

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 Rules

[Civil, Criminal, Habeas Corpus, and Magistrate Judge]

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

**Written comments on the preliminary draft rules are due not later than June 30, 2010**

Address all communications on rules to:

United States District Court, District of Alaska  
Attention: Court Rules Attorney  
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## SYNOPSIS OF PROPOSED AMENDMENTS

### LOCAL (CIVIL) RULES

LR 5.3 – Subsection (a) amended by deleting the reference to January 3, 2006, in ¶ (1) and deleting ¶ (2) in its entirety. The deleted materials have become obsolete and superfluous. This amendment also resulted in the elimination of paragraphs within the subsection.

Subsection (c) amended to make electronic filing mandatory for all attorneys appearing in the case, whether admitted, appearing *pro hac vice*, or federal government attorneys not admitted to practice.

LR 5.4 – Subsection (d) amended to extend the requirement for including the authority for doing so to *ex parte* filings.

LR 7.1 – Added new subsection (d) covering citations or references to materials not readily available to the public in printed form or to material readily accessible electronically on the internet. A copy of the cited or referenced materials must be appended to the pleading or paper filed. In addition the date of the material, or the date last viewed, must be provided. The party must also file a separate motion that the court take judicial notice of the cited or referenced material governed by the subsection.

Current subdivisions (d) through (k) re-designated (e) through (l), respectively. Paragraph (f)(1) amended to include reference to Rule 56. The 2010 amendment to Fed. R. Civ. P. 56, eliminated subsection (c), which provided the response times for summary judgment motions. In order to provided continuity and avoid confusion, because this district adopted two time standards for dispositive and non-dispositive motions in civil cases, this amendment became necessary. *No substantive change in current practice is intended by this amendment.*

Added new ¶ (f)(3) permitting the parties to increase the time by stipulation, without further court approval, for opposing and replying to oppositions to motions by 14 and 7 days, respectively.

Other amendments were non-substantive grammatical or stylistic only.

LR 7.3 – Subsection (b) amended to reflect the changes in procedure required by current courtroom telephonic technology and equipment. The designation of the “Meet Me Bridge” telephone number to be utilized by the parties will be provided at the time the matter is set for telephonic participation by one, or more, of the parties.

LR 10.1 – Paragraph (a)(3) amended by designating the current paragraph as subparagraph [A] and adding subparagraph [B] providing that an electronically filed document must be word searchable. This requirement applies to documents or papers filed electronically, whether the document is converted to Acrobat format from a word processing program, *e.g.*, WordPerfect® or Word®, or scanned into Acrobat® (.pdf) format. [Current versions of Adobe Acrobat provide for Optical Character Reader (OCR) Recognition during the scanning process.]

Subsection (i) renamed to more accurately describe its intent. Paragraph (1) requiring pinpoint cites to support factual assertions in all motions is adapted from Fed. R. Civ. P. 56(c)(1) (effective December 1, 2010). Paragraph (i)(2) is current subdivision (i) without substantive change with the proviso that the document cited be available on the CM/ECF system. This recognizes that in those situations in which the document cited is not yet available on the CM/ECF system is not possible to cite to the CM/ECF assigned document identifier.

Subdivision (m) is amended to increase the number of pages allowed for principal and reply briefs in dispositive motions under Fed. R. Civ. P. 12(b), (c) and 56 from 25 and 15 to 50 and 25, respectively. The length for all other motions remains 25 and 15 pages. This recognizes that in many instances, dispositive motions are of a nature that 25 pages is simply insufficient. This amendment should reduce the number of requests to file over-length briefs.

LR 12.1 [New] – Sets the time within which a motion for judgment on the pleadings must be filed. The purpose of this provision is to resolve matters that can be disposed of sufficiently early in the proceedings to minimize unnecessary discovery.

LR 16.1 – Paragraph (c)(8) amended to delete the reference to dispositive motions. This amendment is necessitated to avoid any conflict with the amendment to Fed. R. Civ. 56(b) (effective December 1, 2010), which provides that a motion for summary judgment may be filed at any time until 30 days after the close of discovery. This amendment will not affect current practice. [Note: Although Rule 56(b) permits a district court to set a different time, a local rule is considered in conflict with a national rule when it essentially parrots a national rule. Failure to amend paragraph (c)(8) would likely run afoul of this application of the conflict rule.]

LR 33.1 [New] – Intended to expedite the discovery process. In the past, when served with an excessive number of interrogatories, some parties have waited until the last day to interpose an objection to all the interrogatories, thereby delaying the entire discovery process. Under the proposed rule, the receiving party is required to respond to the first number of interrogatories that does not exceed the maximum allowed by either answering the interrogatory or interposing an objection (other than that the number of interrogatories exceeds the maximum permitted). For example, if a party is served with 35 interrogatories, the receiving party must respond to the first 25 (assuming a greater number is not allowed by stipulation or court order) and may interpose an objection to the last 10 on the basis that the number exceeds the maximum allowed.

The receiving party may, however, waive the excess number objection and answer all or some of the excess interrogatories as the receiving party may, at its option, desire. The court will not generally treat the option of a party to answer excess interrogatories as waiving the objection except as to those interrogatories to which the party has responded other than objecting on the grounds that the number of interrogatories exceeds the maximum allowed.

LR 37.1 – Subsection (b) amended to make clear that the order to be entered under Fed. R. Civ. P. 37 is an order imposing sanctions.

LR 39.3 – Technical amendment to substitute “Data Quality Analyst” for “Case Management Clerk” in ¶ (c)(1) due to change in position title. No substantive change intended.

LR 56.1 [New] – This rule, which basically limits each party to a single Rule 56 motion, is intended to prevent “end runs” around the page limitations of LR 10.1 and piecemeal litigation. Subdivision (b) is similar to and patterned on Fed. R. Civ. P. 12(g)(2). This provision, which requires good cause for the filing of a successive motion for summary judgment, is consistent with the Ninth Circuit’s decision in *Hoffman v. Tonnemacher*, 593 F.3d 908 (9th Cir. 2010).

## LOCAL CRIMINAL RULES

LCrR 47.1 – Subdivision (a) amended by adding LR 5.4 and 5.5 to the local rules applicable to criminal proceedings. This corrects an oversight in the 2009 amendments.

Subdivision (d) added to require that motions filed in criminal cases conspicuously alert the court and the other parties to whether or not a motion will have an impact on the speedy trial computation. The rule should also serve as a reminder to the moving party to use the proper event when electronically filing a motion. It will also assist the Data Quality Analyst in carrying out the quality assurance function. Any objection to the position of the moving party as to the effect the motion has on the speedy trial computation must be filed within 7 days. This will bring potential disputes over speedy trial computations to the attention of the presiding judge earlier in the proceeding, thereby reducing the possibility of a speedy trial violation.

LCrR 49.1 – Paragraph (a)(1) amended by deleting the reference to January 3, 2006, as being obsolete and superfluous.

## LOCAL MAGISTRATE RULES

LMR 3 – Paragraphs (6) and (7) amended by deleting the reference to “dispositive” or “non-dispositive” as potentially misleading as a matter covered by 28 U.S.C. § 636(b)(1)(A) may be dispositive and a matter covered by § 636(b)(1)(B) may be non-dispositive. No substantive change intended.

LMR 5 – Subdivision (a) is amended to make the procedure for review of non-dispositive motions dispositive motions uniform. Paragraph (a)(3) is former ¶ (a)(4) modified to make the procedure for obtaining a hearing on an objection to a non-dispositive matter the same as for motions made before the district judge.

Subdivision (c) is former ¶ (a)(3) relocated to make it applicable to objections and briefs in both dispositive and non-dispositive matters.

LMR 6 – Paragraph (a)(1) amended by deleting the word “non-dispositive” and (b) amended by deleting the word “dispositive.” See comment to proposed amendment to LMR 3.

Subparagraph (b)(3)[B] amended by substituting “serve” for “mail.” Where appropriate, the transmission may be electronically. In those cases where the final findings and recommendations are filed, service will occur as provided with any other document filed electronically.

Paragraph (c)(3) is amended to provide for 3 business days to account for the 2009 amendment to Fed. R. Civ. P 6 and Fed. R. Civ. P. 45 eliminating the exclusion of intervening holidays and weekends. [Corrects an oversight in the 2009 time amendments.]

## LOCAL HABEAS RULES

HCR 1.1 – In subdivision (a), current paragraph (a)(2) has been redesignated (c)(1) without substantive change and paragraph (a)(1) becomes the entirety of subdivision (a). Current subdivision (c) [effective date] is abrogated as obsolete. Current paragraph (a)(2) has been designated as paragraph (c)(1) without change. New paragraph (c)(2) makes it clear that these rules apply to all petitions for habeas corpus relief, including petitions under 28 U.S.C. § 2241.

RED-LINED VERSION

LOCAL (CIVIL) RULES

**Rule 5.3 Electronic Case Filing**

**(a) Cases Assigned to CM/ECF System.**

~~(1)~~ Except as otherwise provided by this rule or order of the court, all pleadings, papers, and documents filed in all civil cases in this district ~~on or after January 3, 2006~~, must be filed electronically utilizing the Case Management/Electronic Case Filing (“CM/ECF”) System.

~~(2) If directed by the court, in a case assigned to the Electronic Filing System after it has been opened, parties who are Filing Users, or are represented by Filing Users, must promptly provide the clerk with electronic copies of all documents previously provided in paper form.~~

**(b) Procedures.**

\* \* \* \*

**(c) Registration.**

**(1) Password.**

[A] (i) Each attorney admitted to practice under D.Ak ~~L.R.-LR~~ 83.1(c) or appearing under D.Ak ~~L.R.-LR~~ 83.1(d) or (e), who files pleadings, documents, or papers in cases assigned to the CM/ECF system, must obtain a CM/ECF System password to permit the attorney to participate in the electronic retrieval and filing of pleadings and other papers in accordance with the CM/ECF System electronic filing procedures.

(ii) Exceptions to the requirements of subparagraph (1)[A](i) must be approved by the Chief Judge and will be granted only upon motion for good cause shown.

(iii) Attorneys in outlying areas of the state that do not have access to high speed (256 kbs, or higher) internet access may be exempted from the requirements of subparagraph (1)[A](i) until such time as high speed (256 kbs, or higher) internet access becomes available in the area in which the attorney maintains the attorney’s principal office. Any request for exception under this provision must be accompanied by an affidavit showing the availability and cost of internet access in the area.

