

ALASKA LEGISLATURE COMMITTEE FILES 1980-1980 80/2

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- (3) Within 45 days after the filing of a petition, the Supreme Court, in its discretion, may refer the petition to the appropriate standing committee listed in paragraph (c) or grant the petitioner an opportunity for written comment or oral hearing.
 - (4) If an opportunity for written comment or oral hearing is granted, the time, place, and conditions for an oral hearing will be fixed or conditions for written comment will be set. Notice of the hearing must be given as provided in paragraph (g).
 - (5) Whenever the Supreme Court determines that a petition is improper as to form or is frivolous or a petition requests a rule or order of mere formality, the Supreme Court, in place of referral for committee review pursuant to paragraph (b) or of providing for opportunity for written comment or oral hearing, may make an immediate decision on the petition.
- (d) Request for Committee Study.
- (1) As an alternative to the procedure described in paragraph (c), any person interested in a procedural rule, administrative rule, or administrative order, may file with the Clerk of the Appellate Courts a Request for Standing Committee Study.
 - (2) Each Request shall state the reasons for requesting standing committee study of any rule or order or modification or repeal of any rule or order. It shall include a draft of the proposed or amended rule or order and be accompanied by supporting documentation.
 - (3) Each request shall be referred to the revisor of rules for committee assignment.
- (e) Court Certificate of Intention for Rule Change.
- (1) The Supreme Court, on its own motion, may file with the Clerk of the Appellate Courts a Certificate of Intention to adopt, amend, or repeal a rule or order.
 - (2) A Certificate of Intention shall be treated as a petition pursuant to paragraph (c).

(f) Emergency Rule Action.

- (1) Whenever the Supreme Court determines that an emergency exists requiring the immediate promulgation of a procedural rule or administrative rule or order, the Supreme Court will take any action the circumstances require. Any rule or order promulgated pursuant to this section becomes immediately effective, unless otherwise ordered by the Court.
- (2) Notwithstanding that a rule or order is made immediately effective, the notice provisions of paragraph (g) must be, and if applicable, the procedures provided in paragraph (c) may be followed with a view to determining whether the rule or order should be continued in effect.

* (g) Notice of Rules and Orders.

- (1) Within 30 days after the filing of a Petition or a Request for Standing Committee Study, or a Certificate of Intention, relating to a procedural rule or administrative rule and within 30 days after the adoption of a procedural rule or an administrative rule, the Clerk of the Appellate Courts shall send notice of the matter to the Executive Director of the state bar association, to all judges, the attorney general, the chairperson of each standing committee, the Executive Director of the Legislative Affairs Agency and additional notice may be ordered by the Supreme Court as circumstances warrant.
- (2) Within 30 days after the adoption of an administrative order, the Clerk of the Appellate Courts shall send notice of the order to all judges, the Executive Director of the State Bar Association, and additional notice as circumstances warrant.

*Comment: It is intended that the state bar association provide appropriate mechanisms for providing notice to its member attorneys.

(h) Standing Committees on Rules and Orders.

* (1) The following standing committees are established to provide continuing study and review of present rules and orders and to propose the adoption of new rules and the amendment or repeal of existing rules and orders for consideration by the Supreme Court. Each standing committee is responsible for the full extent of its area of jurisdiction.

(A) The Joint Procedure Committee shall study and review all rules of pleading, practice, and procedure, including:

- (i) Rules of Appellate Procedure,
- (ii) Specialized Court Proceeding Procedures,
- (iii) Rules of Evidence,
- (iv) Rules of Civil Procedure, and
- (vii) Procedural Rules of Lower Courts.

(B) The Attorney Standards Committee shall study and review all rules for attorney supervision including:

- (i) Admission to the Bar,
- (ii) Attorney Discipline,
- (iii) Code of Professional Responsibility,
- (iv) Mandatory Continuing Legal Education,
- (v) Student Practice.

(C) The Judiciary Standards Committee shall study and review all rules for judiciary supervision including:

- (i) Judicial Discipline, and
- (ii) Judicial Code of Ethics.

(D) The Court Services Administration Committee shall study and review all rules and orders relating to the administrative supervision of the judicial system.

The Supreme Court may establish other committees and jurisdictional responsibilities as circumstances warrant.

*Comment: It is recommended that representatives of agencies, such as the Judicial Council, the Legislative Council, the Judicial Qualifications Commission, and the State Bar Association be considered for membership on appropriate standing committees. There is substantial reason for limiting the size of standing committees as much as possible and of providing by committee rule for a quorum for the transaction of business.

- (2) The members of each committee shall be designated by the Chief Justice after consultation with the Supreme Court. Each member of a committee will serve for a term not to exceed 3 years and is eligible for reappointment. Initially, as determined by lot, one-third of the members of each committee will serve for 3 years, one-third of the members will serve for 2 years, and one-third of the members will serve for one year. At the end of a member's term a successor will be designated by the Chief Justice for a full three year term. The Chief Justice shall designate a chairperson for each committee from among its members.
 - (3) Each committee shall be assigned appropriate staff assistance through the administrative director of courts.
 - (4) Each committee shall make any reports as requested by the Chief Justice.
 - (5) Any proposed rules or order and amendments shall be submitted pursuant to the petition procedure of paragraph (c).
 - (6) Each rule and order shall be reviewed by the appropriate committee and its findings and recommendations reported to the Supreme Court at least once within a period of 10 years after the effective date for each rule and at least once within a period of 10 years after the effective date for each rule and at least once within a period of 5 years after the effective date for each order.
- (i) Action of Supreme Court on Rules and Orders.
- (1) After the hearing, completion of the record or filing of any briefs or comments, whichever is latest, the Supreme Court shall make a determination adopting, modifying, or repealing the rule or order or returning the matter to the appropriate committee for further study or refusing so to adopt, modify, repeal, or return the rule or order.

- (2) Whenever the Supreme Court intends to make a substantial change in a proposed rule or order of which adequate notice has not been given, the Supreme Court shall submit the matter to the appropriate committee for further study, or provide notice and opportunity for comment or oral hearing consistent with paragraph (a) of this rule.
 - (3) The action on any rule adopted or amended may be accompanied by an Official Comment, including a concise statement of its basis and purpose.
 - (4) Whenever necessary for clarity, an amendment to a procedural rule or administrative rule or order will be promulgated as a re adoption of the rule or order as amended.
- (j) Effect of Reconsideration.
- (1) A request for reconsideration is treated as a petition pursuant to paragraph (c).
 - (2) A request for reconsideration of a procedural rule, administrative rule, or administrative order does not stay the rule or order unless the Supreme Court orders a stay. The court may impose any terms and conditions for a stay it deems proper.
- (k) Effective Terms of Rules and Orders.
- (1) Each procedural rule and administrative rule has an indefinite effective term unless otherwise ordered by the Supreme Court.
 - (2) Each administrative order has an effective term of 5 years after the effective date unless otherwise ordered by the Supreme Court and is subject to re adoption at any time.
 - (3) Upon the expiration of the effective term of any rule or order, the rule or order lapses and is void. The lapse of any rule or order does not revive any superseded rule or order.
- (l) Effective Date of Rules and Orders.
- (1) Each final action taken by the Supreme Court on a procedural rule or administrative rule or order becomes effective on the 30th day after the date of adoption or repeal unless otherwise ordered by the Supreme Court.

(m) Codification of Rules and Orders.

- (1) The procedural rules and administrative rules of the Supreme Court shall be codified and published periodically and made available to the judiciary, bar, and public.
- (2) Whenever possible, all rules directed to a common subject will be grouped and numbered together. Desirable references to related rules will be provided.
- (3) References to decisions of the Supreme Court and comments of the Supreme Court and committees may be included as annotations in the codification and publication of each rule.

(n) Effective Date and Application of Rule.

- (1) The rule takes effect on _____, and will apply to all rules and orders adopted after that date.
- (2) All rules and orders in effect on the date of the adoption of this rule remain in effect.

