

NOTICE OF PRELIMINARY DRAFT OF
PROPOSED AMENDMENTS TO LOCAL RULES
U.S. DISTRICT COURT, DISTRICT OF ALASKA.

Comments are sought on proposed amendments to Local (Civil) Rules

16.1; 16.3; and Local Civil Form 26.1(f)

and Local Criminal Rules 1.1, 58.2 and 59.1 (*Abrogated*)

All Comments received become part of the permanent files on the rules.

Written comments on the preliminary draft are due no later than October 29, 2004

Address all communications on rules to:

United States District Court, District of Alaska

Attention: Court Rules Attorney

222 West Seventh Avenue, Stop 4

Anchorage, Alaska 99513-7564

or

e-mail to AKD-Rules@akd.uscourts.gov

Rule 16.1 Pre-Trial Procedures.

(a) **Exempted Matters.** Unless otherwise ordered by the court, the following categories of cases are exempted from the requirement of scheduling conferences and scheduling orders:

- (1) Internal Revenue Service enforcement actions;
- (2) eminent domain proceedings;
- (3) bankruptcy appeals;
- (4) habeas corpus petitions;
- (5) Freedom-of-Information-Act actions;
- (6) actions to enforce out-of-state judgments;
- (7) social security appeals;
- (8) Administrative Procedure Act appeals; and
- (9) actions in which service upon a defendant is not effected within 120 days of filing of the complaint.

(b) **Pre-Trial Scheduling and Planning Conference.**

(1) The report required by Rule 26(f), Federal Rules of Civil Procedure, must:

[A] be in form substantially similar to AK LCF 26(f), Scheduling and Planning Conference Report;

[B] be signed by counsel for the parties; and

[C] clearly specify—

- (i) those matters, if any, on which the parties were unable to reach agreement, and
- (ii) the respective positions of each party on each matter on which agreement could not be reached.

(2) The court may enter a scheduling and pretrial order without a hearing or set a pre-trial conference.

(c) **Standard Pretrial Procedures and Times.** Unless otherwise ordered by the court, the procedures and times set forth in this subsection apply to all pretrial matters.

(1) Preliminary disclosure of potential witnesses (a preliminary witness list) will be made contemporaneously with the disclosures required by Rule 26(a)(1), Federal Rules of Civil Procedure.

(2) Counsel for each party must contemporaneously prepare and maintain a written record of all disclosures and supplementation of disclosures or responses made to requests for discovery under Rule 26(a) and (e), Federal Rules of Civil Procedure.

(3) If discovery is not completed by the date specified in the Pretrial Scheduling Order:

[A] the parties may stipulate to a continuance of not more than two (2) months for the completion of discovery, which stipulation does not require court approval, provided that the stipulation states with particularity—

- (i) the discovery that remains to be accomplished, and
- (ii) when discovery will be accomplished; or

[B] if more than two months is required to complete discovery, the parties must request a discovery conference with the court.

(4) The deadline for completion of discovery set in the Pretrial Scheduling Order is applicable to all depositions, including depositions referred to as “perpetuation” depositions.

(5) Preliminary motions, especially those raising legal issues that have the potential for reducing necessary discovery, should be served and filed at the earliest time possible commensurate with the development of discovery, if any, necessary to support the motion.

(6) Motions to amend pleadings or add parties must be filed not later than sixty (60) days after the date the Pretrial Scheduling Order is entered.

(7) Motions under the discovery rules must be filed not later than thirty (30) days after the date set for the close of discovery.

(8) Motions in limine and dispositive motions must be filed not later than thirty (30) days after the date set for the close of discovery.

(9) Subject to the provisions of paragraph (c)(3), the parties may, by agreement, extend the time for a party to respond to any discovery request propounded by any other party.

(d) **Pre-Trial Conferences.** Status, discovery, settlement, or other pre-trial conferences may be scheduled upon motion of a party or on the court's own motion.

(e) **Certification of Readiness for Trial.** In the event that all discovery is completed more than forty-five (45) days before the discovery close date set in the Pretrial Scheduling Order and no dispositive motions are to be made by any party, counsel for plaintiff should file a certification that the matter is ready for trial as provided in D.Ak. LR 40.3(b).

Related Provisions:

F.R.Civ.P. 16 Pretrial Conferences; Scheduling; Management

D.AK. LR 40.3 Calendaring Cases for Trial

LCF 26(f) Scheduling and Planning Conference Report

COMMENT: Paragraph (a)(9) is amended to clarify that it applies in the event that any named defendant has not been served within 120 days (if the defendant has appeared, service has occurred and there is no need for a return of the summons to be filed).

Paragraph (b)(1) is amended eliminating the time within which the Scheduling and Planning Conference Report must be filed by the parties. The time for filing is provided in the pre-trial planning order issued by the presiding judge.