~~[B] Attorneys admitted to practice under D.Ak L.R. 83.1(d) may be entitled to one CM/ECF System password to permit the attorney to participate in the electronic retrieval and filing of pleadings and other papers in accordance with the CM/ECF System electronic filing procedures.~~

[CB] An individual may become registered to participate in the CM/ECF System by submission of an application in the form prescribed by the Clerk of the Court and—

(i) have completed such training/familiarization as may be prescribed by the Clerk of the Court, or

(ii) is registered as a CM/ECF participant in another court.

\* \* \* \*

**Rule 5.4 Filing Documents Under Seal, Ex Parte, or In Camera**

**(d) Notation in Caption.** A document filed under seal or ex parte must include in the caption immediately below the title of the document the notation “Filed (Under ~~Seal~~Seal/Ex Parte) per (authority for filing under ~~seal~~seal/ex parte).”

## Rule 7.1 Motion Practice

\* \* \* \*

### (d) Citation of or Reference to Materials not Readily Available in Print.

(1) Where citation or reference is made to materials or information not readily available to the public in printed form, or to an internet site, the citing party must attach a copy as an exhibit to the motion.

(2) The party referring to or citing material must file a separate motion that the court take judicial notice of the materials or information cited under Federal Rules of Evidence, Rule 201.

(3) The copy appended to the motion must clearly delineate on the first page thereof:

[A] the source of the material or information; and

[B] the date the material was obtained or last viewed.

\* \* \* \*

(e) Time Limits. Unless otherwise ordered by the court, provided by statute, or rule:

(1) for motions brought under Federal Rule of Civil Procedure 12(b), 12(c), and 12(e)56, an opposition must be served and filed within twenty-one (21) days of service of the motion, and a reply, if any, within fourteen (14) days of service of the opposition;

(2) for all other motions, an opposition must be served and filed within fourteen (14) days of service of the motion, and a reply, if any, within seven (7) days of service of the opposition.

(3) The parties may, by stipulation filed with the court and without further order of the court, extend the time for filing an opposition by not more than fourteen (14) days and a reply, if any, by not more than seven (7) days.

## Rule 7.3 Telephonic Participation in Civil Cases

\* \* \* \*

(b) **Procedure.** The following procedure must be observed concerning telephonic participation in court hearings.

(1) When telephonic participation is requested, ~~the court, before the hearing, will designate the party responsible for arranging the call and the party or parties responsible for payment of the call under the following criteria:~~

~~— [A] the party at whose convenience a hearing is held will pay the telephone cost of the hearing;~~

~~— [B] the court will pay the telephone cost if the judge is able to avoid traveling to the hearing;~~

~~— [C] the defendant will pay the cost if the civil defendant, defense attorney or defense witness is able to avoid traveling to the hearing;~~

~~— [D] the plaintiff will pay the cost if the plaintiff, plaintiff's attorney, or witness for the plaintiff is able to avoid traveling to the hearing; or~~

~~— [E] when a hearing is set telephonically at the request of or for the convenience of more than one party, the court may order one of those parties to pay the cost and order the other parties to compensate that party for a portion of the cost.~~

~~(2) At least two (2) business days in advance of the hearing, the designated party must contact the court's case management clerk for instructions on how to proceed.~~

(3) the court will inform the parties of the "Meet Me Bridge" telephone number the party(ies) is(are) to call not less than five (5) minutes before the scheduled hearing time.

(2) Upon convening a telephonic proceeding, the judge or the court reporter will:

[A] recite the case name, case number, names and locations of parties and counsel, and the type of hearing;

[B] ascertain that all statements of all parties are audible to all participants; and

[C] give instructions on how the hearing is to be conducted, including notice that in order to preserve the record speakers must identify themselves each time they speak.

(43) A verbatim record must be made in accordance with D. Ak. L.R.-LR 80.1.

**Rule 10.1 Form of Pleadings, Motions, and Other Papers**

**(a) Form in General.**

\* \* \* \*

(3) Electronically filed documents must be:

[A] in Adobe Acrobat Portable Document Format (.pdf); and  
[B] word searchable.

\* \* \* \*

**(i) ~~Reference to Other Documents in Record.~~ Supporting Factual Positions.**

(1) A party asserting a fact in a motion must support the assertion by citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers or other materials.

(2) A reference to a specific part of another pleading, motion, or paper in the record must, when available, include the document number and page assigned by the CM/ECF System.

\* \* \* \*

**(m) Length.** Unless otherwise ordered, principal briefs or memoranda of law in civil and criminal cases (including appeals) may not exceed:

(1) for motions brought under Federal Rule of Civil Procedure 12(b), (c), and 56, fifty (50) pages and replies twenty-five (25) pages; and

(2) for all other motions, twenty-five (25) pages and replies may not exceed fifteen (15) pages;

The page limitations in this subdivision are exclusive of pages containing a table of contents, table of citations, or reproductions of statutes, rules, regulations, ordinances, *etc.*

**Rule 16.1 Pre-Trial Procedures.**

\* \* \* \*

**(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.

\* \* \* \*

(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.

**Rule 37.1 Discovery Motions**

\* \* \* \*

**(b) Standard for Imposition of Sanctions.** Prior to entering an order imposing sanctions under Rule 37, Federal Rules of Civil Procedure, the court will consider:

LOCAL CRIMINAL RULES

**Rule 47.1 Criminal Motion Practice**

(a) **General.** Except as otherwise ordered by the court or as specified in these rules, written motions in criminal proceedings are governed by D.Ak. LR 5.1, LR ~~5.4~~, ~~LR 5.5~~, LR 7.1, and LR 7.2.

(b) **Time for Opposition.** Unless otherwise ordered by the court, oppositions to motions in criminal cases must be served and filed within seven (7) days of service of the motion; or two (2) business days ~~before~~prior to the hearing, whichever is earlier.

(c) **Reply.** Unless otherwise ordered by the court, no reply memorandum will be filed.

**(d) Speedy Trial Impact.**

(1) Motions in criminal proceedings must apprise the court and the parties of the moving party's position on the impact, if any, that the motion will or may have on the Speedy Trial computation. Each motion must include in the motion, immediately following the caption, one of the following statements:

[A] "This motion falls within the scope of the Speedy Trial Act, 18 U.S.C. § 3161(h)(insert applicable paragraph number or numbers)"; or

[B] "This motion has no effect on the speedy trial computation."

(2) Any objection to the moving party's Speedy Trial position must be served and filed not later than seven (7) days after the motion is served.

**Rule 49.1 Electronic Case Filing**

**(a) Cases Assigned to CM/ECF System.**

(1) Except as otherwise provided by this rule or order of the court, all pleadings, papers, and documents filed in all criminal cases in this district ~~on or after January 3, 2006~~, must be filed electronically utilizing the CM/ECF System.

(2) In CVB cases, pleadings and documents are filed conventionally.

MAGISTRATE RULES

**Rule 3 Criminal Matters Routinely Assigned to Magistrate Judges**

\* \* \* \*

(b) **Other Matters.** Unless otherwise provided by order of a district judge, in addition to the matters provided in subsection (a), the following criminal matters will be assigned to magistrate judges:

\* \* \* \*

(7) ~~non-dispositive~~ pretrial motions within the scope of 28 U.S.C. § 636 (b)(1)(A), except motions related to scheduling the time and place of trials not otherwise assigned to a magistrate judge; and

(8) ~~dispositive~~ pre-trial motions within the scope of 28 U.S.C. § 636 (b)(1)(B) for reports and recommendations.

**Rule 5 Review of Magistrate Judge Civil Pretrial Orders**

**(a) Nondispositive Matters under Rule 72(a), Federal Rules of Civil Procedure.**

(1) Unless ~~other wise~~otherwise ordered by a district judge:

[A] not later than fourteen (14) days after service of the objection ~~is filed~~, the ~~objecting~~opposing party must serve and file an opposing brief; and

[B] ~~not later than fourteen (14) days after service of the objecting party's brief, the opposing party must file an opposing brief; and~~

~~— [C] the objecting party may serve and file a reply brief within seven (7) days after service of the opposing party's brief~~ Unless ordered by the district judge, no reply may be filed to the opposition.

(2) Unless leave of court is obtained, for good cause shown:

[A] objections are limited to those matters fairly presented to or raised before the magistrate judge; and

[B] new matters or issues may not be raised for the first time in an objection to the decision of a magistrate judge.

(3) ~~Preparation of briefs is~~ Hearings on the objections are governed by D. Ak. LR 5.1.

~~— (4) Unless otherwise ordered, forty (40) days after the objection is filed if a hearing is deemed required it will be set for hearing by the court~~ LR 7.2.

\* \* \* \*

(c) Form of Objections/Briefs. Preparation of the objection and briefs is governed by D. Ak. LR 10.1.

### **Rule 6 Objections to Matters under 28 U.S.C. § 636(b)(1) in Criminal Cases**

(a) **Objections and Replies.** Unless otherwise ordered:

(1) an objection to ~~non-dispositive~~ orders entered under 28 U.S.C. § 636(b)(1)(A) or initial findings and recommendations entered under 28 U.S.C. § 636(b)(1)(B) must be filed within the time specified in Federal Rule of Criminal Procedure 59;

\* \* \* \*

(b) **Initial Review by Magistrate Judge.** Unless otherwise ordered, an objection to a dispositive matter referred under §636(b)(1)(B) will be routed to the magistrate judge who:

\* \* \* \*

(3) will, when the action deemed appropriate has been taken—

[A] forward final findings and recommendations to the district judge, and

[B] mailserve a copy to on the parties.

(c) **Review by District Judge.**

\* \* \* \*

(3) A party requesting a further evidentiary hearing must serve and file a motion not later than three business (3) days after the transcript of the record is certified, which motion must:

\* \* \* \*

## HABEAS RULES

### **Rule 1.1 ~~Scope~~ Scope/Applicability**

~~— (2a) Scope.~~ These rules supplement the Rules Governing Section 2254 Cases in the United States District Courts (“Section 2254 Rules”) and the Rules Governing Section 2255 Proceedings for the United States District Courts (“Section 2255 Rules”) promulgated by the United States Supreme Court.

\* \* \* \*

#### **(c) Applicability:**

(1) These rules govern the procedure in the United States District Court, District of Alaska, on applications under 28 U.S.C. §§ 2254 and 2255.