ALASKA SUPREME COURT COMMITTEE LISTING

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ALASKA SUPREME COURT COMMITTEE LISTING
1985

NAME	CHAIRPERSON	MEMBERS	PURPOSE	LAST ACTIVITY	NEXT ACTIVITY
1. Civil Rules Committee		Andrew Kleinfeld Millard Ingraham Peter Aschenbrenner Barbara Schumann	Standing Advisory Committee	1983 rule change considera- tion.	Thank you has been sent to old mem- bers. New stand- ing committee to be appointed.
2. Criminal Rules Committee	Jeff Feldman	Judge Fuld Judge Greene Judge Singleton Susan Orlansky David Mannheimer William Bryson Don Bauermeister, Rptr.	Standing Advisory Committee	Committee re-appointed (5/'85)	First meeting of new members to be scheduled.
3. Appellate Rules Committee	David Lampen	Bob Bacon Susan Orlansky Sandra Saville Robert Estaugh Don Bauermeister, Rptr.	Standing Advisory Committee	Committee re-appointed (4/'85)	First meeting of new members to be scheduled.
4. Childrens' Rules Committee	Judge Carlson	Bill Hitchcock Joe Evans Pat Kennedy Bonnie Bundy	Rewrite childrens rules as appropriate.	Commentary currently being drafted.	Submission to the Supreme Court.
5. District Court Rules Committee		Judge Mason Judge Beckwith	Rewrite district court rules as appropriate.	Accepting suggestions for elimination/deletion. (2/25/85).	

ALASKA SUPREME COURT COMMITTEE LISTING
May 1985

NAME	CHAIRPERSON	MEMBERS	PURPOSE	LAST ACTIVITY	NEXT ACTIVITY
6. Pattern Civil Jury Instructions Committee	Julian Mason	Theodore Fleischer Daniel Gerety Michael Moody Judge Cooke Judge Souter Judge Hodges Shannon Turner	Undertake annual review of civil pattern jury instructions.	Finalization of revisions to civil pattern jury instructions.	Chief Justice to reappoint committee w/Bauermeister as reporter.
7. Pattern Criminal Jury Instructions Committee	Dena Fabe	Judge White Judge Michalski Bob Linton John Murtaugh Don Bauermeister, Rptr.	Undertake annual review of criminal pattern jury instructions.	Committee re-appointed. (5/'85)	To schedule first meeting.
8. Forms Committee	Susan Miller	Richard P. Barrier Judge Anderson Judge Carlson Brigitte McBride Kris Carlisle Wayne Wolfe Ross Cushman Sharon Walker	Creation and revision of forms used by courts statewide.	Ongoing changes.	Ongoing changes.
9. Sentencing Guidelines Committee	Judge Schulz	Judge Blair Judge Anderson Judge Buckalew Judge Shortell	Establish guidelines for misdemeanor sentencing.	Reactivated committee.	Plan to meet in February 1985 to reactivate committee w/Schulz as chair.
10. Magistrate Salary & Policy Committee	Karrol Jackson	Judge Bosshard Linda Hartshorn Brigitte McBride Judge Van Hoomissen Charlene Dolphin (ad hoc)	Review magistrate salaries and policies statewide and make recommendations to supreme court.	Preparation of suggested policy.	Submission of policy to the Supreme Court.

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May 1985

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ALASKA SUPREME COURT COMMITTEE LISTING
1985

NAME	CHAIRPERSON	MEMBERS	PURPOSE	LAST ACTIVITY	NEXT ACTIVITY
11. Magistrates Advisory Committee	Judge Van Hoomissen	Carole Baekey Geoffrey Comfort Maxine Savland Skip Slater Lowell Anagick Geo. Rukovishnikoff	Resolution of problems faced by Alaska magistrates.	Formation of committee	Meeting to be held within 90 days of January 9, 1985.
12. Policy Advisory Committee	Judge Victor Carlson	Judge W. Taylor Linda Hartshorn Judge Cooke Judge Carpeneti Judge Bosshard Judge Shortell Judge Coates Judge Cutler Judge Kauvar	Provide recommendations regarding court system policies.	Proposal submitted to Supreme Court.	None
13. Facility Advisory Committee	Daniel Moore (unofficial)	LeEllen Baker Justice Moore Judge Bryner Judge Rowland Judge Andrews Karl Forsythe Gerry Dubie	Provide information & assistance to architects of courthouse expansion project, and to discuss proposal elements of the new facility as they are developed.	Meeting in 8/84 re: space allocations in new bldg.	Meeting to be scheduled.
14. Rule 53 Masters Committee	Justice Compton	Justice Compton Judge Blair Judge Carlson Judge Carpeneti Judge Jones Bill Hitchcock Harry Branson Stephanie Cole Don Bauermeister (reporter)	Review statewide use of masters.		First meeting will be in May or June '85.

ALASKA SUPREME COURT COMMITTEE LISTING
May 1985

NAME	CHAIRPERSON	MEMBERS	PURPOSE	LAST ACTIVITY	NEXT ACTIVITY
15. Rules Publishing Format Committee	Don Bauermeister	Lynn Allingham John Lohff Thomas Klinkner Jeff Feldman Mark Ashburn Aimee Ruzicka	Make recommendations to supreme court on written format & publisher.	Has finished review.	Review by Supreme Court on May 31, '85.
16. Commercial Litigation (Civil Litigation Task Force)	Arnold Espe	Judge Souter Bruce Gagnon David Call William Rozell Stanley Reitman Connie J. Sipe	Make recommendations to supreme court on streamlining civil rules and procedures.	Submitted final report 9/83	Connie Sipe to meet with the Supreme Court during Sitka Judicial Conference (5/'85).
17. Domestic Relations (Civil Litigation Task Force)	Niesje Steinkruger	Judge Van Hoomissen John Reese Charles Drennan Myra Munson Margie Ennis	Determine methods for smoother case processing of domestic relations cases.	Chair met wit' the Supreme Court in November of 1984.	None
18. Personal Injury (Civil Litigation Task Force)	Robert C. Erwin	Justice Moore Lloyd Hoppner Eric T. Sanders Bob Wainscott Marcus Clapp William Mellow	Determine methods for smoother case processing for personal injury cases.	Chair met with the Supreme Court in December of 1984.	None
19. Telephonic Procedures Committee	Don Bauermeister	Judge Bryner Judge Serdahely Judge Andrews Dana Fabe Stephanie Cole David Mannheimer Don Bauermeister	draft rule proposal on telephonic procedures.	Finished proposal which was presented to the Supreme Court at 9/84 admin. conference. Rule adopted effective 7/'85.	Committee to disband.

MEMORANDUM

December 4, 1981

TO: Chief Justice Burke
 Justice Connor
 Justice Matthews
 Justice Compton
 Judge Stewart ✓

INFO: Arthur H. Snowden, II
 Administrative Director
 Robert D. Bacon, Clerk

FROM: Justice Rabinowitz

SUBJECT: Administrative Conference

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JUDGE
 SUPERIOR COU
 JUNEAU

At this week's administrative conference I neglected to bring up a matter which I had intended to place on the agenda. I think we should discuss the manner in which we solicit and select committee members for our various standing advisory committees.

Historically, this process has been unstructured, varied, and heavily dependent upon our collective personal knowledge of bar membership. In my view, we should, in the future, solicit applications for committee membership by notice in the Bar Rag, etc., and request that the applicant submit a resume, etc. I also suggest that a selection committee be formed which should include members from the Court of Appeals and trial courts. In this way we will perhaps broaden the expertise in both the committee composition, we obtain in the future and perhaps make our selection procedures fairer as well as improving the composition of our various committees.

JAR
 JAR

Memorandum

Alaska Court System

TO: Chief Justice Rabinowitz
Stephanie Cole
David Lampen
Pam McIntire

DATE : February 15, 1985

FROM: Don C. Bauermeister *DCB*
Court Rules Attorney

SUBJECT: Distribution of Supreme
Court Orders

This memorandum contains, in outline form, what I believe we agreed upon on January 31 of this year as the procedure which should control the dating and distribution of supreme court orders. The publisher's distribution dates have been obtained from Book and are incorporated in I(A)(1) below. The second date that appears is the cutoff date. Book must receive the orders by the cutoff date if they are to promise distribution by the designated distribution date. If you have any question or disagreement with the outline, please contact me and I will make the appropriate revisions.

