provide the depositions may be taken before any person, at any time or place, upon any notice, and in any manner and that when so taken may be used like other depositions; and (2) modify the procedures provided by these rules for other methods of discovery.

(Adopted by SCO 5 October 9, 1959; amended by SCO 158 effective February 15, 1973; and by SCO 411 effective June 15, 1980)

Rule 30. Depositions Upon Oral Examination.

(a) **When Depositions May be Taken.** After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4(e), except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b)(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) **Notice of Examination: General Requirements; Special Notice; Nonstenographic Recording; Production of Documents and Things; Deposition of Organization.**

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the judicial district where the action is pending and more than 100 miles from the place of trial, or is about to go out of the state, or is bound on a voyage to sea, and will be unavailable for examination unless his deposition is taken before expiration of the 30-day period, and (B) sets forth facts to support

the statement. The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

If a party shows that when he was served with notice under this subdivision (b) (2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(5) A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subparagraph (b) (5) does not preclude taking a deposition by any other procedure authorized in these rules.

(c) **Examination and Cross-Examination: Record on Examination; Oath; Objections.** Examination and cross-examination of witnesses may proceed as permitted at the trial under the Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. For an audio or audio-visual deposition, any officer authorized by the laws of this state to administer oaths shall swear the witness. The recording machinery may be operated by such officer, or someone acting under his direction and in his presence, even where such officer is also an attorney in the case. The testimony shall be taken stenographically or recorded by audio or audio-visual means. A party may arrange at his own expense to have any portion of the record typewritten.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party,

and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Motion to Terminate or Limit Examination.

At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the judicial district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses in relation to the motion.

(e) Submission to Witness; Changes; Signing.

When a stenographic deposition is taken and the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d) (4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.

(1) The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. The officer shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of [here insert

name of witness]" and shall promptly send it to the party who requested that the deposition be transcribed. If requested, the officer shall also send a copy of the deposition to the other party for the reasonable cost of postage and copying.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification, if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(Adopted by SCO 5 October 9, 1959; amended by SCO 158 effective February 15, 1973; by SCO 634 effective September 15, 1985; by SCO 731 effective December 15, 1986; by SCO 732 effective December 15, 1986; and by SCO 773 effective December 15, 1986)

Rule 30

ALASKA RULES OF COURT

Annotations

Cases

The provision of this rule permitting a motion by a party during the taking of a deposition for a court to order a deposition terminated covers those situations where the deponent, after showing bad faith or a course of conduct that unreasonably annoys, embarrasses or oppresses deponent, to receive appropriate relief by court order. Such suspension has no application to a motion for relief made prior to the commencement of the deposition. *Jefferson v. Greater Anchorage Area Borough*, Op. No. 536, 451 P2d 730 (Alaska 1969).

The person filing a motion to set aside subpoenas to appear and depose is not automatically excused from appearing and deposing. The motion must be noticed for hearing and ruled on favorably by the court before the movant is excused from obeying the subpoena. *Jefferson v. Greater Anchorage Area Borough*, Op. No. 536, 451 P2d 730 (Alaska 1969).

Rule 30.1. Audio and Audio-Visual Depositions.

(a) Authorization of Audio-Visual Depositions.

(1) Any deposition upon oral examination may be recorded by audio or audio-visual means without a stenographic record. Any party may make at his own expense a simultaneous stenographic or audio record of the deposition. Upon his request and at his own expense, any party is entitled to an audio or audio-visual copy of the audio-visual recording.

(2) The audio or audio-visual recording is an official record of the deposition. A transcript prepared in accordance with Rule 30(c) is also an official record of the deposition.

(3) On motion for good cause the court may order the party taking, or who took, a deposition by audio or audio-visual recording to furnish at his expense a transcript of the deposition.

(b) Use. An audio or audio-visual deposition may be used for any purpose and under any circumstances in which a stenographic deposition may be used.

(c) Notice. The notice for taking an audio or audio-visual deposition and the subpoena for attendance at that deposition must state that the deposition will be recorded by audio or audio-visual means.

(d) Procedure. The following procedure must be observed in recording an audio or audio-visual deposition:

(1) The deposition must begin with an oral statement which includes:

(A) the operator's name and business address;

(B) the name and business address of the operator's employer;

(C) the date, time, and place of the deposition;

(D) the caption of the case;

(E) the name of the witness;

(F) the party on whose behalf the deposition is being taken; and

(G) any stipulations by the parties.

(2) Counsel shall identify themselves on the recording.