~~— (e2) Effective Date:~~ Except as otherwise specifically provided by statute, rule or order of the court, these rules become effective on October 1, 2002 and the Rules Governing Section 2254 Cases in the United States District Courts, apply to all petitions for habeas corpus relief filed in this court.

SMOOTH VERSION INCORPORATING PROPOSED AMENDMENTS

LOCAL (CIVIL) RULES

**Rule 5.3 Electronic Case Filing**

(a) **Cases Assigned to CM/ECF System.** Except as otherwise provided by this rule or order of the court, all pleadings, papers, and documents filed in all civil cases in this district must be filed electronically utilizing the Case Management/Electronic Case Filing (“CM/ECF”) System.

(b) **Procedures.**

(1) The filing of documents in electronic format will be in accordance with this rule and the CM/ECF administrative procedures promulgated by the Clerk of the Court.

(2) Participants in the CM/ECF System are responsible for ensuring that current filing procedures are followed.

(c) **Registration.**

(1) *Password.*

[A] (i) Each attorney admitted to practice under D.Ak LR 83.1(c) or appearing under D.Ak LR 83.1(d) or (e), who files pleadings, documents, or papers in cases assigned to the CM/ECF system, must obtain a CM/ECF System password to permit the attorney to participate in the electronic retrieval and filing of pleadings and other papers in accordance with the CM/ECF System electronic filing procedures.

(ii) Exceptions to the requirements of subparagraph (1)[A](i) must be approved by the Chief Judge and will be granted only upon motion for good cause shown.

(iii) Attorneys in outlying areas of the state that do not have access to high speed (256 kbs, or higher) internet access may be exempted from the requirements of subparagraph (1)[A](i) until such time as high speed (256 kbs, or higher) internet access becomes available in the area in which the attorney maintains the attorney’s principal office. Any request for exception under this provision must be accompanied by an affidavit showing the availability and cost of internet access in the area.

[B] An individual may become registered to participate in the CM/ECF System by submission of an application in the form prescribed by the Clerk of the Court and—

(i) have completed such training/familiarization as may be prescribed by the Clerk of the Court, or

(ii) is registered as a CM/ECF participant in another court.

(2) *Consent to Electronic Notice and Service.* Except as provided in subparagraph (2)[C], participation in the CM/ECF System by receipt of a password from the court, constitutes:

[A] a request for service of notice electronically under Rule 49(b), Federal Rules of Criminal Procedure and Rule 5(b), Federal Rules of Civil Procedure; and

[B] consent to receive notice and service by electronic means in each case in which a formal entry of appearance as a party or attorney for a party has been made.

[C] A user may elect not to receive notice and service by electronic means by filing with the Clerk of the Court a notice of that election in a form as prescribed by the Clerk of the Court.

(3) *Unauthorized Use of Passwords.*

[A] No registered participant may knowingly permit or cause to permit the participant’s password to be utilized by anyone other than an authorized employee of the participant or the participant’s firm.

[B] No person may knowingly utilize or cause another person to utilize the password of a registered participant unless the person is an authorized employee of the participant or the participant’s firm.

(4) *Compromised Password.*

[A] Each registered participant in the CM/ECF System is responsible for maintaining the integrity of the participant's password.

[B] In the event a registered participant has reason to believe that the password issued to the participant has been compromised or otherwise may be subject to use by an unauthorized person, the participant must immediately notify the Clerk of the Court in writing or by e-mail and request cancellation of the existing password and issuance of a new password.

(5) *Withdrawal.*

[A] A registered participant may withdraw from participation in the CM/ECF System by providing the Clerk of Court with written notice of withdrawal.

[B] Upon receipt of a written notice of withdrawal, the Office of the Clerk will immediately cancel the participant's password and delete the participant from any applicable electronic service list.

[C] Unless otherwise ordered by the court, withdrawal by an attorney from participation in the CM/ECF System does not relieve the attorney of the obligation to comply with paragraph (1).

(d) **Signatures.**

(1) *Registered Participant.*

[A] The electronic filing of a petition, complaint, indictment, pleading, motion or other paper by a registered participant in the CM/ECF System constitutes the signature of the participant under Rule 11, Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the local rules of this court, and any other purpose for which a signature is required in connection with proceedings before this court.

[B] (i) A registered participant may, if authorized to so do, sign on behalf of another person a pleading, motion or other paper to be filed electronically as follows: "s/ James Smith for Jane Doe."

(ii) Affixing the signature of another as provided herein constitutes a certification by the participant that the participant has been authorized by the person whose signature is so signified to sign the pleading, motion, or paper on the signatory's behalf.

(iii) The person whose signature is affixed under this subparagraph must be served with a copy of the pleading, motion, or paper and such service noted on the proof of service.

(2) *Court Orders.* The electronic filing of an order or other document by, or at the direction of, a judge or the Clerk of the Court constitutes the signature of the judge or the Clerk of the Court under the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the local rules of this court, and any other purpose for which a signature is required in connection with proceedings before this court.

(3) *Other Documents.* The signature page of any electronically filed pleading or paper not governed by paragraph (1) or (2) must bear a digitally imaged (scanned) original signature.

(4) *Verified Documents.* Subject to paragraphs (1), (2) and (3), verified documents (affidavits or declarations under penalty of perjury as provided in 28 U.S.C. § 1746), are to be filed electronically.

(5) *Objections to Authenticity of Signatures.* Any objection to the authenticity of a signature on an electronically filed document must be served on the filing party and filed with the court not later than fourteen (14) days after the document is served.

(e) **Electronic Filing.**

(1) *Mandatory Electronic Filing.* Except as expressly otherwise provided in this Rule or in exceptional circumstances that prevent a participant from filing electronically, all petitions, complaints, indictments, motions, pleadings, memoranda of law, or other documents required to

be filed with the court in connection with a case assigned to the CM/ECF System must be electronically filed by participants in the CM/ECF System.

(2) *Related Documents*. All documents must be filed separately, except that exhibits to a document must be filed as attachments to that document under the same docket number.

[A] Where documents related to a motion or other pleading are being filed concurrently with the motion or other pleading, *e.g.*, a motion, memorandum of law and a supporting affidavit, the related documents must be filed separately and shown as being a document related to the motion or other pleading.

[B] If documents being submitted electronically have lengthy exhibits, the filing of relevant excerpts of the exhibits is preferred and permitted without prejudice to the right of any party to file additional excerpts or the complete exhibit with the court at any time.

(3) *Emergency Motions*.

[A] Emergency motions, supporting pleadings and objections are to be filed electronically as provided in this rule.

[B] The party filing the motion must promptly advise the Clerk's Office of the filing as provided in the CM/ECF Procedures promulgated by the Clerk of the Court.

(4) *Lodged Documents*. Unless otherwise ordered by the court, participants in the CM/ECF System must submit all documents required to be lodged with the court, *e.g.*, proposed orders, findings of fact and conclusions of law, and judgments, electronically, in accordance with the CM/ECF administrative procedures promulgated by the Clerk of the Court.

(f) **Service**.

(1) The filing party must serve the pleading or other paper being electronically filed upon all persons entitled to service in accordance with otherwise applicable rules.

(2) If a person entitled to notice or service is a registered participant in the CM/ECF System in the case in which the pleading or other paper is being filed, electronic service of the Notice of Electronic Filing is deemed the equivalent of service of the pleading or other paper by first class mail, postage prepaid.

(g) **Special Filing Requirements**. Electronic or conventional filing of the following documents is governed by the provisions of this subsection:

(1) *Documents to be Filed under Seal*.

[A] All documents to be filed under seal and motions to file documents under seal are to be filed as provided in the CM/ECF administrative procedures promulgated by the Clerk of the Court.

[B] The party filing a document under seal is responsible for effecting service of the document as provided in the Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure, or the Local Rules of this court.

(2) *Exhibits to Pleadings and Other Documents*.

[A] Wherever possible, documents being filed as exhibits, including but not limited to leases, notes, and the like, should be electronically imaged (*i.e.*, "scanned") and filed as part of the document referring to the exhibit using Portable Document Format (pdf).

[B] (i) Exhibits that are not available in electronic format are to be filed conventionally attached to a copy of the Notice of Electronic Filing for the electronically filed document to which the exhibit(s) pertains either by mail not later than the next business day or hand delivered not later than the second business day next immediately following the filing.

(ii) If an exhibit is filed conventionally, the filer must include a "dummy" page in the appropriate place sequentially in the document to which the exhibit applies with a conspicuous notation in the middle of the page "Exhibit \_\_\_\_ (insert brief description of the exhibit) filed conventionally."

(3) *Complaints/Summonses/Civil Cover Sheets*. All complaints, civil cover sheets (JS 44), and summonses to be issued by the court are to be filed as provided in the CM/ECF administrative procedures promulgated by the Clerk of the Court.

(4) *Trial and Hearing Exhibits*.

[A] Exhibit lists, to the extent that the filing thereof is required by the rules otherwise applicable to the trial or hearing, are to be filed electronically.

[B] The actual exhibits are to be submitted conventionally as provided by the rules otherwise applicable to the trial or hearing.

(5) *Transcripts*.

[A] Whenever possible, transcripts, or the relevant portions thereof, not otherwise converted to electronic format, should be electronically imaged (*i.e.*, “scanned”) and filed as part of the document referring to the transcript using Portable Document Format (pdf).

[B] Transcripts that are not available in electronic format are to be filed conventionally attached to a copy of the Notice of Electronic Filing for the electronically filed document to which the transcript(s) relate.

(6) *Service of Conventionally Filed Documents*. Except as otherwise provided by order of the court, the party filing pleadings or other documents conventionally under this subsection is responsible for effecting service in the manner provided for in the Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure and Local Rules of this court.

(h) **Fees**.

(1) Any required fee may be paid as provided in the CM/ECF administrative procedures.

(2) Unless other arrangements are made with the Clerk of Court, any required fee for a document filed electronically not paid electronically must be mailed to the Clerk of the Court not later than the next business day or hand delivered to the Clerk of the Court not later than the second business day next immediately following the filing.

(3) Unless otherwise ordered by the court, no summons or other process will be issued until such time as any required filing fee is received by the Clerk of the Court.

(i) **Technical Failures**.