DISTRIBUTION OF SUPREME COURT ORDERS

I. COURT RULES ORDERS

A. Normal Procedure

1. Set effective date as the publisher's distribution date.
 - a. March 15 is the distribution date for orders received by January 15;
 - b. June 15 is the distribution date for orders received by April 15;
 - c. September 15 is the distribution date for orders received by July 15; and
 - d. December 15 is the distribution date for orders received by October 15.
2. The rules attorney gives all signed and dated orders to the appellate court clerk.
3. The appellate clerk provides for normal distribution of orders, including:
 - a. Fairbanks Supreme Court;
 - b. Juneau Supreme Court;

6. The appellate clerk publishes notice that the rule change has occurred in the monthly activity report.

II. SPECIAL ORDERS OF THE CHIEF JUSTICE

- A. Effective dates are set by the chief justice according to immediate needs;
- B. The attorney, judge, or justice who circulates the order provides a signed and dated order to the appellate court clerk;
- C. The appellate clerk provides for normal distribution of orders, including:
 1. Staff counsel;
 2. Any individual named in the orders;
 3. The presiding judge for the judicial district affected;
 4. The Area Court Administrator for the judicial district affected;
 5. Calendaring department for the judicial district affected;
 6. Any person named for distribution by the order; and
 7. Where a specific case file number is used in the order, the civil or criminal department of the superior court in the appropriate judicial district.
- D. Where the order relates to pro tem appointments, the clerk provides for the following distribution:
 1. Administrative Director;
 2. Area Court Administrator affected;
 3. Presiding Judge affected;
 4. Any individual named in the order;
 5. Any persons named for distribution by the order;
 6. Calendaring for the appropriate judicial district;
 7. ACS Personnel Office; and
 8. ACS Accounting Office.
- E. Any additional distribution is done by the clerk only upon special instruction attached to the order from the attorney, judge, or justice who circulated the order.

PRELIMINARY DRAFT OF PROPOSED
AMENDMENTS
To
BANKRUPTCY RULES 5002 AND 5004

Public hearings will be held
on January 17, 1985 in
Washington, D. C.

COMMITTEE ON RULES OF PRACTICE
AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE
UNITED STATES

AUGUST 1984

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

TO THE BENCH AND BAR:

The Judicial Conference Advisory Committee on Bankruptcy Rules has proposed amendments to Bankruptcy Rules 5002 and 5004 and has requested that the proposed amendments be circulated to the bench and bar and to the public generally for comment. Committee Notes, prepared by the Advisory Committee and accompanying the proposed amendments, explain their intent and purpose.

The Judicial Conference Standing Committee on Rules of Practice and Procedure has not yet approved these proposed amendments, but submits them herewith for public comment. We request that all comments be placed in the hands of our Committee as soon as convenient and, in any event, no later than January 1, 1985.

All communications with respect to the proposed amendments to Bankruptcy Rules 5002 and 5004 should be addressed to the Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, D. C. 20544.

In order that persons and organizations wishing to do so may comment orally on these proposals, hearings on them will be held at the National Courts Building in Washington, D. C. on Thursday January 17, 1985. Those wishing to testify should contact the Secretary to the Committee at the above address prior to January 1, 1985.

These proposed amendments have not been submitted to nor considered by the Judicial Conference of the United States or the Supreme Court.

Edward T. Gignoux
*Chairman, Standing Committee on
Rules of Practice and Procedure*

Joseph F. Spaniol, Jr., *Secretary*

August 1, 1984
Washington, D. C.

STANDING COMMITTEE ON RULES OF PRACTICE
AND PROCEDURE

JUDGE EDWARD T. GIGNOUX, *Chairman*

JUDGE CARL MCGOWAN

JUDGE AMALYA L. KEARSE

JUDGE JAMES S. HOLDEN

EDWARD H. HICKEY, ESQ.

PROF. WADE H. MCCREE, JR.

FRANCIS N. MARSHALL, ESQ.

PROF. WAYNE LAFAVE

JOSEPH F. SPANIOL, JR., *Secretary*

ADVISORY COMMITTEE ON BANKRUPTCY RULES

JUDGE RUGGERO J. ALDISERT, *Chairman*

JUDGE CLIVE W. BARE

CHARLES A. HORSKY, ESQ.

JUDGE JOHN T. COPENHAVER, JR.

PROF. ROBERT W. FOSTER

JUDGE ASA S. HERZOG

RICHARD L. LEVINE, ESQ.

JUDGE HERBERT KATZ

NORMAN H. NACHMAN, ESQ.

JUDGE BERYL E. MCGUIRE

JOSEPH PATCHAN, ESQ.

JUDGE ALEXANDER L. PASKAY

PROF. LAWRENCE P. KING

JUDGE MOREY L. SEAR

PROFESSOR WALTER J. TAGGART, *Reporter*

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

TO THE BENCH AND BAR:

The Judicial Conference Advisory Committee on Bankruptcy Rules has proposed amendments to Bankruptcy Rules 5002 and 5004 and has requested that the proposed amendments be circulated to the bench and bar and to the public generally for comment. Committee Notes, prepared by the Advisory Committee and accompanying the proposed amendments, explain their intent and purpose.

The Judicial Conference Standing Committee on Rules of Practice and Procedure has not yet approved these proposed amendments, but submits them herewith for public comment. We request that all comments be placed in the hands of our Committee as soon as convenient and, in any event, no later than January 1, 1985.

All communications with respect to the proposed amendments to Bankruptcy Rules 5002 and 5004 should be addressed to the Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, D. C. 20544.

In order that persons and organizations wishing to do so may comment orally on these proposals, hearings on them will be held at the National Courts Building in Washington, D. C. on Thursday January 17, 1985. Those wishing to testify should contact the Secretary to the Committee at the above address prior to January 1, 1985.

These proposed amendments have not been submitted to nor considered by the Judicial Conference of the United States or the Supreme Court.

Edward T. Gignoux
*Chairman, Standing Committee on
Rules of Practice and Procedure*

Joseph F. Spaniol, Jr., *Secretary*

August 1, 1984
Washington, D. C.

BANKRUPTCY RULES

15 (a) Appointment of Relatives Prohibited. No
16 individual may be appointed as a trustee or examiner or be
17 employed as an attorney, accountant, appraiser, auctioneer,
18 or other professional person pursuant to § 327 or § 1103 of the
19 Code if the individual is a relative of the bankruptcy judge
20 making the appointment or approving the employment.
21 Whenever under this subdivision an individual is ineligible for
22 appointment or employment, the individual's firm,
23 partnership, corporation, or any other form of business
24 association or relationship, and all members, associates and
25 professional employees thereof are also ineligible for
26 appointment or employment.

27 (b) Judicial Determination that Appointment or
28 Employment Is Improper. A bankruptcy judge may not
29 appoint a person as a trustee or examiner or approve the
30 employment of a person as an attorney, accountant,
31 appraiser, auctioneer, or other professional person pursuant
32 to § 327 or § 1103 of the Code if that person is or has been so
33 connected with such judge as to render the appointment or
34 employment improper.

COMMITTEE NOTE

The amended rule is divided into two subdivisions. Subdivision (a) applies to relatives of bankruptcy judges and subdivision (b) applies to persons who are or have been connected with bankruptcy judges. Subdivision (a) permits no judicial discretion; subdivision (b) allows judicial discretion. In both subdivisions of the amended rule "bankruptcy judge" has been substituted for "judge." The amended rule makes clear that it only applies to relatives of, or persons connected with, the bankruptcy judge. See In re Hilltop Sand and Gravel, Inc., 35 B.R. 412 (N.D. Ohio 1983).

Subdivision (a). The original rule prohibited all bankruptcy judges in a district from appointing or approving the employment of (i) a relative of any bankruptcy judge serving in the district, (ii) the firm or business association of any ineligible relative and (iii) any member or professional employee of the firm or business association of an ineligible relative. In addition, the definition of relative, the third degree relationship under the common law, is quite broad. The restriction on the employment opportunities of relatives of bankruptcy judges was magnified by the fact that many law and accounting firms have practices and offices spanning the nation.