(3) The oath must be administered to a witness on the recording.

(4) The videotaped deposition shall depict the witness in a waist-up shot, seated at a table. The camera and lens shall not be varied except as may be necessary to follow natural body movements of the witness or to present exhibits or describe evidence that is being used during the deposition.

(5) If the length of the deposition requires the use of more than one recording unit, the end of each unit and the beginning of each succeeding unit must be announced on the recording.

(6) At the conclusion of the deposition, a statement must be made on the recording that the deposition is concluded. A statement may be made on the recording setting forth any stipulations made by counsel concerning the custody of the recording and exhibits or other pertinent matters.

(7) Audio depositions must be indexed by a brief written log notation of the recorder counter number at the beginning of each examination whether direct, cross, redirect, etc. The log must be attached to the tape.

(8) Audio visual depositions may be indexed by a time generator or similar method.

(9) An objection must be made as in the case of stenographic depositions.

(10) Unless otherwise stipulated by the parties, the original audio or audio-visual recording of a deposition shall be held by the party noticing the deposition.

(11) If the court issues an editing order, the original audio or audio-visual recording must not be altered.

(e) Costs. The reasonable expense of recording, editing, and using an audio or audio-visual deposition may be taxed as costs.

(f) Standards. The Administrative Director may establish standards for audio or audio-visual equipment and guidelines for taking and using audio or audio-visual depositions. Incompatible audio or audio-visual recordings must be conformed to the standards at the expense of the proponent. Conformed recordings may be used as originals.

(SCO 734 effective December 15, 1986)

Rule 31. Depositions on Written Questions.

(a) **Serving Questions; Notice.** After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(5).

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) **Officer to Take Responses and Prepare Record.** A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

(c) **Notice of Filing.** When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

(Adopted by SCO 5 October 9, 1959; amended by SCO 158 effective February 15, 1973; and by SCO 388 effective July 15, 1988)

Rule 32. Use of Depositions in Court Proceedings.

(a) **Use of Depositions.** At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying may be used against any party who was present or represented at

the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any part for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(5) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness whether or not a party, may be used by any party for any purpose if the court finds: (A) that the witness is dead; or (B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; or (F) that the witness' testimony has been recorded on video tape.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action in any court of the state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

(b) **Objections to Admissibility.** Subject to the provisions of Rule 28(c) and subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) **Effect of Taking or Using Depositions.** A party does not make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or

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- (3) drugs and alcoholic beverages;
- (4) perishable, flammable or hazardous materials;
- (5) money, jewelry or other valuable items; and
- (6) items which are unwieldy due to bulk and/or weight.

Whenever exhibits are returned to counsel for safekeeping pending appeal, the court may require counsel to submit an affidavit setting forth the specific measures taken to insure safekeeping of the exhibits.

(h) **Administrative Bulletin.** The administrative director shall establish standards and procedures by appropriate bulletin consistent with these rules governing the marking, handling, storage, safekeeping, and disposal of all exhibits coming into the court's custody. Unless otherwise ordered by the court, such standards and procedures are controlling.

(Added by SCO 598 effective September 1, 1984; amended by SCO 948 effective January 15, 1989)

Rule 45. Subpoena.

(a) **For Attendance of Witnesses—Form—Issuance.** Every subpoena shall be issued by the clerk under the seal of the court, shall state the name of the court and title of the action, and shall command each person to whom it is directed to attend and give testimony or to produce documents at a time and place therein specified. The clerk shall issue a subpoena for the attendance of a witness, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service. The clerk shall issue a subpoena for the production of documentary evidence signed and sealed and indicating the date, time and place of the deposition or court proceeding at which the documentary evidence is to be produced.

(b) **For Production of Documentary Evidence.** A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) void or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents or tangible things.

(c) **Service.** A subpoena may be served by a peace officer, or any other person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fees for one day's attendance and the mileage prescribed by rule. When the subpoena is

issued on behalf of the state, a municipality, a borough, a city, or an officer or agency thereof, fees and mileage need not be tendered. A subpoena may also be served by registered or certified mail. In such case the clerk shall mail the subpoena for delivery only to the person subpoenaed and, unless not required under this rule, shall enclose a warrant or postal money order in the amount of the fees for one day's attendance and of the mileage prescribed by rule. The returned delivery receipt shall be so addressed that it is returned to the party requesting the subpoena or his attorney. Proof of service shall be made by affidavit.

(d) Subpoena for Taking Depositions—Place of Examination.