(1) If a participant in the CM/ECF System is unable to transmit a time-critical document electronically due to technical failure of either the CM/ECF System or the participant’s system, or due to internet congestion or internet service provider problems, the participant must promptly contact the Clerk of the Court and make alternate arrangements for filing the document in electronic format during normal working hours.

(2) Unless exceptional circumstances exist that prevent the document from being transmitted during regular business hours, the participant must make every effort to transmit any time-critical document during regular business hours on the date the document is due.

(j) **Consequences for Noncompliance**. Any misuse of the CM/ECF System, or intentional noncompliance with its requirements, may result in revocation of the participant’s login and password privileges and/or the imposition of sanctions as provided in District of Alaska Local Rule 1.3.

Related Provisions:

Fed. R. Civ. P. 5	Serving and Filing Pleadings and Other Papers
Fed. R. Civ. P. 5.2	Privacy Protection for Filings Made with the Court
Fed. R. Crim. P. 49.1	Privacy Protection for Filings Made with the Court
D.Ak. LR 1.3	Sanctions
D.Ak. LR 3.1	Papers to Accompany Initial Filing
D.Ak. LR 3.3	Venue; Place of Trial; and Filing in Satellite Offices

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 5.4	Filing Documents Under Seal, <i>Ex Parte</i> , or <i>In Camera</i>
D.Ak. LR 7.1	Motion Practice
D.Ak. LR 7.4	Proposed Orders
D.Ak. LR 10.1	Form of Pleadings and Other Papers
D.Ak. LCrR 49.1	Electronic Case Filing

COMMENT: Subsection (a) amended by deleting the reference to January 3, 2006, in ¶ (1) and deleting ¶ (2) in its entirety. The deleted materials have become obsolete and superfluous. This amendment also resulted in the elimination of paragraphs within the subsection. Subsection (c) amended to make electronic filing mandatory for all attorneys appearing in the case, whether admitted, appearing *pro hac vice*, or federal government attorneys not admitted to practice.

**Rule 5.4 Filing Documents Under Seal, *Ex Parte*, or *In Camera***

(a) **Filings Under Seal.** Except as otherwise specifically provided by statute, court rule, case law, or published policy and procedures, no pleading, motion, or other paper may be filed under seal without first obtaining leave of the court.

(1) Any motion to file a document under seal, except in connection with a motion for a protective order under Federal Rule of Civil Procedure 26(c), must:

- [A] Set forth the factual basis for sealing the document and citation to supporting authority;
- [B] Identify the pleading or motion of which the document is or intended to be a part; and
- [C] Certify that it is not feasible or practicable to file a redacted version of the document.

(2) A motion to file a document under seal may be filed under seal without prior court order.

(3) Where the filing consists of multiple documents, *e.g.*, exhibits to a motion for summary judgment, only those documents that contain material subject to non-disclosure to the public may be filed under seal; all other parts of the filing must be filed as part of the public record.

(4) An order authorizing filing a document under seal in a protective order or in connection with a non-dispositive motion will not be considered or construed as authorization to file the document under seal in connection with a dispositive motion, hearing, or trial, unless:

- [A] specifically so stated in the order; and
- [B] the order sets forth the compelling reasons justifying sealing the document.

(5) In any case in which filing under seal is authorized, the court may direct the party to file a redacted copy of the document for the public record.

(6) The court may, upon the motion of any party or upon its own volition after notice to the parties, order any document filed under seal to be unsealed.

(7) [A] A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item of redacted information listed.

[B] The list must be filed under seal and may be amended of right.

[C] Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(8) Nothing in this subsection should be construed as prohibiting the party filing a redacted copy as part of the public record, or any opposing party, from filing an unredacted version under seal.

(b) **Ex Parte Filings.** Except as otherwise specifically provided by statute, court rule, case law, or published policy and procedures, no pleading, motion, or other paper may be filed *ex parte* without first obtaining leave of the court.

(1) Any motion to file a document *ex parte* must:

[A] Identify the pleading, motion, or paper to be filed *ex parte*; and

[B] Set forth the factual basis for filing the document *ex parte* and citation to supporting authority.

(2) [A] A motion to file a document *ex parte* may be filed *ex parte* without prior court order

[B] Unless otherwise ordered by the court, if a motion to file a document *ex parte* is denied, the motion will become part of the public record.

(3) [A] When the basis for the *ex parte* filing no longer exists, the party filing a document *ex parte* must file with the court a request to remove the *ex parte* status of the document.

[B] If a document filed *ex parte* is also to be filed under seal—

(i) the request to remove the *ex parte* status must clearly state that the document is to remain under seal, and

(ii) sealing must be authorized under subsection (a) of this rule.

(c) **Filing Documents In Camera.** Except as otherwise specifically provided by statute, court rule, case law, or published policy and procedures, no pleading, motion, or other paper may be filed *in camera* without first obtaining leave of the court.

(1) A motion to file a document *in camera* may be made under seal without prior court order.

(2) Documents filed *in camera* are to be delivered to the court in a sealed envelope conspicuously marked “Filed *in Camera*” and containing the following information on the envelope:

[A] the caption of the case and case number; and

[B] name of presiding judge.

(d) **Notation in Caption.** A document filed under seal or *ex parte* must include in the caption immediately below the title of the document the notation “Filed (Under Seal/Ex Parte) per (authority for filing under seal/*ex parte*).”

Related Provisions:

Fed. R. Civ. P. 5.2	Privacy Protection for Filings Made with the Court
Fed. R. Civ. P. 26	Duty to Disclose; General Provisions Governing Discovery
Fed. R. Civ. P. 11	Signing Pleadings, Motions and Other Papers; Representations to the Court; Sanctions
Fed. R. Civ. P. 45	Subpeona
Fed. R. Crim. P. 6	The Grand Jury
Fed. R. Crim. P. 12.2	Notice of an Insanity Defense; Mental Examination
Fed. R. Crim. P. 12.3	Notice of a Public-Authority Defense
Fed. R. Crim. P. 16	Discovery and Inspection
Fed. R. Crim. P. 26.2	Producing a Witness’s Statement
Fed. R. Crim. P. 49.1	Privacy Protection for Filings Made with the Court
Fed. R. Evid. 412	Sex Offense Cases; Relevance of Alleged Victim’s Past Sexual Behavior or Alleged Sexual Predisposition
Fed. R. Bank. P. 6011	Disposal of Patient Records in Health Care Business Cases
Fed. R. Bank. P. 9018	Secret Confidential, Scandalous, or Defamatory Matter
Fed. R. Bank. P. 9037	Privacy Protection for Filings Made with the Court
D.Ak. LR 5.1	Filing and Proof of Service When Service is Required by Rule 5, Federal Rules of Civil Procedure
D.Ak. LCrR 11.2	Plea Agreements

COMMENT: Subsection (d) amended to extend the requirement for including the authority for doing so to *ex parte* filings.

### Rule 7.1 Motion Practice

(a) **Motion and Opposition.** A motion is initiated by the filing and service of a single document, and the motion and any opposition to a motion must include or be accompanied by the following.

- (1) A concise statement of the relief or decision sought by the moving or opposing party.
- (2) A brief statement of points and authorities relevant to the relief requested.
- (3) [A] Legible copies of affidavits, deposition excerpts, and properly authenticated documents or other exhibits as provided in paragraph (a)(4) upon which the moving or opposing party relies.

[B] Documents and depositions should be appropriately excerpted so that only the portions required to be reviewed to make the decision are filed with the motion papers.

(4) [A] The evidence ordinarily presented, in support of or in opposition to any motion, includes:

- (i) affidavits;
- (ii) declarations under 28 U.S.C. § 1746;
- (iii) deposition excerpts;
- (iv) admissions;
- (v) verified interrogatory answers; and
- (vi) other similar documentary exhibits.

[B] Bulky, heavy or otherwise sensitive exhibits, *e.g.* controlled substances or firearms, are to be photographed and the photograph submitted, or leave of court obtained for submission of the exhibit.

[C] Exhibits not provided to the court and the parties in this manner, including purely demonstrative or summary exhibits, may not be referred to in oral argument.

(5) Motions or oppositions presented to the clerk's office for filing that have supporting affidavits, exhibits, or other documents, must be firmly attached as one document where practicable.

(6) Proposed orders as provided in D.Ak. LR 7.4 are not to be stapled or otherwise affixed or attached to motions or oppositions.

(b) **Reply.** A reply memorandum by the party initiating a motion is optional, and, if filed, must be restricted to rebuttal of factual and legal arguments raised in the opposition.

(c) **Citation to Unpublished Decisions; Judicial Notice.**

(1) [A] Except to support a claim of *res judicata*, collateral estoppel, or law of the case, or as provided by rule, no decision, opinion, or order of any court may be cited in this court if citation is prohibited in the court that rendered the decision; and

[B] unless the decision is published in the National Reporter System, a National Loose-Leaf Reporter, or publicly accessible on an electronic data base, a copy of a decision cited must be attached to the brief.

(2) The court may take judicial notice of the contents of case files within the District of Alaska to establish that:

[A] other proceedings have taken place;

[B] the same or similar claims have been raised and adjudicated; and

[C] like or similar matters.

(3) The contents of other case files may not be used to establish disputed substantive facts unless those facts are established in a previous ruling, order, or judgment entitled to *res judicata* or collateral estoppel effect.

**(d) Citation of or Reference to Materials not Readily Available in Print.**

(1) Where citation or reference is made to materials or information not readily available to the public in printed form, or to an internet site, the citing party must attach a copy as an exhibit to the motion.

(2) The party referring to or citing material must file a separate motion that the court take judicial notice of the materials or information cited under Federal Rules of Evidence, Rule 201.

(3) The copy appended to the motion must clearly delineate on the first page thereof:

[A] the source of the material or information; and

[B] the date the material was obtained or last viewed.

**(e) Failure to Support or Oppose Motions.** Failure to include proper materials in support of, or in opposition to, a motion as required by this rule subjects the motion to summary ruling by the court.

(1) If the failure is by the moving party, it may be deemed an admission that the motion is without merit, and, if by the opposing party, that the motion is well taken.

(2) No unopposed motion for summary judgment will be granted unless the court is satisfied that there are no disputed issues of material fact and that the moving party is entitled to the decision as a matter of law.