Relatives are not eligible for appointment or employment when the bankruptcy judge to whom they are related makes the appointment or approves the employment. Canon 3(b)(4) of the Code of Judicial Conduct, which provides that the judge "shall exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism," should guide a bankruptcy judge when a relative of a judge of the same bankruptcy court is considered for appointment or employment.

Subdivision (b), derived from clause (2) of the original rule, makes a person ineligible for appointment or employment if the person is so connected with a bankruptcy judge making the appointment or approving the employment as to render the appointment or approval of employment improper. The caption and text of the subdivision emphasize that application of the connection test is committed to the sound discretion of the bankruptcy judge who is to make the appointment or approve the employment. All relevant circumstances are to be taken into account by the court. The most important of those circumstances include: the nature and duration of the connection with the bankruptcy judge; whether the connection still exists, and, if not, when it was terminated; and the

BANKRUPTCY RULES

type of appointment or employment. These and other considerations must be carefully evaluated by the bankruptcy judge.

The policy underlying subdivision (b) is essentially the same as the policy embodied in the Code of Judicial Conduct. Canon 2 of the Code of Judicial Conduct instructs a judge to avoid impropriety and the appearance of impropriety, and Canon 3(b)(4) provides that the judge "should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism." Subdivision (b) alerts the potential appointee or employee and party seeking approval of employment to consider the possible relevance or impact of subdivision (b) and indicates to them that appropriate disclosure must be made to the bankruptcy court before accepting appointment or employment. The information required may be made a part of the application for approval of employment. See Rule 2014(a).

Subdivision (b) departs from the former rule in an important respect: a firm or business association is not prohibited from appointment or employment merely because an individual member or employee of the firm or business association is ineligible under subdivision (b).

The emphasis given to the bankruptcy court's judicial discretion in applying subdivision (b) and the absence of a per se extension of ineligibility to the firm or business association or any ineligible individual complement the amendments to subdivision (a). The change is intended to moderate the prior limitation on the employment opportunities of attorneys, accountants and other professional persons who are or who have been connected in some way with the bankruptcy judge. For example, in all but the most unusual situations service as a law clerk to a bankruptcy judge is not the type of connection which alone precludes appointment or employment. Even if a bankruptcy judge determines that it is improper to appoint or approve the employment of a former law clerk in the period immediately after completion of the former law clerk's service with the judge, the firm which employs the former law clerk will, absent other circumstances, be eligible for employment. In each instance all the facts must be considered by the bankruptcy judge.

Subdivision (b) applies to persons connected with a bankruptcy judge. "Person" is defined in § 101 of the Bankruptcy Code to include an "individual, partnership and corporation." A partnership or corporation may be appointed or employed to serve in a bankruptcy case. If a bankruptcy judge is connected in some way with a partnership or corporation, it is necessary for the court to determine

whether the appointment or employment of that partnership or corporation is proper.

The amended rule does not regulate professional relationships which do not require approval of a bankruptcy judge. Disqualification of the bankruptcy judge pursuant to 28 U.S.C. § 455 may, however, be appropriate. Under Rule 5004(a), a bankruptcy judge may find that disqualification from only some aspect of the case, rather than the entire case, is necessary. A situation may also arise in which the disqualifying circumstance only comes to light after services have been performed. Rule 5004(b) provides that if compensation from the estate is sought for these services, the bankruptcy judge is disqualified from awarding compensation.

Rule 5004. Disqualification

- 1 (a) Disqualification of Judge. When a judge is
2 disqualified from acting by 28 U.S.C. § 455, he shall
3 disqualify himself from presiding over the adversary
4 proceeding or contested matter in which the disqualifying
5 circumstance arises or, if appropriate, he shall disqualify
6 himself from presiding over the case.
- 7 (b) Disqualification of Judge from Allowing
8 Compensation. A judge shall disqualify himself from allowing
9 compensation to a person who is a relative or with whom he is
10 so ~~associated~~ connected as to render it improper for him to
11 authorize such compensation.

COMMITTEE NOTE

The word "associated" in subdivision (b) has been changed to "connected" in order to conform with Rule 5002(b).



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

Don C. Bauermeister
Court Rules Attorney

303 K Street
Anchorage, Alaska 99501

(907) 264-

June 27, 1985

Senator Pat Rodey
1024 West 6th Ave., Suite 308
Anchorage, AK 99501

Dear Senator Rodey:

I have reduced to writing your inquiry concerning the feasibility and desirability of amending District Court Small Claims Rule 11 to allow for service of process outside the state. This information will be provided to the newly appointed supreme court civil rules committee. That group will review the proposal and provide the supreme court with a recommendation on whether or not the present rule should be changed.

The more extensive role of committees in supreme court rulemaking is mandated by the recent adoption of the new supreme court rule on rulemaking which will be effective on September 15, 1985. The interim rulemaking procedure is already changing to follow the directives of the new rule. Enclosed for your consideration is a copy of the order adopting the new rule on rulemaking as well as a memorandum to the supreme court analyzing the new rule.

Thanks for your inquiry and the suggestion to investigate this proposed rule change. As the new rulemaking procedure suggests, all proposals for improving the efficient administration of justice are welcome and will be given careful consideration. If you have any further ideas or inquiries please do not hesitate to contact me at this office.

Sincerely,

Don C. Bauermeister
Court Rules Attorney

DCB/jm

Enclosures

cc: Arthur H. Snowden, II (w/o enclosures)

THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 630

Adopting Administrative
Rule 42 - Rulemaking;
Rescinding Administrative
Rule 39.5 - Standing
Advisory Committee on
Rules

IT IS ORDERED:

Administrative Rule 39.5 concerning the Standing Advisory Committee on Rules is rescinded.

Administrative Rule 42 concerning Rulemaking is added and adopted to read as follows:

Rule 42. Rulemaking.

- (a) Uniform Policy. The supreme court shall make and promulgate rules governing administration of all courts, and practice and procedure in civil and criminal cases in all courts. The rules shall be uniform throughout the Alaska Court System.
- (b) Request for Rulemaking. Any person may propose new rules or changes in present rules to the supreme court. Each proposal must:
 - 1) Be in writing;
 - 2) Include the language proposed for change;
 - 3) Include the reason for the suggested rule or change;
 - 4) Be submitted to the court rules attorney at the Anchorage Office of the Administrative Director of Courts.The court rules attorney shall review each proposal. If the proposal is unclear or in need of further documentation, the rules attorney shall contact the person submitting the proposal and seek clarification.
- (c) Preliminary Analysis. The rules attorney shall then prepare a preliminary legal analysis of each proposal. This shall include an examination of the present Alaska rule including adoption and amendment history, as well as a comparison with the federal rule where appropriate.
- (d) Meritless Proposal. In the unusual case where no further consideration seems merited, the rules attorney shall forward such opinion and the reason for it along with all pertinent supporting information to the chief justice. If the chief justice concurs, a letter shall be sent by the rules attorney to the person submitting the proposal stating the reason it was not accepted.
- (e) Notice. In all other cases notice that a rule is being considered for change, including the nature of the proposed change, shall be published in the Monthly Activity Report of the appellate courts.
- (f) Major or Minor Change. The rules attorney shall determine whether a proposal is a major or minor rule change. All proposals for new rules and all proposals affecting substantial rights of litigants are major. Minor rules changes are those which are technical in nature.
- (g) Minor Change. Minor rules change proposals shall be submitted to the supreme court along with the preliminary legal analysis and appropriate orders in both signature and legislative form. The chief justice shall calendar a review of the proposal at an appropriate law conference. Following review, the supreme court may adopt or reject the

proposal, or refer it to a standing or advisory committee to be treated as a major rules change.