Subparagraph (c)(5)[B] is abrogated. The time for filing motions under F.R.Civ.P. 12(b) is governed by Rule 12.

Rule 16.3 Administrative Agency Appeals

(a) **Applicability.** Unless otherwise ordered by the court, this rule applies to all appeals under the Administrative Procedure Act.

(b) **Agency Record.**

(1) The agency record, together with proof of service of notice of filing, must be filed not later than 60 days after the initial appearance by the defendants.

(2) A request to augment the agency record must be filed not later than 15 days after notice is given that the agency record has been filed with the court.

(c) **Briefing Schedule.**

(1) Plaintiff's principal brief, in the form of a motion for summary judgment, must be filed not later than 30 days after the agency record is filed.

(2) Defendant's principal brief in opposition, which will be deemed a cross-motion for summary judgment, must be filed not later than 30 days after plaintiff has served and filed plaintiff's principal brief.

(3) Plaintiff may file a reply to defendant's opposition not later than 15 days after service of the opposition.

(d) **Extension of Time .**

(1) The parties may, by written stipulation, extend the time under subsections (b) and (c) by not more than 15 days, which extension need not be approved by the court.

(2) Any extension of time other than as provided in paragraph (d)(1) may be granted only for good cause shown.

(e) **Failure to Timely File Briefs.**

(1) [A] A brief may be filed after the time for filing a brief, including any extensions of time for filing, has lapsed only by leave of the court.

[B] Leave of court must be obtained by motion and, unless otherwise ordered by the court, no opposition to the motion may be served and filed.

[C] The moving party must set forth in the motion:

(i) that the moving party has conferred with the other party(ies) to the appeal and must advise the court whether the motion is opposed or unopposed:

(ii) the date the brief was due;

(iii) whether any extensions were given to file the brief; and

[D] The motion must be accompanied by:

(i) an affidavit or declaration under penalty of perjury stating the reason for seeking leave to file the brief late; and

(ii) a copy of the brief proposed to be filed.

(2) In the event the plaintiff fails to file plaintiff's principal brief by the time specified, including any extensions thereof, the clerk will issue a notice that unless within seven (7) days after notice is sent, the brief together with a motion to accept a late filed brief as provided in paragraph (d)(1) is filed with the court or good cause for the failure to file the brief be shown, the clerk will enter an order dismissing the case.

(3) Failure by the defendant to file defendant's principal brief may be deemed by the court as an admission that the appeal is well taken; provided, however, that the court will not enter judgment reversing the agency decision unless the agency record, taken as a whole, reveals that the agency action was erroneous as a matter of law.

Related Provisions:

5 U.S.C. §§ 701–706 Judicial Review

D.Ak. LR 7.2 Hearings

D.Ak. LR 7.3 Telephonic Participation in Civil Cases

D.Ak. LR 10.1 Form of Pleadings and Other Papers

COMMENT: This rule establishes a procedure for processing of administrative agency appeals, which are exempt from the pre-trial procedures of LR 16.1. The time frames, coupled with the provision for an “automatic” extension of not more than 15 days, are sufficiently long to minimize the need for parties to request any extension of time yet should not unduly delay submission to the court for determination. Subsection (e) is patterned on LBR 8009-2 but specifically precludes reversal of the agency action for a failure to file a brief unless it is clear on the record that the requirements of 5 U.S.C. § 706 apply. Under current practice, after the agency files the record, the court either enters an order similar to the pretrial order in matters governed by LR 16.1 or the plaintiff files a motion for summary judgment. The timing for these is, at best, somewhat haphazard and not always consistent. This rule eliminates any inconsistencies in the practice and reduces the involvement by the CMC (other than tracking) and entry of orders by the court with the process up to the time it is ripe for submission to the court.

Rule 1.1 Scope

(a) Scope.

(1) These rules:

[A] apply to all criminal actions and proceedings before this court; and

[B] supplement the Federal Rules of Criminal Procedure and federal statutory law.

(2) The court, on its own motion or the motion of any party, for cause and in the interests of justice, may modify or dispense with any of these rules in a particular case.

(b) **District of Alaska Local Rules Applicable**. The District of Alaska Local Rules and District of Alaska Local Magistrate Judge Rules apply to criminal proceedings where appropriate.

(c) **Effective Date of Amendments**. All amendments or additions to these rules will apply to:

(1) all proceedings brought in this district on or after the effective date of the amendments; and

(2) except to the extent that the rights of any party are prejudiced, to all proceedings pending in this court on the effective date.