**(f) Time Limits.** Unless otherwise ordered by the court, provided by statute, or rule:

(1) for motions brought under Federal Rule of Civil Procedure 12(b), 12(c), and 56, an opposition must be served and filed within twenty-one (21) days of service of the motion, and a reply, if any, within fourteen (14) days of service of the opposition;

(2) for all other motions, an opposition must be served and filed within fourteen (14) days of service of the motion, and a reply, if any, within seven (7) days of service of the opposition.

(3) The parties may, by stipulation filed with the court and without further order of the court, extend the time for filing an opposition by not more than fourteen (14) days and a reply, if any, by not more than seven (7) days.

**(g) Format.**

(1) Format is governed by D. Ak. LR 10.1 and copies of proposed orders by D. Ak. LR 7.4.

(2) The caption of each motion must contain a brief description of the motion, including citation to the section of the United States code or rule under which the motion is brought and the relief requested.

**(h) Facsimile Copies.**

(1) Clear and legible facsimile copies of affidavits or declarations under penalty of perjury in support of or opposition to a motion may be filed without further leave of court.

(2) Originals must be filed within seven (7) days after the facsimile copy has been filed.

(3) Facsimiles on thermal paper must be photocopied onto non-thermal paper prior to filing.

**(i) Supplemental Materials.**

(1) *Briefs and Pleadings.* Supplemental briefs may not be filed without leave of court. If a party proposes to file a pleading or brief not authorized by these rules, the party must serve and

file a motion requesting permission to do so and attach a copy of the pleading or brief to the motion.

[A] If the motion is granted, the propounding party must serve and file the pleading or brief, or

[B] When pertinent or controlling authorities come to the attention of a party after a brief has been filed, the party may file a notice, without leave of court, limited to two pages, setting forth the citation, docket number, and page numbers of the brief to which the citation pertains. No argument may be included in the notice.

(2) *Factual Materials*. Supplemental factual materials, e.g., deposition excerpts, discovery responses, and affidavits responding to new materials filed with reply briefs, or on account of a change in circumstances, may be filed only by leave of court.

[A] Motions for leave to file supplemental factual materials must reference by docket number the motion papers to which the materials pertain.

[B] Leave will not be routinely granted. The court will consider, among other things—

- (i) whether the material was available to the party when briefs were due, and
- (ii) whether the pertinence of the material was established at the times for briefing.

[C] Leave may be conditioned on such terms as the court in its discretion deems appropriate.

(j) **Motion Submitted**. A motion will be treated as submitted and ripe for decision after:

(1) the time for filing opposition has elapsed and no opposition has been filed;

(2) opposition has been filed, the reply filed or the time for filing a reply has elapsed, and no request for oral argument or evidentiary hearing has been made within the time allowed;

(3) opposition has been filed, the reply filed or the time for filing a reply has elapsed, and request for oral argument or evidentiary hearing has been made and denied; or

(4) at the conclusion of oral argument or a hearing if one has been granted.

(k) **Postponement of Submission**. All motions should be decided by the court as soon as practicable after all pleadings or briefs have been filed, and, in any event, within six (6) months from the filing of the motion.

(1) It is the responsibility of counsel to complete briefing of motions in accordance with the schedule contained in this rule, except where there is good cause to stipulate to extend the time for briefing or postponement of formal submission to the court for a decision.

(2) Where one or more stipulations for postponement will make it impossible for the court to rule upon a motion within six (6) months from the date the motion was filed, the court may, in its discretion, deny the motion with leave to summarily renew the same.

(l) **Separate Documents**. Except as otherwise provided by rule or order of the court, motions, other than motions for relief in the alternative, may not be combined into a single document but must be filed separately.

Related Provisions:

28 U.S.C. § 1746 Unsworn declarations under penalty of perjury

Fed. R. App. P. 32.1 Citing Judicial Dispositions

Fed. R. Civ. P. 6 Time

Fed. R. Civ. P. 7 Pleadings Allowed; Form of Motions

Fed. R. Civ. P. 10 Form of Pleadings

Fed. R. Civ. P. 12 Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on the Pleadings

Fed. R. Civ. P. 26 Duty to Disclose; General Provisions Governing Discovery

Fed. R. Civ. P. 37 Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

Fed. R. Civ. P. 56	Summary Judgment
Fed. R. Evid. 201	Judicial Notice of Adjudicative Facts.
D.Ak. LR 7.2	Hearings
D.Ak. LR 7.4	Proposed Orders
D.Ak. LR 10.1	Form of Pleadings and Other Papers

COMMENT: Added new subsection (d) covering citations or references to materials not readily available to the public in printed form or to material readily accessible electronically on the internet. A copy of the cited or referenced materials must be appended to the pleading or paper filed. In addition the date of the material, or the date last viewed, must be provided. The party must also file a separate motion that the court take judicial notice of the cited or referenced material governed by the subsection. Current subdivisions (d) through (k) re-designated (e) through (l), respectively.

Paragraph (f)(1) amended to include reference to Rule 56. The 2010 amendment to Fed. R. Civ. P. 56, eliminated subsection (c), which provided the response times for summary judgment motions. In order to provide continuity and avoid confusion, because this district adopted two time standards for dispositive and non-dispositive motions in civil cases, this amendment became necessary. *No substantive change in current practice is intended by this amendment.* Added new ¶ (f)(3) permitting the parties to increase the time by stipulation, without further court approval, for opposing and replying to oppositions to motions by 14 and 7 days, respectively. Other amendments were non-substantive grammatical or stylistic only.

### Rule 7.3 Telephonic Participation in Civil Cases

(a) **Authorization for Telephonic Participation.** The court may allow one or more parties, counsel, witnesses or the court to participate telephonically in any hearing or deposition for good cause and in the absence of substantial prejudice to any party.

(1) Requests to have incarcerated litigants appear telephonically will ordinarily be granted unless the litigant has a right to be personally present and declines to waive that right.

(2) Authorization for a witness to telephonically participate does not bar:

[A] witnesses' testimony from being presented by audio-visual deposition taken under Rule 30(b), Federal Rules of Civil Procedure; nor

[B] a party or attorney from being present at the site at which a witness is physically present.

(b) **Procedure.** The following procedure is to be observed concerning telephonic participation in court hearings.

(1) When telephonic participation is requested and granted, at the time the case is set for telephonic hearing the court will inform the parties of the "Meet Me Bridge" telephone number the party(ies) is(are) to call not less than five (5) minutes before the scheduled hearing time.

(2) Upon convening a telephonic proceeding, the judge or the court reporter will:

[A] recite the case name, case number, names and locations of parties and counsel, and the type of hearing;

[B] ascertain that all statements of all parties are audible to all participants; and

[C] give instructions on how the hearing is to be conducted, including notice that in order to preserve the record speakers must identify themselves each time they speak.

(3) A verbatim record must be made in accordance with D. Ak. LR 80.1.

(c) **Public Access.** The right of public access to court proceedings must be preserved in accordance with law.

Related Provisions:

Fed. R. Civ. P. 43

Taking of Testimony

D.Ak. LR 7.2

Hearings

COMMENT: Subsection (b) amended to reflect the changes in procedure required by current courtroom telephonic technology and equipment. The designation of the "Meet Me Bridge" telephone number to be utilized by the parties will be provided at the time the matter is set for telephonic participation by one, or more, of the parties.

**Rule 10.1 Form of Pleadings, Motions and Other Papers**

**(a) Form in General.**

(1) All pleadings, motions, and other papers presented for filing, conventionally or electronically, with the clerk or intended for the use by the court must be:

[A] in either double-spaced or one-and-one-half spaced typewriting or printing, except that lengthy quotations should be single-spaced and indented;

[B] have margins all around of at least one (1") inch, exclusive of identification printed on the stationery;

[C] if consisting of more than one (1) page, at the bottom of each consecutive page—

(i) contain a page number, and

(ii) have a footer including the case name and number; and

[D] all printed matter appear in at least 11-point type, ten-pitch (10 characters per inch) or 12-point proportionally-spaced font.

(2) Conventionally filed documents must be:

[A] upon letter size (8½ by 11) white paper of good quality, of at least 16-pound weight, not onionskin, except where ripple finish or other opaque paper is used, in which event the weight must be at least 13-pound; and

[B] either in original clear and legible typewriting with black ribbon, or in clear and legible printing in black ink.

(3) Electronically filed documents must be:

[A] in Adobe Acrobat Portable Document Format (".pdf"); and

[B] word searchable.

**(b) Chambers Copy.**

(1) [A] A complete and legible paper copy of every pleading, motion, or paper exceeding twenty-five (25) pages, filed conventionally or electronically, must be provided for use by the judge in chambers.

[B] If the original pleading, motion, or paper was filed electronically, the chambers copy must be an exact replica of the filed pleading, motion, or paper including the document header assigned by the CM/ECF System.

[C] Chambers copies are to be two-hole punched at the center of the top of the page.

(2) Chambers copies are not part of the official file in the case and are not open to public inspection.

**(c) Exhibits.**

(1) All exhibits to pleadings, motions, or papers must be:

[A] numbered progressively according to the number of the page of the exhibit, preceded by the number or identification of the exhibit, e.g., "Ex. A, p. 1"; provided that

[B] exceptions to progressive numbering of exhibits may be permitted by the court where acceptable copies of original documents make it impractical to comply with that requirement.

(2) If more than five (5) exhibits are attached, the exhibits must be preceded by a table of contents identifying each exhibit by number and description.

(3) Exhibits attached to the chambers copy, including exhibits filed conventionally under D.Ak. LR 5.3(g)(2)[B], must be:

[A] identified by attached tabs in a manner that the tab identifying the exhibit is readily visible; and

[B] permanently attached to the pleading or document to which they apply in a manner to be easily accessible and readable without detaching from the principal document.

(d) **Interlineation – One Side of Paper to Be Used.** All pleadings, motions, and other papers must be without interlineation unless noted by the court, and printed or written upon only one side of the paper.

(e) **Information to Be Placed on First Page.** The first page of each pleading, motion, or other paper must be prepared as provided in this subsection.

(1) *Attorney's or Party's Name/Address.*

[A] The name, address, telephone number, facsimile number, and e-mail address of the attorney appearing for a party to an action or proceeding, or of a person appearing without an attorney, must be typewritten or printed in the space to the left of center of the paper beginning at least 1¼ inches below the top edge, or

[B] the attorney's name, address, telephone number, facsimile number and e-mail address may be printed on the left-hand margin of the paper.

[C] The attorney must identify the party the attorney represents.