- (h) Major Change. Major rules change proposals shall be referred by the rules attorney to the appropriate standing or advisory committee. The committee shall review the proposal, determine if a draft should be circulated to the bar or other interested persons for comment, and prepare a written recommendation supporting or opposing the change. If no circulation was made, the reason for this decision shall be stated in the recommendation. Where appropriate, the recommendation shall also include proposed orders in signature and legislative form, as well as advisory notes suitable for publication stating the rationale for the rule change. All committee written recommendations shall be forwarded to the supreme court. The chief justice shall calendar a review of the recommendation at an appropriate administrative conference. Following review, the supreme court may adopt or reject the proposal in whole or in part, or refer the proposal to the same or a different committee for further study or additional circulation.
- (i) Public Information. The original proposal, preliminary legal analysis, circulation material, proposed order and advisory notes shall be made available to the public upon request. Committee minutes, reporter's notes, and other preparatory drafts or memoranda shall not be made public.
- (j) Standing and Advisory Committees. Standing committees shall be established to review Civil Rules, Criminal Rules and Appellate Rules. The administrative senior staff shall act as the standing committee to review Administrative Rules. Advisory committees shall be appointed as needed to review all other rules. All committees shall receive major rules change proposals from the rules attorney or the supreme court. In addition, the standing committees shall carry on a continuous study of the operation and effect of the rules of procedure and administration. When specific proposals for change initiate in a committee, notice that the proposal is being considered must be published in the Monthly Activity Report under subsection (e) of this rule. Changes to those rules found by the committees to promote: 1) Simplicity in procedure; 2) Fairness in administration; 3) The just determination of litigation; and 4) The elimination of unjustifiable expense and delay, shall be periodically recommended to the supreme court for its consideration.
- (k) Appointment. The supreme court shall appoint such members of the judiciary, Alaska Bar Association, and other qualified persons to the committees as it deems advisable. Nominees shall be considered from any source, but solicitation for nominee recommendations shall also be made to the board of governors of the state bar association and the statewide court clerks conference. Where possible, terms of the committee members will be staggered to preserve committee continuity. The members of the committees shall serve without compensation. However, with prior approval the members may be reimbursed for per diem and travel expenses incident to their duties as members of the committees.
- (l) Emergency Rule Action. Whenever the supreme court determines that an emergency exists requiring the immediate promulgation of a procedural or administrative rule, the court may take any action required by the circumstances. The court shall follow all of the requirements of this rule consistent with meeting the nature of the emergency circumstances.
- (m) Effective Date. The effective date for each rule change order shall be stated in the order. Normally, the effective date shall be the same as the publisher's distribution date, in order to provide adequate notice to those affected by the rule change. Where this is not possible, the effective date shall be set as determined by the supreme court. When this occurs, the supreme court shall determine what

Supreme Court Order 630
eff. date September 15, 1985
Page 3

additional notice, if any, shall be provided to those affected by the rule change. Adoption or rejection of a rules change proposal shall be published in the Monthly Activity Report.

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

DATED: May 30, 1985

EFFECTIVE DATE: September 15, 1985

Jan. A. Rabinowitz
Chief Justice Rabinowitz

James J. Burke
Justice Burke

Walter W. Matthews
Justice Matthews

Alan P. Compton
Justice Compton

Daniel A. Moore Jr.
Justice Moore

Prepare case carefully, small claims judge advises potential litigants

By KAY MONROE LEVINE

Daily News Reporter

If you're thinking of filing a small claims action, try talking it over with your opponent first, advises District Court Judge Elaine Andrews.

"Sometimes my job is nothing more than to ask 'Have you two talked about this?'" she says. The answer is usually "Well, no, not really."

When talking doesn't settle the dispute, small claims court is an effective forum, she says. "I think the system works great. I always hope people leave the courtroom feeling they've had their say."

To that end, Andrews stresses that small claims litigants should be prepared when they come to court. If you think you're going to be nervous, write an outline of what you need to say or write out a detailed statement and just give it to the judge, says Andrews.

If the suit focuses on a car accident or something similar, bring a diagram of the scene, says Andrews.

And please, she says, bring two copies of statements and supporting documents (including canceled checks). One copy is for the judge, one is for your opponent in the suit.

Most small claims hearings last 15-20 minutes, but Andrews has seen them range from five minutes to three hours.

You can hire an attorney to help you with a small claims case but most people don't. Usually, litigants who use attorneys in small claims court are people who retain an



Clerks like Jean Fowler, right, can assist potential litigants, but they can't offer advice.

attorney routinely, she says.

You don't have to hire an attorney just because your opponent does. Your words will carry as much weight as a lawyer's.

Even when attorneys are involved in a small claims hearing, the litigants may still do most of the talking, says Andrews. So remember: Talk to the judge (not your

opponent) and try not to get steamed up.

To file a small claims case, just pick up forms and a copy of "Alaska Small Claims Handbook" in room 134 of the Anchorage District Court building at 303 K St.

In the Matanuska-Susitna Borough, go to the clerk's office in the Palmer District Court building, 268 E. Fireweed.

Then, just follow directions. Be alert to the following:

- The filing fee is \$5.
- To file, you must be 18 or older unless a judge has declared you an "emancipated minor."
- You can ask for a maximum of \$2,000 or personal property worth that amount.

• There are several types of cases that cannot be heard in small claims court, including slander, libel and claims against the state or federal government. Check the handbook for other exceptions.

• The process itself is simple: File a complaint, wait for the defendant to respond, go to court.

• Court clerks cannot fill out the forms for you, nor can they offer legal advice.

• During a small claims hearing, you may call witnesses and cross-examine your opponent, but you're not required to do so.

• The "Small Claims Handbook" and "Judgment Debtor Booklet" explain the rights and responsibilities of defendants.

Before a judge hears your case, the defendant (the person named in the suit)

See Page D-2, CLAIMS'

Claims' number accelerating this year

Continued from Page D-1

must get a copy of whatever court documents you file. This process is called service.

The service requirement means you have to know where to find the defendant; then, a professional process server can deliver the paperwork or the court can send the papers by certified mail. In the latter case, the defendant — not just someone at that address — must sign for the documents.

Court clerks say there's a fair chance that the person against whom your suit is filed will write a counterclaim on the form when he or she files an answer to your claim.

The counterclaim may say you are the one

who owes money, but it doesn't mean you will lose your case automatically.

About half the people who win their cases must go through another process, called execution, because the defendant refuses to surrender the money or property awarded.

Directions on execution are available in "Execution Procedure for Judgment Creditors," another booklet available at the small claims office. Execution involves getting the court's permission to have a process server seize some of the defendant's property. The court also may allow you to garnish the defendant's wages or permanent fund check.

Court clerks say most people who file execution papers eventually collect.

Talk to your adversary first, judge says

Continued from Page D-1

up a book of short stories," she says.

The small claims office is crowded and usually hectic, but the atmosphere remains friendly. During a quiet spell one recent morning, a man leaned against the counter with a bundle of papers.

"Can I help you?" asked Wyrick.

"I hope so," he answered.

She laughed. "That's the

most common phrase I hear," she said.

Like most of the people filing small claims cases, William Berry had never done it before. Two days before he presented his case to Stemp, Berry said he'd been a little nervous.

"I've been trying to jot notes to myself," he said.

Berry hadn't had any trouble filling out the complaint forms, and clerks were nice about it when he asked questions that were answered in the handbook

(see related story this page).

There is one flaw in the process, Berry says: It's slow. "The incident took place in March and here I am, going to court in August."

Berry attributes part of the delay to his attempts to settle his problem informally. Still, his trial date came 15 weeks after he filed the legal complaint — not the 4 to 6 weeks clerks told him it would be.

THERE'S NOTHING SMALL ABOUT THESE CLAIMS

By KAY MONROE LEVINE
Daily News reporter

Had it been a boxing match, the announcer would have said: "And William Berry is down . . . no, he's up — and he's knocking Rent-A-Wreck out of the ring!"

But, because Berry's arena was actually small claims court, there wasn't that much hullabaloo. A sales manager for Postal Instant Press, Berry is pursuing a \$906 small claims suit against Rent-A-Wreck, a local car rental company.

In March, a Rent-A-Wreck car had backed into Berry's vehicle, causing \$906 in damage. But, since the person who'd rented the car wasn't driving, the rental

firm said it wasn't liable. In fact, said manager Jim Secort, Berry himself should have to pay \$400 to compensate the company for "all the trouble we have to go to."

Near the end of the 30-minute hearing, which took place in mid-August, District Court Judge Ralph Stemp said he wasn't swayed by Berry's main argument — that Rent-A-Wreck was responsible because of Alaska's mandatory insurance law. That law clearly is not applicable, said Stemp.

"I was really kind of thrown there for a second," Berry said later.