Related Provisions:

D.Ak.LR 5.1	Filing and Proof of Service When Service is Required by Rule 5, Federal Rules of Civil Procedure
D.Ak.LR 5.2	Filing and Proof of Service
D.Ak.LR 5.3	Copies Required for a Three-Judge Court
D.Ak.LR 5.4	Proposed Orders
D.Ak.LR 5.5	Service Upon Parties by the Court
D.Ak.LR 7.1	Motion Practice
D.Ak.LR 9.2	Request for a Three-Judge Court
D.Ak.LR 10.1	Form of Pleadings and Other Papers
D.Ak.LR 39.3	Exhibits
D.Ak.LR 39.5	Courtroom Conduct
D.Ak.LR 43.1	Examination of Witnesses
D.Ak.LR 47.1	Voir Dire
D.Ak.LR 51.1	Jury Instructions
D.Ak.LR 83.1	Attorneys
D.Ak. LMR 2	Authority of Magistrate Judges
D.Ak. LMR 3	Criminal Matters Routinely Assigned to Magistrate Judges

COMMENT: New subsection (c) is former LCrR 59.1(b) renumbered without substantive change.

Rule 58.2 Payment of Fixed Sum in Lieu of Appearance

(a) Bail Forfeiture.

(1) A person who is charged with a petty offense as defined in 18 U.S.C. §3559(a)(6)–(9), may, in lieu of appearance, pay to the United States the amount indicated for the offense, thereby waiving appearance and forfeiting the amount so paid.

(2) Forfeiture of the specified amount constitutes an admission of guilt.

(3) The Clerk of Court will maintain available for the public a copy of the bail forfeiture schedule.

(b) **Failure to Pay or Appear.** If a person charged with an offense listed for which a fixed amount may be paid fails to pay the amount or otherwise appear, any punishment including fine, imprisonment or probation, may be imposed within the limits established by law upon conviction by plea or after trial.

(c) **Traffic Violations.** The record of any conviction of a traffic violation as may be required by state statute will be certified by the Clerk of Court to the appropriate state authority.

(d) **Exception.** Nothing contained in this rule prohibits a law enforcement officer from:

(1) requiring a person charged with the commission of any offense described in subsection

(e) to appear before a magistrate judge; or

(2) arresting a person for commission of the offense and taking the person immediately before a magistrate judge or other judicial officer.

(e) **Assimilated Offenses.**

(1) The bail forfeiture schedule adopted by the State of Alaska under Alaska Administrative Rule 43 applies to any offense assimilated by the Federal Assimilated Crimes Act (18 U.S.C. §13).

(2) Except as otherwise provided in the regulation, the bail forfeiture schedule adopted by the State of Alaska under Alaska Administrative Rule 43 applies to any offense adopted or incorporated by a regulation promulgated by a Federal agency.

Related Provisions

18 U.S.C. § 13	Laws of States adopted for areas within Federal jurisdiction
18 U.S.C. § 3559	Sentencing classification of offenses
18 U.S.C. § 3571	Sentence of fine
40 U.S.C. § 1315	Law enforcement authority of Secretary of Homeland Security for protection of Public Property
Ak.AdminR 43	Bail Forfeiture Schedules
Ak AdminR 43.1	Traffic Bail Forfeiture Schedule
Ak AdminR 43.2	Fish and Game Bail Forfeiture Schedule
Ak AdminR 43.3	Parks Bail Forfeiture Schedule
Ak AdminR 43.4	Smoking Bail Forfeiture Schedule
Ak AdminR 43.5	Alcohol Bail Forfeiture Schedule
Ak AdminR 43.6	Oversize Vehicle Bail Forfeiture Schedule
Ak AdminR 43.7	Warning Signs Bail Forfeiture Schedule
Ak AdminR 43.8	Watercraft Bail Forfeiture Schedule

COMMENT: Adds subsection (e) adopting the Alaska bail forfeiture schedule for all crimes assimilated under 18 U.S.C. §13 and state laws adopted by regulation. Historically, bail schedules for this court have been adopted on an agency by agency basis. These bail schedules may include state law offenses committed on federal land adopted by administrative regulation. Paragraph (e)(2) makes state bail schedules applicable to state laws adopted by agency regulation unless the regulation provides otherwise. The Assimilated Crimes Act and, by necessary implication if not specific regulatory language, agency regulations adopting state law do not apply where there is a specific federal law or agency regulation prohibiting the same or substantially similar conduct covered by the state law [See *United States v. Waites*, 198 F.3d 1123 (9th Cir. 2000); *United States v. Palmer*, 956 F.2d 189 (1992)], therefore, the state bail schedules do not apply in that situation.

Agency generated bail schedules get updated on a staggered basis, consequently, on occasion there are differences in Agency bail schedules for the same state offense committed in a federal jurisdiction and frequently the schedule differs from the bail schedule adopted by the state. This situation is contrary to the intent of the Assimilated Crimes Act to provide for a like punishment for an assimilated offense in Federal courts as the offender would receive in state court. Subsection (e) will provide complete uniformity whether the offense is prosecuted in state or federal court and irrespective of which agency issues the citation. In addition, the state not infrequently amends its statutes or and regulations assimilated by the Assimilated Crimes Act of adopted by be regulation, in some cases restructuring and renumbering the provision. This requires amendment of this courts bail schedule. Alaska Administrative Rule 43 provides for an annual review by the cognizant state agency and recommendation for changes. This will also result in bail schedules being automatically updated lessening the administrative burden on the agencies and the court of keeping the bail schedules current as state law changes.