(2) *Title of the Court.* The title of the court is to be centered on the paper and commence not less than 1½ inches below the top edge, and in any event not less than ½ inch below the name, address, and telephone number of the attorney or person appearing without an attorney if this appears at the top of the page as provided in paragraph (e)(1).

(3) *Clerk's Filing Marks; Case Number.*

[A] A space above the title of the court and to the right of center on the page must be reserved for the filing marks of the clerk; and

[B] below that the file number of the action or proceeding, including the initials of the judge assigned, is to be inserted.

(4) *Title of Action or Proceeding.* Below the title of the court and to the left of center of the page the title of the action or proceeding is to be inserted.

[A] In the event all defendants cannot be named on the first page, the names of defendants only may appear on the second page.

[B] Except for complaints and summonses, lengthy captions may be reduced to indicate a single-named party as plaintiff or defendant followed by "et al."

[C] unless otherwise ordered by the court, the name of a party who is terminated as a party in the action must be removed from the caption.

(5) *Description of Pleading, Motion or Paper.* Below the title of the court and file number, and either centered or to the right of center of the page, a brief designation of the nature of the pleading, motion or paper and, where relief is sought, the nature thereof is to be inserted.

(f) **Information to be Placed on Signature Page.**

(1) Names are to be typed beneath signatures to pleadings, motions and other papers.

(2) An attorney must identify each party the attorney represents.

(g) **Citation of Statute.** A party filing a complaint, counterclaim or cross-claim seeking relief under a specific statute should cite the statute relied upon in parentheses following the title of the pleading.

**(h) Reference to Other Parts of Document.**

(1) Where practical, reference to other portions of the same pleading, motion or other paper should be made to avoid repetition.

(2) [A] In any action brought upon or any proceeding involving serial notes, bonds, coupons or obligations for the payment of money that are of the same form, tenor and effect, and are issued under the same law, or by the same authority, and differing only in number, date of maturity or amount, it is sufficient for the plaintiff to set forth in one claim of the complaint one note, bond, coupon, or obligation, either verbatim or according to legal effect.

[B] The remaining notes, bonds, coupons or obligations may be pleaded, in the same or another claim of the complaint, by a general reference or description sufficient to identify them with like effect as if they had been set forth verbatim.

[C] Similar practice may be followed in any pleading where any two or more documents of similar form, tenor or effect are set forth.

(3) Any document referred to in any pleading, motion, or other paper filed with the court may be set forth either in the body of the document or in an exhibit attached thereto.

**(i) Supporting Factual Positions.**

(1) A party asserting a fact in a motion must support the assertion by citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers or other materials.

(2) A reference to a specific part of another pleading, motion, or paper in the record must, when available, include the document number and page assigned by the CM/ECF System.

(j) **Replacing Papers Lost or Withheld.** If an original pleading, motion or paper, other than a document filed in the CM/ECF System, is lost or withheld by any person, the court may order a verified copy to be filed and used in lieu of the original.

(k) **Judge's Name Typed on Orders.** On all orders prepared for signature, the name of the ordering judge, if known, should be typed immediately under the signature line prior to presentation for signature.

(l) **Jurisdictional Statement.** The short and plain statement of jurisdictional grounds required by Rule 8(a), Federal Rules of Civil Procedure, should be at the beginning of the complaint, with citations to any federal statutes or constitutional provisions upon which jurisdiction may be based.

(m) **Length.** Unless otherwise ordered, principal briefs or memoranda of law in civil and criminal cases (including appeals) may not exceed:

(1) for motions brought under Federal Rule of Civil Procedure 12(b), (c), and 56, fifty (50) pages and replies twenty-five (25) pages; and

(2) for all other motions, twenty-five (25) pages and replies may not exceed fifteen (15) pages.

The page limitations in this subdivision are exclusive of pages containing a table of contents, table of citations, or reproductions of statutes, rules, regulations, ordinances, *etc.*

Related Provisions:

Fed. R. Civ. P. 5.2	Privacy Protection for Filings Made with the Court
Fed. R. Civ. P. 6	Time
Fec .R. Civ. P. 7	Pleadings Allowed; Form of Motions
Fed. R. Civ. P. 8	General Rules of Pleading
Fed. R. Civ. P. 9	Pleading Special Matters
Fed. R. Civ. P. 10	Form of Pleadings
Fed. R. Civ. P. 12	Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on the Pleadings

Fed. R. Civ. P. 13	Counterclaim and Cross-Claim
Fed. R. Civ. P. 14	Third-Party Practice
D.Ak. LR 5.3	Electronic Case Filing
D.Ak. LR 7.1	Motion Practice
D.Ak. LR 15.1	Motions to Amend
D.Ak. LR 38.1	Notation of Jury Demand in Pleading

COMMENT: Paragraph (a)(3) amended by designating the current paragraph as subparagraph [A] and adding subparagraph [B] providing that an electronically filed document must be word searchable. This requirement applies to documents or papers filed electronically, whether the document is converted to Acrobat format from a word processing program, *e.g.*, WordPerfect® or Word®, or scanned into Acrobat format.

Subsection (i) renamed to more accurately describe its intent. Paragraph (1) requiring pinpoint cites to support factual assertions in all motions is adapted from Fed. R. Civ. P. 56(c)(1) (effective December 1, 2010). Paragraph (i)(2) is current subdivision (i) without substantive change with the proviso that the document cited be available on the CM/ECF system. This recognizes that in those situations in which the document cited is not yet available on the CM/ECF system is not possible to cite to the CM/ECF assigned document identifier.

Subdivision (m) is amended to increase the number of pages allowed for principal and reply briefs in dispositive motions under Fed. R. Civ. P. 12(b), (c) and 56 from 25 and 15 to 50 and 25, respectively. The length for all other motions remains 25 and 15 pages. This recognizes that in many instances, dispositive motions are of a nature that 25 pages is simply insufficient. This amendment should reduce the number of requests to file over-length briefs.

### **Rule 12.1 Motion for Judgment on the Pleading: Time to File**

Unless otherwise ordered by the court, motions for judgment on the pleadings must be filed not later than 60 days after the later of the date—

- (1) the last pleading allowed is filed, or
- (2) the moving party is served with an amended pleading.

#### Related Provisions.

Fed. R. Civ. P. 12	Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidated Motions; Waiving Defenses; Pretrial Hearing
D,Ak. LR 7.1	Motion Practice
D.Ak. LR 7.2	Hearings
D.Ak. LR 7.4	Proposed Orders
D.Ak. LR 10.1	Form of Pleadings, Motions, and Other Papers

COMMENT: New rule setting the time within which a motion for judgment on the pleadings must be filed. The purpose of this provision is to resolve matters that can be disposed of sufficiently early in the proceedings to minimize unnecessary discovery.

### **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 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:

Fed. 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 (c)(8) amended to delete the reference to dispositive motions. This amendment is necessitated to avoid any conflict with the amendment to Fed. R. Civ. 56(b) (effective December 1, 2010), which provides that a motion for summary judgment may be filed at any time until 30 days after the close of discovery. This amendment will not affect current practice. [Note: Although Rule 56(b) permits a district court to set a different time, a local rule is considered in conflict with a national rule when it essentially parrots a national rule. Failure to amend paragraph (c)(8) would likely run afoul of this application of the conflict rule.]

**Rule 33.1 Excess Interrogatories: Duty to Answer**

(a) **Duty to Answer.** In the event that a party is served with a number of interrogatories in excess of the number permitted under Federal Rule of Civil Procedure Rule 33(a)(1), the stipulation of the parties, or the order of the court, the receiving party must answer or otherwise interpose an objection, other than an objection that the number of interrogatories exceeds the maximum allowed, to the first number of interrogatories that do not exceed the maximum number allowed.

(b) **Response to Excess Interrogatories.** The party receiving the interrogatories may, as to each excess interrogatory at the option of the party receiving the interrogatories, either:

- (1) answer the interrogatory; or
- (2) object to the interrogatory by signifying "Objection. See Rule 33(a)(1)."

Related Provisions:

Fed. R. Civ. P. 26      Duty to Disclose; General Provisions Governing Discovery

Fed. R. Civ. P. 33      Interrogatories to Parties

COMMENT: New rule intended to expedite the discovery process. In the past, when served with an excessive number of interrogatories, some parties have waited until the last day to interpose an objection to all the interrogatories, thereby delaying the entire discovery process. Under the proposed rule, the receiving party is required to respond to the first number of interrogatories that does not exceed the maximum allowed by either answering the interrogatory or interposing an objection (other than that the number of interrogatories exceeds the maximum permitted). For example, if a party is served with 35 interrogatories, the receiving party must respond to the first 25 (assuming a greater number is not allowed by stipulation or court order) and may interpose an objection to the last 10 on the basis that the number exceeds the maximum allowed.

The receiving party may, however, waive the excess number objection and answer all or some of the excess interrogatories as the receiving party may, at its option, desire. The court will not generally treat the option of a party to answer excess interrogatories as waiving the objection except as to those interrogatories to which the party has responded other than objecting on the grounds that the number of interrogatories exceeds the maximum allowed.

### **Rule 37.1 Discovery Motions**

(a) **Duty to Confer; Certification of Good Faith.** Absent exigent circumstance, counsel for the moving party must confer in person, or if they are not located in the same city then by telephone, with counsel for the party against whom relief is sought in an effort to resolve any discovery dispute before filing a motion to compel discovery or for sanctions under Rule 37, Federal Rules of Civil Procedure. If such a motion is filed, it must:

(1) have attached a Good Faith Certificate (Form 37.1); or

(2) include in the first paragraph a statement as to the reason that a Good Faith Certificate can not be attached, including the efforts made to arrange a conference.

(b) **Standard for Imposition of Sanctions.** Prior to entering an order imposing sanctions under Rule 37, Federal Rules of Civil Procedure, the court will consider:

(1) the nature of the violation, including the willfulness of the conduct and the materiality of the information the party refused to disclose;

(2) the prejudice to the opposing party;

(3) the relationship between the information the party refused to disclose and the proposed sanction;

(4) whether a lesser sanction would adequately protect the opposing party and deter other discovery violations; and

(5) other factors deemed appropriate by the court or required by law.

(c) **Dismissal, Establishment, or Preclusion.** The court will not enter an order that has the effect of establishing or dismissing a claim or defense or determining or precluding a central issue in the litigation unless the court finds that the party acted willfully.