Then Stemp announced that Berry had won after all, because the rental company didn't retrieve the car when employees learned the renter had loaned it to someone else.

Berry was happy with his victory, whatever the reasoning behind it. "I basically testified from the heart," he said. "I figured I was right."

Berry's case was one of the most common types of small claims actions, say clerks who work in the small claims office. Minor car crashes, bad checks and rental disputes generate most cases.

Alaska law allows anyone over the age of 18 to file a complaint — over nearly anything — in small claims court. The ceiling on damages is \$2,000 in money or personal property. Last year, 10 district court judges heard 5,700 small claims cases.

There will be even more cases this year, says Barbara Wyrick, a clerk in the small claims office. More than 4,200 cases have been filed thus far in 1985.

And they're diverse indeed. For example, the case heard right after Berry's was filed by a woman who sued a former boyfriend for a \$200 loan. She won, but was awarded only \$92 plus \$10 court costs. Her old boyfriend had countersued — successfully — that she should reimburse him for treatment expenses related to a case of crab lice he'd gotten from her.

In the case just before Berry's, the purchaser of a jade tree said the plant died in an untimely fashion and asked the court to award \$500 plus attorney fees. Stemp didn't buy that one.

District Court Judge Elaine Andrews has been hearing small claims cases for 3½ years and calls it the most interesting part of her job.

"It's like coming to court and opening



Mary Music adds to court files.



Anchorage Daily News photos/Jim Lavrakas

See Page D-2, TALK

Anyone over 18 can sue in small claims court; 4,200 such suits have already been filed this year.

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

SENATOR PATRICK RODEY, CHAIRMAN
SENATOR TIM KELLY, VICE-CHAIR
SENATOR JAN FAIKS
SENATOR RICK HALFORD
SENATOR ROBERT ZIEGLER, SR.



POUCH V
JUNEAU, ALASKA 99811
(907) 465-3717

March 2, 1986

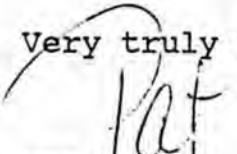
Mr. Don Bruegel, Corporate Auditor
Bayly, Martin & Fay of Alaska, Inc.
1031 W. 4th Ave., Suite 400
P.O. Box 7502
Anchorage, Alaska 99510-7101

Dear Mr. Bruegel:

Thank you for your letter of February 5, concerning jurisdictional limitation of small claims. I have enclosed a copy of a February 19, 1986, article from the Juneau Empire, which describes House Bill 118 and its passage by the legislature. I'm sure this bill will address your areas of concern.

Thank you for your comments.

Very truly yours,


Patrick M. Rodey

Small claims ceiling could be raised; case load upped

By ED SCHOENFELD

THE JUNEAU EMPIRE

A bill that would increase the ceiling for Small Claims Court suits has passed the Senate and is on its way to the Governor's office.

The bill (HB118) will increase the amount an individual, business or government agency can gain from a small claims action from \$2,000 to \$5,000.

The small claims procedure is popular because it is faster, simpler and less expensive than the formal civil court process. Filing costs for a case in small claims court is \$5 and an attorney is not needed.

The bill was submitted by the court system and is strongly supported by the Anchorage Chamber of Commerce, said Karla Forsythe, staff counsel to the administrative offices of the state court system.

The change is supported by private industry because it would make it easier to sue for small amounts of money.

"It's not economic to bring an action between \$2,000 and \$5,000 because attorney fees will eat up most settlements. It's just not worth it," said Forsythe.

The increased maximum is expected to double the number of cases filed, she said. A fiscal note attached to the bill calls for the hire of six new court clerks to handle the increased load, including one in Juneau, she said.

The bill would increase the cost of filing a small claims case from \$5 to at least \$15. Court officials estimate the increase would bring in \$357,000 a year, more than offsetting the cost of additional staff.

The bill passed the Senate 18-0 Wednesday and is headed to the governor's office, where it is expected to be signed into law. It takes effect

once the Supreme Court, which sets Small Claims Court rules, raises the filing fee.

It is unclear how the bill will affect the Juneau courts office, which has been overloaded with small claims cases in recent years.

Statistics show a 44 percent increase locally in small claims filings between fiscal year 1984 and fiscal year 1985, and officials said the trend is continuing.

Juneau Clerk of Trial Courts Sharon Walker said about two-thirds of all civil court cases filed so far this year have been small claims cases.

The increase in filings is related to the increase in the number of large organizations seeking to get payments that have been delinquent. Juneau City-Borough, Bartlett Memorial Hospital and the Alaska Electric Light and Power Company are three of the biggest users, Walker said.

She also said the large number of cases can be at least partially attributed to more collection agencies in Juneau.

Walker said the increased number of small claims cases has caused a staff crunch in the local trial clerk's office. Only one person at the office is assigned to small claims cases, which are often filed in large numbers, she said.

"When you get hit with 70 cases a day and it takes an average of 15 minutes per case and you only have one person doing that, we all get in and help," she said.

The large number of filings is slowing down the small claims court process two to three weeks, she said. The length of the process varies from case to case. The average case took about a month to complete before the current crunch hit, she said.

The staff shortage is worse in Juneau than some other communities, Walker said. The Fairbanks office has two staff members assigned to handle small claims cases and handles a smaller case load than Juneau, she said.

But Juneau is not the only community where small claims court cases have increased. Court filings went up by one-third statewide in 1985, according to the state court system's annual report. At 78 percent, Palmer had one of the largest increases in filings. A 34 percent increase was reported in Anchorage.

Because of the heavy load of cases, court employees are encouraging those considering small claims

actions to read several booklets explaining the court procedure.

A booklet titled "Alaska Small Claims Handbook," is available from the local trial clerk's office. The office is located on the ground floor of the Court Building, at the corner of Fourth and Main Streets downtown.

While an attorney is not needed to file a small claims case, one can be used, and if the person filing suit

wins the case, attorney fees can be collected.

The small claims procedure can be used to gain a legal ruling about a debt, but it does not force payment. These methods are also described in a booklet that's available at the court office. Methods of collection include seizing property, garnishing wages and getting the state to hand over part of a Permanent Fund Dividend.



February 5, 1986

Senator Patrick Rodey
Pouch V
Capitol Building
Juneau, AK 99811

Dear Senator Rodey:

I would like to urge you to promote and support legislation to raise the small claims jurisdictional limit from \$2,000 to \$5,000. This measure, which was supported by a majority of the legislators, was not acted on last year to give the court system time to adequately budget for the change. I believe the time for action is now!

Please keep me posted as to the progress of this legislation.

Cordially,

BAYLY, MARTIN & FAY OF ALASKA, INC.

Don Buegel
Corporate Auditor

DR/ajt/25/2



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
General Counsel

303 K Street
Anchorage, AK 99501

March 21, 1985

The Honorable Patrick Rodey
Chairman
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Rodey:

Thank you for the opportunity to appear before the Committee on March 19 to respond to concerns that the small claims procedures have become overly complex.

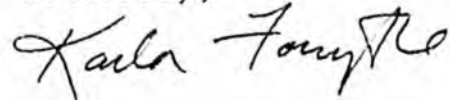
As I indicated to the Committee, I will be meeting with Mr. Lewis and Mr. Mahnke on March 28 to discuss their specific concerns with the way in which the court processes small claims. However, the majority of the procedures and forms which these gentlemen question are required directly by the Alaska Exemptions Act (A.S. 09.38), enacted by the legislature in 1981. It is my understanding that after our meeting, Messrs. Lewis and Mahnke may be proposing amendments to the statute. The court system will be glad to review these proposals and comment as to the procedural impact on the courts.

As a general comment, the court system has developed both small claims and exemption forms and instructions with a view toward assisting litigants for whom the small claims procedures are primarily designed: individuals bringing or defending claims on their own. The court system has worked hard to develop forms which are understandable and usable by lay people. Messrs. Lewis and Mahnke are representative of the another major type of small claims litigants: businesses routinely collecting unpaid accounts either on their own behalf or for another entity. These two types of litigants may have different interpretations of the legislature's mandate for the court to provide a simple and expeditious small claims process. Both viewpoints must be taken into account in developing forms and procedures.