(Insert Atty (or party if pro se) Name, Address, Telephone and Facsimile Numbers and e-mail address)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

(Insert Name of Plaintiff))	
Plaintiff(s))	Case No. (Insert Case No)
vs)	
)	
(Insert name of Defendant))	
Defendant(s))	SCHEDULING AND PLANNING CONFERENCE REPORT

1. **Meeting.** In accordance with F.R.Civ.P. 26(f), a meeting was held on *(insert date)* and was attended by:

- (Insert attorney's name)* attorney for plaintiff *(insert name of party)*
- (Insert attorney's name)* attorney for defendant *(insert name of party)*
- (Insert attorney's name)* attorney for defendant *(insert name of party)*
- (Insert attorney's name)* attorney for defendant *(insert name of party)*

The parties recommend the following:

2. **Pre-Discovery Disclosures.** The information required by F.R.Civ.P. 26(a)(1):

_____ have been exchanged by the parties

_____ will be exchanged by the parties by *(insert date)*

Proposed changes to disclosure requirements: *(Insert proposed changes, if any)*

Preliminary witness lists

_____ have been exchanged by the parties

_____ will be exchanged by the parties by *(insert date)*

3. **Contested Issues of Fact and Law.** Preliminarily, the parties expect the following issues of fact and/or law to be presented to the court at trial in this matter:

(insert contested issues)

4. **Discovery Plan.** The parties jointly propose to the court the following discovery plan.

A. Discovery will be needed on the following issues:

(Insert discovery issues)

B. All discovery commenced in time to be completed by *(insert date)* ("discovery close date").

C. Limitations on Discovery.

1. Interrogatories

_____ No change from F.R.Civ.P. 33(a)

_____ Maximum of _____ by each party to any other party.

Responses due in _____ days.

2. Requests for Admissions.

_____ No change from F.R.Civ.P. 36(a).

_____ Maximum of _____ requests.

Responses due in _____ days.

3. Depositions.

_____ No change from F.R.Civ.P. 36(a), (d).

_____ Maximum of _____ depositions by each party.

Depositions not to exceed _____ hours unless agreed to by all parties.

D. Reports from retained experts.

_____ Not later than 90 days before the close of discovery subject to F.R.Civ.P. 26(a)(2)(C).

_____ Reports due:

From plaintiff (*insert date*)

From defendant (*insert date*)

E. Supplementation of disclosures and discovery responses are to be made:

_____ Periodically at 60-day intervals from the entry of scheduling and planning order.

_____ As new information is acquired, but not later than 60 days before the close of discovery.

F. A final witness list, disclosing all lay and expert witnesses whom a party may wish to call at trial, will be due:

_____ 45 days prior to the close of discovery.

_____ Not later than (*insert date*)

5. Pretrial Motions.

_____ No change from D.Ak. LR 16.1(c).

The following changes to D.Ak. LR 16.1(c). [Check and complete all that apply]

_____ Motions to amend pleadings or add parties to be filed not later than (*insert date*).

_____ Motions under the discovery rules must be filed not later than (*insert date*).

_____ Motions in limine and dispositive motions must be filed not later than (*insert date*).

6. Other Provisions:

A. _____ The parties do not request a conference with the court before the entry of the scheduling order.

_____ The parties request a scheduling conference with the court on the following issue(s):

(*Insert issues on which a conference is requested*)

B. Alternative Dispute Resolution. [D.Ak. LR 16.2]

_____ This matter is not considered a candidate for court-annexed alternative dispute resolution.

_____ The parties will file a request for alternative dispute resolution not later than _____ (*insert date*).

_____ Mediation _____ Early Neutral Evaluation

C. The parties _____ do _____ not consent to trial before a magistrate judge.

D. Compliance with the Disclosure Requirements of F.R.Civ.P. 7.1

_____ All parties have complied _____ Compliance not required by any party

7. Trial.

A. The matter will be ready for trial:

_____ 45 days after the discovery close date.

_____ not later than (*insert date*).

B. This matter is expected to take _____ days to try.

C. Jury Demanded _____ Yes _____ No

Right to jury trial disputed? _____ Yes _____ No

Dated:

(Insert Signature Block for Plaintiff's Attorney)

(Insert Signature Block for Defendant's Attorney)

(Insert Signature Block for Defendant's Attorney)

(Insert Signature Block for Defendant's Attorney)