(1) Proof of service of a notice to take a deposition as provided in Rules 30(b) and 31(a) constitutes a sufficient authorization for the issuance by the clerk of the court for any judicial district of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26(b), but in that event the subpoena will be subject to the provisions of Rule 26(c) and subparagraph (b) of this rule.

The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the material except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(2) A resident of the judicial district in which the deposition is to be taken may be required to attend an examination at any place within the district, unless otherwise ordered by the court. A nonresident of the judicial district in which the deposition is to be taken, and a nonresident of the state subpoenaed within the state, may be required to attend at any place within the district wherein he is served with a subpoena, unless otherwise ordered by the court.

(e) **Subpoena for a Hearing or Trial.** At the request of any party subpoenas for attendance at a hearing or trial shall be issued by the clerk of the court for the judicial district in which the hearing or trial is held. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the state.

(f) **Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued.

(g) **Enforcement of Administrative Subpoenas.** When any officer or agency of the state has the authority to issue subpoenas, enforcement of such subpoenas to compel the giving of testimony or the production of documents may be secured by proceedings brought in the court in the manner provided by the Administrative Procedures Act of the state.

(Adopted by SCO 5 October 9, 1959; amended by SCO 90 effective July 24, 1967; by SCO 167 dated June 25, 1973; by SCO 258 effective November 15, 1976; by SCO 374 effective August 15, 1979; by SCO 465 effective June 1, 1981; by SCO 558 effective May 2, 1983; and by SCO 934 effective January 15, 1989)

Rule 51. Instructions to Jury.

(a) **Requested Instructions—Objections.** At the close of the evidence or at such earlier time as the court reasonably directs, any party may file written requests that the court give the jury specific instructions. The court shall inform counsel of the final form of jury instructions prior to their arguments to the jury. Following the close of the evidence, before or after the arguments of counsel, the court shall instruct the jury. Additionally, the court may give the jury such instructions as it deems necessary at any stage of the trial. No party may assign as error the giving or the failure to give an instruction unless the party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objection. Opportunity must be given to make the objection out of the hearing of the jury, by excusing the jury or hearing objections in chambers.

(b) **Instructions to be Given.** The court shall instruct the jury that they are the exclusive judges of all questions of fact and of the effect and value of evidence presented in the action. The court shall instruct the jury on all matters of law which it considers necessary for their information in giving their verdict. On all proper occasions they shall also be instructed:

(1) That they are not bound to find in conformity with the declarations of any number of witnesses which do not produce conviction in their minds against a less number, or against a presumption or other evidence satisfying their minds.

(2) That a witness wilfully false in one part of his testimony may be distrusted in other parts.

(3) That the oral admissions of a party ought to be viewed with caution.

(4) That evidence is to be estimated not only by its own intrinsic weight, but also according to the evidence which it is in the power of one party to produce and of the other party to contradict; and if weaker and less satisfactory evidence is offered, when it appears that stronger and more satisfactory evidence was within the power of one party to produce, that the evidence offered should be viewed with distrust.

(Adopted by SCO 5 October 9, 1959; amended by SCO 49 effective January 1, 1963; by SCO 79 effective February 1, 1966; and by SCO 920 effective January 15, 1989)

PART IX. JUDGMENT

Rule 58.1. Judgments and Orders—Effective Dates and Commencement of Time for Appeal, Review and Reconsideration.

(a) **Effective Dates of Orders and Judgments.** Orders and judgments become effective the date they are entered.

(1) **Oral Orders.** The date of entry of an oral order is the date the order is put on the official electronic record by the judge unless otherwise specified by the judge. At the time the judge announces an oral order, the judge shall also announce on the record whether the order shall be reduced to writing. If the oral order is reduced to writing, the effective date shall be included in the written order.

(2) **Written Orders Not Preceded by Oral Orders.** The date of entry of a written order not preceded by an oral order is the date the written order is signed unless otherwise specified in the order.

(3) **Judgments.** The date of entry of a civil judgment is the date it is signed unless otherwise specified in the judgment. All judgments shall be reduced to writing.

(b) **Commencement of Time for Appeal, Review and Reconsideration.** The time within which a notice of appeal may be filed and reconsideration or review of orders and judgments may be requested begins running on the date of notice as defined below.

(c) **Date of Notice.**

(1) **Oral Orders.**

(i) As to the parties present when an oral order is announced, the date of notice is the date the judge announces the order on the official electronic record, unless at that time the judge announces his intention of having the order reduced to writing in which case the date of notice is the date shown in the clerk's certificate of distribution on the written order.