The Honorable Patrick Rodey
March 21, 1985
Page Two

Should the Committee or individual members desire further details at this time regarding small claims or exemption forms and procedures, please let me know.

Sincerely,



Karla Forsythe
General Counsel

cc: Senator Faiks
Senator Halford
Senator Kelly
Senator Ziegler
Arthur H. Snowden, II
Mr. Lewis
Mr. Mahnke
Sharon Walker, Juneau Clerk of Court

KLF:lae

M E M O R A N D U M

April 4, 1985

To: Arthur H. Snowden, II
Administrative Director

From: Karla L. Forsythe *KLF*
General Counsel

Subject: Concerns about number and complexity of
small claims forms

On March 28 I met with Bruce Manhke and H. H. Lewis of Associated Credit Agency, who had contacted Senator Faiks with concerns about the number and complexity of small claims forms. I had advised the Senate Judiciary Committee that I would be meeting with these gentlemen to discuss their concerns.

After our discussion, it appears that the majority of their questions relate to forms and procedures required by the Alaska Exemptions Act (AS 09.38). Mr. Mahnke has obtained a copy of the act, and plans to address his substantive concerns to the Code Revision Commission, which developed and requested this legislation.

These gentlemen also raised technical questions about court forms, and concerns about Small Claims Rule 15 and general court policy. I recommend that these questions be referred to the Forms Committee for discussion and response to Mr. Mahnke and Mr. Lewis. These specific areas are listed below:

1. Small Claims Rule 15. This rule provides that any party asserting a claim as an assignee must be represented by an attorney. Messrs. Mahnke and Lewis request that this requirement be deleted from the rule. They point out that this requirement is an additional expense to debtors, because attorneys fees are passed along. It is their understanding that this rule was developed because of a concern originally articulated by Mary Alice Miller that collection agencies were filing false cases.

M E M O R A N D U M

April 4, 1985

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They believe defendants are adequately protected under the Federal Fair Debts Collection Act, which they say provides that fraudulent filing to collect a claim is a federal offense with specific penalties.

Mr. Mahnke tells me he has tried to locate an attorney to handle his collection cases at a reasonable fee. He contacted many attorneys in Juneau, most of whom indicated they represented persons against whom collection activity would be undertaken. The attorney currently working with the firm is charging \$20 to review a case, and \$60 for an appearance if the defendant answers. If the attorney is out of town, or has a conflict of his own, the pace of collection activity slows.

2. Exemptions Forms. The following questions were posed:

a. Why does a party have to write the name of the plaintiff and defendant several times on a form? Why can't the form simply read "above-named plaintiff" or "above-named defendant?"

b. Why must process servers be required to serve the lengthy judgment debtor booklets? There is no way to serve a person with one of these booklets discreetly. It would be less expensive to the court to simply provide a sheet saying "a statement of your rights may be obtained from the court," rather than serving a book. They say in several instances, the defendant upon service has thrown away the book. This happens often if the defendant is served with several writs within a short time period. Mr. Mahnke believes it is wrong for the court to have a policy whereby a return of service will not be accepted unless he states he has served the booklet.

c. Information to complete the figures on the writ is submitted to the clerk, along with the writ itself. In Juneau, the clerk reviews the figures on the writ, and will change them

on the writ in pen, initialed, if the clerk reaches a different calculation. Bank have questioned the validity of these writs. Mr. Lewis believes that the court either should not change the figures on the writ, or should do the figuring itself. As a side note, in one instance the clerk proposed changing figures because they failed to reflect a leap year, although the form itself refers to 365 days.

d. Why can't the garnishment form show process server fees at the bottom, similarly to a writ for property? Space for the service fee should be included on the writ for garnishment. Otherwise, employers can take out the money, and then fire the employee, and fees on a supplemental writ will never be collected.

e. The court is interpreting the notice of levy provision to require a two-step process. First, a personal demand must be made with the exemption paperwork served. If there is no response, the temporary restraining order is served. However, the TRO is ineffective, because during the time span between the demand and the service of the TRO and 15 day notice, the defendant may depart or dispose of the assets.

f. The property and garnishment writs should be combined into one form.

3. Small claims forms. Mr. Lewis and Mr. Mahnke and I reviewed all the small claims forms. They agreed that all of the forms are necessary, and understood that many are required for internal paperwork. However, they had several questions and concerns with court policy and the wording of the forms.

a. They question the court's policy of not granting requests for default judgments if the defendant answers beyond the 20 days but before the request is filed. As an example, if the defendant answers on day 29, and the process server does not

request default until day 30, Messrs. Mahnke and Lewis believe the court should grant the request for default.

b. The dismissal form should include more information. There can be reasons a case is dismissed in addition to failure to file an answer, such as wrong name, or inability to serve. Also, they do not understand why the defendant's signature is required on the stipulation, since the plaintiff is dismissing the case.

c. They believe the satisfaction of judgment form should be more specific, with separate boxes to be checked for money claims paid in full and for performance. Failure to pay a money judgment can be reported for credit purposes; a judgment for services cannot be reported.

d. They are concerned about fraudulent use of the stipulation for installment payments. They point out that a person can sign the installment agreement with every intent of leaving the state. Although they are aware that they take a risk in agreeing to installment payments, often there is no choice, because the judge requires them to go along. They suggest that they be permitted to submit an affidavit of proof that a defendant is planning to leave the jurisdiction, which would permit execution, rather than require adhering to an installment payment stipulation which will never materialize.

e. They believe it is costly and wasteful to require plaintiffs to complete three or four envelopes at the time the complaint is filed. They point out that often the defendant does not answer, in which case the envelopes will not be used. Also, envelopes often have the wrong address, because the community is so transient, and envelopes must be checked against the return with no time saving.

Mr. Mahnke and Mr. Lewis pointed out that if small claims jurisdiction increases to \$5,000, even more collection activity will take place through small claims court. They suggest that a representative of the business community and/or a process server be involved whenever exemption, small claims, and related forms are reviewed by the Forms Committee.

cc: Bruce Mahnke
H. H. Lewis
Senator Faiks
Senator Rodey
Senator Ziegler
Senator Kelly
Senator Halford
Don Bauermeister
Susan Miller
Sharon Walker

§ 22.15.030

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ley, Sup. Ct.
05), 550 P.2d

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District court lacked jurisdiction over action for accrued rent. — Where the district court had no jurisdiction over actions for forcible entry and detainer in 1965, the court also lacked jurisdiction to enter a 1966 judgment on a second cause of action for accrued rent under the special form of summons used in forcible entry and detainer actions. *McDowell v. Lenarduzzi*, Sup. Ct. Op. No. 1242 (File No. 2413), 546 P.2d 1315 (1976).

Serving as a district judge constitutes the "practice of law." In re Application of *Brewer*, Sup. Ct. Op. No. 864 (File No. 1643), 506 P.2d 676 (1973).

The district judge is continuously involved with legal problems of a wide variety as indicated by the statutory juris-

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diction of the district court, and the nature of the judge's duties includes conducting court hearings, ruling on questions of evidence, and adjudicating issues of law and fact, so as clearly to constitute the "practice of law." In re Application of *Brewer*, Sup. Ct. Op. No. 864 (File No. 1643), 506 P.2d 676 (1973).

Applied in *Oxereok v. State*, Sup. Ct. Op. No. 2076 (File No. 3902), 611 P.2d 913 (1980).

Cited in *Dowling Supply & Equip., Inc. v. City of Anchorage*, Sup. Ct. Op. No. 739 (File No. 1450), 490 P.2d 907 (1971); *Aguchak v. Montgomery Ward Co.*, Sup. Ct. Op. No. 1026 (File No. 1940), 520 P.2d 1352 (1974).

Sec. 22. 20. Small claims. When a claim for relief does not exceed \$2,000 exclusive of costs, interest and attorney fees, and request is so made, the district judge or magistrate shall hear the action as a small claim unless important or unusual points of law are involved. The supreme court shall prescribe the procedural rules and standard forms to assure simplicity and the expeditious handling of small claims. (§ 8(4) ch 184 SLA 1959; added by § 1 ch 91 SLA 1961; am § 1 ch 12 SLA 1970; am § 1 ch 23 SLA 1978)

Cross references. Small claims rules may be found in District Court Civ. R. 8-22.