#### Related Provisions:

Fed. R. Civ. P. 26 General Provisions Governing Discovery; Duty of Disclosure

Fed. R. Civ. P. 37 Failure to Make Disclosure or Cooperate in Discovery; Sanctions

USDC Form 37.1 Good Faith Certificate

COMMENT: Subsection (b) amended to make clear that the order to be entered under Fed. R. Civ. P. 37 is an order imposing sanctions.

### **Rule 39.3 Exhibits**

(a) **General.** Except as may be otherwise ordered by the court, exhibits will be managed as provided by this subsection.

(1) At least fourteen (14) days before trial or at least three (3) business days prior to the deadline for submission of exhibits under a pretrial order in the case, whichever is earlier, counsel must meet with a deputy clerk to review trial exhibits.

(2) Plaintiff will arrange the time for this exhibit review.

(3) [A] (i) At the time set, all exhibits must be available for inspection by opposing counsel and the deputy clerk.

(ii) Trial will not be recessed or delayed to permit counsel to read or examine exhibits.

[B] (i) Large or bulky exhibits that cannot be readily transported to the office of the deputy clerk must be made available at a reasonable time and location prior to the meeting with the deputy clerk for examination by opposing counsel.

(ii) If available, photographs or other representations of large or bulky exhibits must be included with the exhibits marked under this rule.

(4) Prior to the exhibit review, parties will obtain from the deputy clerk exhibit labels that counsel must affix to proposed exhibits, marking the same with numbers for plaintiff and letters for defendant in the approximate order of anticipated use of the exhibits.

[A] With the approval of the deputy clerk, the parties may stipulate prior to marking exhibits that an exhibit identification scheme other than that provided by this rule be used.

[B] Depositions and deposition excerpts that are to be used for any purpose at trial must be marked as exhibits and included on an exhibit list as provided by this rule.

(5) The parties must stipulate at the exhibit review meeting to admissibility of those exhibits to which there will be no objection, which exhibits are to be marked "ADM."

[A] Exhibits marked "ADM" are evidence, without need for foundation or further offer at trial, and no objections will be heard regarding their admissibility.

[B] Exhibits not admitted by stipulation are to be marked for identification only, "ID."

(6) Within five (5) days after the exhibit review session:

[A] each party must serve and file an exhibit list, in the form of a pleading, identifying by number or letter those exhibits marked for admission and those marked for identification, and briefly describing each exhibit; and

[B] a copy of all exhibits that can be photocopied, including depositions, must be lodged for use by the court, and a copy provided to opposing counsel, which copies—

(i) will be photocopied subsequent to the exhibit review meeting bearing all the information required by paragraphs (a) (2) and (3), and

(ii) original labels should not be used on the court's copy of exhibits.

(7) Exhibits not presented according to this rule will not be admitted except upon a showing of good cause.

(8) Exhibits are to be retained by the parties between the marking session and trial, and will not be stored by the court.

(9) Counsel will maintain custody of all exhibits during trial, see that they are properly marked when identified and admitted, and keep them organized for ready access by opposing counsel, the court, and witnesses during trial.

[A] All exhibits admitted on a party's behalf must be immediately available at the conclusion of trial for submission to the jury or the court during deliberations.

[B] Prior to submission of the exhibits to the jury, counsel must meet with the clerk and review all parties' exhibits to assure that all admitted exhibits are segregated for submission, and no non-admitted exhibits are submitted.

(10) Immediately after a jury verdict or findings of fact by the court, the exhibits will be returned to the custody of respective counsel and must be retained by them pending appeal and final disposition of the case.

**(b) Custody of Drugs, Cash, Firearms and Other Sensitive Exhibits.**

(1) Any cash, drugs, firearms, weapons, and other sensitive items, presented to the Court for admittance as evidence must be presented in a sealed bag identifying the exhibit and marked not to be opened except under order of the court.

(2) The attorney or party offering to introduce any firearm or other weapon into evidence must:

[A] provide written notification to the Supervisory Deputy in the Office of the United States Marshal of the intent to introduce the firearm or weapon not later than two (2) business days prior to the date the firearm or weapon is to be brought to the courtroom, including—

(i) identity of the person who will have physical possession or custody of the firearm or weapon; and

(ii) a complete, detailed description of the firearm or weapon, including, if applicable, the serial number; and

[B] prior to the first day of trial or the date of the hearing at which the firearm or weapon is to be introduced into the courtroom, coordinate with the Supervisory Deputy to have a Deputy United States Marshal physically secure the firearm or weapon to make it safe for handling.

[C] The United States Marshal is authorized to promulgate such forms for the purposes of providing the United States Marshal with such notice and additional information as the United States Marshal may, in the discretion of the United States Marshal, deem appropriate or necessary.

(3) The attorney for the party offering the exhibit will retain custody of the exhibit and is responsible for the exhibit during trial, including recesses.

(4) [A] Sensitive items admitted into evidence and submitted to the jury for deliberation become the responsibility of the jury bailiff during deliberations.

[B] Upon the return of a verdict or discharge of the jury, the attorney for the party offering the exhibits must immediately take custody of the item.

**(c) Digital Evidence Presentation System.** To utilize the Digital Evidence Presentation System (“DEPS”), not less than fourteen (14) days in advance of the hearing or trial, a party must:

(1) contact the assigned Data Quality Analyst to arrange for necessary training and familiarization; and

(2) file a notice of intent to use DEPS including in the notice—

[A] the date, and

[B] location in which the hearing or trial is to be held.

**(d) Applicability to Criminal Cases.** Except for the pretrial exhibit marking procedures in paragraphs (a)(1)–(5), this rule applies to criminal cases.

COMMENT: Technical amendment to substitute “Data Quality Analyst” for “Case Management Clerk” in ¶ (c)(1) due to change in position title. No substantive change intended.
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**Rule 56.1 Motion for Summary Judgment**

**(a) Single Motion.** A motion for summary judgment must contain all the grounds upon which the moving party relies and address all causes of action or affirmative defenses raised in the pleading challenged.

**(b) Limitation on Further Motions.** Except upon leave of court for good cause shown, a party who makes a motion under Rule 56 of the Federal Rules of Civil Procedure must not make another motion under Rule 56 addressing a cause of action or affirmative defense that was available to the party but omitted from its earlier motion.

Related Provisions.

Fed. R. Civ. P. 56	Summary Judgment
D.Ak. LR 7.1	Motion Practice
D.Ak. LR 7.2	Hearings
D.Ak. LR 7.4	Proposed Orders
D.Ak. LR 10.1	Form of Pleadings, Motions, and Other Papers

COMMENT: [New] This rule, which basically limits each party to a single Rule 56 motion, is intended to prevent “end runs” around the page limitations of LR 10.1 and piecemeal litigation. Subdivision (b) is similar to and patterned on Fed. R. Civ. P. 12(g)(2). This provision, which requires good cause for the filing of a successive motion for summary judgment, is consistent with the Ninth Circuit’s decision in *Hoffman v. Tonnemacher*, 593 F.3d 908 (9th Cir. 2010).

LOCAL CRIMINAL RULES

**Rule 47.1 Criminal Motion Practice**

**(a) General.** Except as otherwise ordered by the court or as specified in these rules, written motions in criminal proceedings are governed by D.Ak. LR 5.1, LR 5.4, LR 5.5, LR 7.1, and LR 7.2.

**(b) Time for Opposition.** Unless otherwise ordered by the court, oppositions to motions in criminal cases must be served and filed within seven (7) days of service of the motion or two (2) business days prior to the hearing, whichever is earlier.

**(c) Reply.** Unless otherwise ordered by the court, no reply memorandum will be filed.

**(d) Speedy Trial Impact.**

(1) Motions in criminal proceedings must apprise the court and the parties of the moving party's position on the impact, if any, that the motion will or may have on the Speedy Trail computation. Each motion must include in the motion, immediately following the caption, one of the following statements:

[A] "This motion falls within the scope of the Speedy Trial Act, 18 U.S.C. § 3161(h)(insert applicable paragraph number or numbers)"; or

[B] "This motion has no effect on the speedy trial computation."

(2) Any objection to the moving party's Speedy Trial position must be served and filed not later than seven (7) days after the motion is served.

Related Provisions:

18 U.S.C. § 3161	Time limits and exclusions
Plan for Prompt Disposition of Criminal Cases, United States District Court, District of Alaska	
Fed. R. Crim. P. 45	Time
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 5.4	Filing Documents Under Seal, <i>Ex Parte</i> , or <i>In Camera</i>
D.Ak. LR 5.5	Service Prior to an Event
D.Ak. LR 7.1	Motion Practice
D.Ak. LR 7.2	Hearings
D.Ak. LR 10.1	Form of Pleadings and Other Papers

COMMENT: Subdivision (a) amended by adding LR 5.4 and 5.5 to the local rules applicable to criminal proceedings. This corrects an oversight in the 2009 amendments. Subdivision (d) added to require that motions filed in criminal cases conspicuously alert the court and the other parties to whether or not a motion will have an impact on the speedy trial computation. The rule should also serve as a reminder to the moving party to use the proper event when electronically filing a motion. It will also assist the Data Quality Analyst in carrying out the quality assurance function. Any objection to the position of the moving party as to the effect the motion has on the speedy trial computation must be filed within 7 days. This will bring potential disputes over speedy trial computations to the attention of the presiding judge earlier in the proceeding, thereby reducing the possibility of a speedy trial violation.

## **Rule 49.1 Electronic Case Filing**

### **(a) Cases Assigned to CM/ECF System.**

(1) Except as otherwise provided by this rule or order of the court, all pleadings, papers, and documents filed in all criminal cases in this district must be filed electronically utilizing the CM/ECF System.

(2) In CVB cases, pleadings and documents are filed conventionally.

(b) **Procedures.** Except as otherwise provided in this rule, the filing of documents in electronic format will be in accordance with D.Ak. LR 5.3.

### **(c) Special Filing Requirements for Criminal Cases.**

#### **(1) Indictments.**

[A] Indictments must be presented to the court in conventional (paper) format; and

[B] On a disk in electronic (.pdf) format as follows—

(i) the entire indictment with the name and/or signature of the jury foreperson redacted, and

(ii) as a separate document, the signature page bearing the digitally imaged (“scanned”) signature of the jury foreperson.

#### **(2) Warrants and Summonses.**

[A] Warrants and summonses may be filed conventionally or electronically in accordance with the CM/ECF administrative procedures promulgated by the Clerk of the Court.