Effect of amendments. — The 1978 amendment increased the maximum limit

for small claims from \$1,000 to \$2,000. Legislative history reports. — For report on 1961 amendment, see 1961 House Journal, pp. 314, 315.

NOTES TO DECISIONS

Magistrates are "judges of other courts" within the meaning of Alaska Const., art. IV, § 4. *Buckalew v. Holloway*, Sup. Ct. Op. No. 1988 (File No. 4058), 604 P.2d 240 (1979).

Notice to indigent bush defendants. — Proper tailoring of notice to the capacities and circumstances of indigent bush defendants requires the communication of substantially more information regarding the methods by which such defendants can respond to a distant lawsuit than is presently imparted. *Aguchak v. Montgomery Ward Co.*, Sup. Ct. Op. No. 1026 (File No. 1940), 520 P.2d 1352 (1974).

A notice that fails to inform the indigent bush defendant of the right to file a written pleading is not reasonably calculated to afford the defendant an opportunity to be heard at a meaningful time and

in a meaningful manner. *Aguchak v. Montgomery Ward Co.*, Sup. Ct. Op. No. 1026 (File No. 1940), 520 P.2d 1352 (1974).

The summons served upon indigent bush defendants in a small claims action was constitutionally defective because it did not adequately convey the information necessary to their defense against a creditor's claim. The district court's assumption of personal jurisdiction over the debtors based on such a summons therefore violated the due process rights which inure to the debtors under Alaska Const., art. I, § 7. *Aguchak v. Montgomery Ward Co.*, Sup. Ct. Op. No. 1026 (File No. 1940), 520 P.2d 1352 (1974).

Counsel for collection suit defendants. — The bulk of collection suit defendants, due to indigency, cannot afford to engage counsel to advise them of their "venue" rights. *Aguchak v. Montgomery*

 Plaintiff(s),
 vs.

 Defendant(s)

CASE NO. _____ SC
 COMPLAINT

Plaintiff is a corporation that has paid its taxes due the state and filed its required reports.
 is not a corporation

Defendant is indebted to the plaintiff in the amount of \$ _____ plus court costs and interest as a result of _____

which occurred at or near _____, Alaska, on or about _____, 19 _____.

Plaintiff has demanded relief from the defendant, but defendant has failed to comply.

Plaintiff requests the small claims procedure, gives up his right to a jury trial and formal procedure in this case, and waives all of this claim which exceeds \$2,000. If the court enters an order applying the formal Rules of Civil Procedure rather than the Small Claims Rules to this action, this waiver shall be null and void.

This action is filed at a court which will not cause unnecessary expense or inconvenience to the defendant and is the court nearest to:

(CHECK APPLICABLE BOXES)

- The residence or place of employment of defendant.
- Where personal injury or property damage occurred.
- Where the defendant does or solicits business.

 Print Name and Title (if applicable)

 Date

 Plaintiff (Signature)

 Mailing Address

 Home Phone Work Phone

SUPPORTING DOCUMENTS OR COPIES OF THESE DOCUMENTS, FOR EXAMPLE, CHECKS, RECEIPTS, BILLS, NOTES, STATEMENTS OF ACCOUNT, ETC., MUST BE ATTACHED. COPIES MUST BE SUPPLIED FOR EACH DEFENDANT.

Plaintiff(s),
vs.

Defendant(s)

CASE NO. _____ SC
SUMMONS

TO: _____
ADDRESS: _____

The plaintiff has filed a small claims action against you. You are summoned and required to answer the complaint which accompanies this summons. If you do not answer the complaint, the court may enter a judgement against you for the amount claimed plus interest and court costs.

If you elect to continue to use small claims procedures, complete the attached ANSWER and mail or deliver it to the District Court at _____
(address)

(city) . YOUR ANSWER MUST REACH THE COURT WITHIN 20 DAYS AFTER THE DAY YOU RECEIVE THIS SUMMONS AND COMPLAINT. Please read Chapter III of the Small Claims Handbook before filling out the answer.

If your answer indicates disagreement with the plaintiff, the court will set a date for trial of this case at the above court. You may request to have the trial held in another court.

The suit the plaintiff filed against you is a civil action and you are not accused of a crime. If you lose this case, the plaintiff may ask only that the court take some of your wages, money or property to pay the judgement.

This case has been filed under the rules of small claims procedure. You may choose to continue to use small claims procedures or you may elect to use the procedures set forth in Part I of the District Court Rules of Civil Procedure. Page 14 of the Small Claims Handbook describes the differences between these two types of procedures.

If you elect Part I of the District Court Rules of Civil Procedure, you must file with the court a written request for Part I and an answer to the complaint. The court does not provide forms or other assistance in cases proceeding under Part I of the District Court Rules of Civil Procedure. You may wish to consult with an attorney if you select Part I procedures.

This is your copy of the summons and complaint.

Date

JUDGE / CLERK

 Plaintiff(s),
 vs.

 Defendant(s)

CASE NO. _____ SC
 ANSWER, COUNTERCLAIM, REQUEST
 FOR CHANGE OF PLACE OF TRIAL

[Only defendants who elect small claims procedures may use this form. Do not use this form if you elect Part I of the District Court Rules of Civil Procedure.]

I. ANSWER

Defendant answers the complaint as follows:

- I agree with what the plaintiff claims.
- I owe the plaintiff: Nothing \$ _____
because _____
- COUNTERCLAIM: The plaintiff owes me \$ _____
because: _____

NOTE: The maximum amount of the counterclaim which may be recovered under small claims procedures is \$2,000. A plaintiff against whom a counterclaim is filed shall have ten days after such claim is mailed to him to demand that formal District Court rules apply. If he does so, this action will no longer be treated as a small claim.

II. REQUEST FOR CHANGE OF PLACE OF TRIAL

- I request that the court change the place of trial to _____
_____, Alaska because _____

III. SMALL CLAIMS ELECTION

I understand that I have the right to proceed under Part I of the District Court Rules of Civil Procedure. However, I HEREBY ELECT THE SMALL CLAIMS PROCEDURES. I give up my right to a jury trial and formal procedure and waive all this counterclaim (if any) which exceeds \$2,000.

_____ Date
 _____ Signature
 I certify that on _____
 _____ copies of
 this form were sent
 to: _____ Mailing Address
 _____ Home Phone _____ Work Phone
 _____ Clerk

SUPPORTING DOCUMENTS OR COPIES OF THESE DOCUMENTS, FOR EXAMPLE, CHECKS, RECEIPTS, BILLS, NOTES, STATEMENTS OF ACCOUNT, ETC., MUST BE ATTACHED. COPIES MUST BE SUPPLIED FOR THE PLAINTIFF.

)
)
 Plaintiff(s),)
)
 vs.)
)
)
)
)
 Defendant(s))
)
 _____)

CASE NO. _____ (SC)
 DEFAULT AFFIDAVIT AND REQUEST
 FOR JUDGMENT

1. More than 20 days have elapsed since the summons and complaint were served upon defendant, _____.
 2. I have personal knowledge that the above-named defendant is not an infant or otherwise incompetent and is not in the active military service of the United States.
 3. I affirm that the information included in the complaint and attached documents is accurate and demonstrates that I am entitled to the relief demanded.
 4. Since filing the complaint, I have received \$ _____ from the defendant, thereby leaving a balance of \$ _____ owed for which I request judgment.
- Date of last payment: _____ (or other information necessary for the computation of pre-judgment interest) _____

I do solemnly swear (or affirm) that the facts set out above are true to the best of my personal knowledge, and request default judgment.

 Print Name and Title (If Applicable)

 Signature

Subscribed and sworn to before me on _____, 19__

 Clerk of Court, Notary Public, or
 other person authorized to administer
 oath.

SERVICE INSTRUCTIONS

DATE: _____

CASE NO.: _____

PROCESS SERVER: _____

PERSON REQUESTING SERVICE:

Name: _____

Address: _____

Phone: _____

PERSON TO BE SERVED:

Name: _____

Address _____

Phone: _____

DOCUMENTS TO BE SERVED: _____

Instructions/Remarks: _____