[B] Warrants and summonses may be issued electronically.

(3) **CJA Documents.** CJA Documents will be filed as provided in the CJA Plan and CJA Compensation Policy Manual adopted by the court and the CM/ECF Procedures promulgated by the Clerk of the Court.

#### Related Provisions:

Fed. R. Crim. P. 49.1	Privacy Protection for Filings Made with the Court
D.Ak. LR 3.3	Venue; Place of Trial; Filings in Satellite Offices
D.Ak. LR 5.2	Service on Parties by the Court
D.Ak. LR 5.3	Electronic Case Filing
D.Ak. LR 10.1	Form of Pleadings and Other Papers
D.Ak. LR 79.1	Court Record; Notice of Filing; Docketing
D.Ak. LR 79.2	Books and Records of the Clerk; Access and Copies

COMMENT: Paragraph (a)(1) amended by deleting the reference to January 3, 2006, as being obsolete and superfluous.
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## MAGISTRATE RULES

### Rule 3 Criminal Matters Routinely Assigned to Magistrate Judges

(a) **In General.** Unless otherwise provided by order of a district judge, all criminal matters designated for hearing before magistrate judges by statute or the Federal Rules of Criminal Procedure will be assigned to magistrate judges, including but not limited to:

- (1) issuance of arrest warrants;
- (2) issuance of search warrants;
- (3) initial appearances;
- (4) preliminary examinations;
- (5) removal hearings;
- (6) Class B and Class C misdemeanor cases, and infractions in their entirety; and
- (7) Class A misdemeanor cases in their entirety upon consent of the defendant.

(b) **Other Matters.** Unless otherwise provided by order of a district judge, in addition to the matters provided in subsection (a), the following criminal matters will be assigned to magistrate judges:

- (1) extradition proceedings under 18 U.S.C. § 3184;
- (2) return of indictments;
- (3) warrants and summonses upon indictment or information;
- (4) arraignments;
- (5) waivers of indictment;
- (6) pretrial release and detention hearings;
- (7) pretrial motions within the scope of 28 U.S.C. § 636 (b)(1)(A), except motions related to scheduling the time and place of trials not otherwise assigned to a magistrate judge; and
- (8) pre-trial motions within the scope of 28 U.S.C. § 636 (b)(1)(B) for reports and recommendations.

#### Related Provisions:

18 U.S.C. § 19	Petty Offenses
18 U.S.C. §§ 3141–3156	Release and Detention Pending Judicial Proceedings
18 U.S.C. § 3184	Fugitives from foreign country to United States
18 U.S.C. §§ 3401, 3402	Trial by United States Magistrate Judges
28 U.S.C. § 636	Jurisdiction, powers, and temporary assignments
Fed. R. Crim. P. 4	Arrest Warrant or Summons Upon Complaint
Fed. R. Crim. P. 5	Initial Appearance Before the Magistrate Judge
Fed. R. Crim. P. 5.1	Preliminary Examination
Fed. R. Crim. P. 7	The Indictment and the Information
Fed. R. Crim. P. 10	Arraignment
Fed. R. Crim. P. 40	Commitment to Another District
Fed. R. Crim. P. 41	Search and Seizure
Fed. R. Crim. P. 46	Release From Custody
Fed. R. Crim. P. 58	Procedure for Misdemeanors and Other Petty Offenses
Fed. R. Crim. P. 59	Matters Before a Magistrate Judge
D.Ak.LMR 2	Authority of Magistrate Judges
D.Ak.LMR 6	Objections to Matters under 28 U.S.C. § 636(b)(1) in Criminal Matters

COMMENT: Paragraphs (6) and (7) amended by deleting the reference to “dispositive” or “non-dispositive” as potentially misleading as a matter covered by 28 U.S.C. § 636(b)(1)(A) may be dispositive and a matter covered by § 636(b)(1)(B) may be non-dispositive. No substantive change intended.

### **Rule 5 Review of Magistrate Judge Civil Pretrial Orders**

#### **(a) Nondispositive Matters under Rule 72(a), Federal Rules of Civil Procedure.**

(1) Unless otherwise ordered by a district judge:

[A] not later than fourteen (14) days after service of the objection, the opposing party must serve and file an opposing brief; and

[B] Unless ordered by the district judge, no reply may be filed to the opposition.

(2) Unless leave of court is obtained, for good cause shown:

[A] objections are limited to those matters fairly presented to or raised before the magistrate judge; and

[B] new matters or issues may not be raised for the first time in an objection to the decision of a magistrate judge.

(3) Hearings on the objections are governed by D. Ak. LR 7.2.

#### **(b) Dispositive Motions and Prisoner Petitions under Rule 72(b), Federal Rules of Civil Procedure.**

(1) Unless otherwise ordered by the district judge, no briefs, other than the objection and reply provided in Rule 72(b), Federal Rules of Civil Procedure, will be permitted.

(2) The court may, on its own motion or the motion of any party, set the matter for a further evidentiary hearing either before the district court or it may remand the matter to the magistrate judge to take such further evidence as the district judge may deem necessary.

(3) A party requesting a further evidentiary hearing must serve and file a motion not later than seven (7) days after the transcript of the record is certified, which motion must:

[A] describe the nature of the evidence to be proffered and its relevance to the specific objections; and

[B] contain a statement of the reason the proffered evidence could not be presented to the magistrate judge.

(c) **Form of Objections/Briefs.** Preparation of the objection and briefs is governed by D. Ak. LR 10.1.

#### Related Provisions:

Fed .R. Civ. P. 72      Magistrate Judges; Pretrial Orders

D. Ak. LR 7.2      Hearings

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

COMMENT: Subdivision (a) is amended to make the procedure for review of non-dispositive motions dispositive motions uniform. Paragraph (a)(3) is former ¶ (a)(4) modified to make the procedure for obtaining a hearing on an objection to a non-dispositive matter the same as for motions made before the district judge.

Subdivision (c) is former ¶ (a)(3) relocated to make it applicable to objections and briefs in both dispositive and non-dispositive matters.

## **Rule 6 Objections to Matters under 28 U.S.C. § 636(b)(1) in Criminal Cases**

### **(a) Objections and Replies.** Unless otherwise ordered:

(1) an objection to orders entered under 28 U.S.C. § 636(b)(1)(A) or initial findings and recommendations entered under 28 U.S.C. § 636(b)(1)(B) must be filed within the time specified in Federal Rule of Criminal Procedure 59;

(2) any reply to the objection must be filed within seven (7) days after any objection is filed; and

(3) no briefs, other than the objection and reply will be permitted.

### **(b) Initial Review by Magistrate Judge.** Unless otherwise ordered, an objection to a matter referred under §636(b)(1)(B) will be routed to the magistrate judge who:

(1) will promptly examine the pleadings and documents related to the objection;

(2) may—

[A] conduct such further hearings as deemed necessary, and

[B] make additional, supplemental or substitute findings and recommendations; and

(3) will, when the action deemed appropriate has been taken—

[A] forward final findings and recommendations to the district judge, and

[B] serve a copy on the parties.

### **(c) Review by District Judge.**

(1) Unless leave of court is obtained, for good cause shown:

[A] objections are limited to those matters fairly presented to or raised before the magistrate judge; and

[B] new matters or issues may not be raised for the first time in an objection to the decision or findings and recommendations of a magistrate judge.

(2) The court may, on its own motion or the motion of any party, set the matter for a further evidentiary hearing before the district judge or it may remand the matter to the magistrate judge to take such further evidence as the district judge may deem necessary.

(3) A party requesting a further evidentiary hearing must serve and file a motion not later than three business (3) days after the transcript of the record is certified, which motion must:

[A] describe the nature of the evidence to be proffered and its relevance to the specific objections; and

[B] contain a statement of the reason the proffered evidence could not be presented to the magistrate judge.

### Related Provisions:

28 U.S.C. § 636      Jurisdiction, powers, and temporary assignment

Fed. R. Crim. P. 59      Matters Before a Magistrate Judge

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

D.Ak. LMR 3      Criminal Matters Routinely Assigned to Magistrate Judges

COMMENT: Paragraph (a)(1) amended by deleting the word “non-dispositive” and (b) amended by deleting the word “dispositive.” See comment to proposed amendment to LMR 3.

Subparagraph (b)(3)[B] amended by substituting “serve” for “mail.” Where appropriate, the transmission may be electronically. In those cases where the final findings and recommendations are filed, service will occur as provided with any other document filed electronically.

Paragraph (c)(3) is amended to provide for 3 business days to account for the 2009 amendment to Fed. R. Civ. P 6 and Fed. R. Civ. P. 45 eliminating the exclusion of intervening holidays and weekends.

## HABEAS RULES

### **Rule 1.1 Scope/Applicability**

(a) **Scope.** These rules supplement the Rules Governing Section 2254 Cases in the United States District Courts (“Section 2254 Rules”) and the Rules Governing Section 2255 Proceedings for the United States District Courts (“Section 2255 Rules”) promulgated by the United States Supreme Court.

(b) **Title and Citation.** These rules constitute the Local *Habeas Corpus* Rules of Practice for the District of Alaska and may be cited as “D.Ak.HCR\_\_\_\_.”

(c) **Applicability:**

(1) These rules govern the procedure in the United States District Court, District of Alaska, on applications under 28 U.S.C. §§ 2254 and 2255.

(2) Except as otherwise specifically provided by statute, rule or order of the court, these rules and the Rules Governing Section 2254 Cases in the United States District Courts, apply to all petitions for habeas corpus relief filed in this court.

Related Provisions:

28 U.S.C. § 2241      Power to grant relief

28 U.S.C. § 2254      State custody; remedies in Federal Courts

28 U.S.C. § 2255      Federal custody; remedies on motion attacking sentence

Rules Governing Section 2254 Cases in the United States District Courts

Rules Governing Section 2255 Proceedings for the United States District Courts

COMMENT: In subdivision (a), current paragraph (a)(2) has been redesignated (c)(1) without substantive change and paragraph (a)(1) becomes the entirety of subdivision (a). Current subdivision (c) [effective date] is abrogated as obsolete. Current paragraph (a)(2) has been designated as paragraph (c)(1) without change. New paragraph (c)(2) makes it clear that these rules apply to all petitions for habeas corpus relief, including petitions under 28 U.S.C. § 2241.