

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE



Alaska Building, Inc., an Alaska corporation,)
Plaintiff,)
v.)
716 West Fourth Avenue, LLC,)
Koonce Pfeiffer Bettis, Inc., d/b/a)
KPB Architects, Pfeiffer Development, LLC,)
Legislative Affairs Agency, and)
Criterion General, Inc.,)
Defendants.)

Case No. 3AN-15-05969 CI

INITIAL PRETRIAL ORDER

Pursuant to the Uniform Pretrial Order Administrative Order 3AO-03-04, this Court hereby issues the Initial Pretrial Order in this case.

Routine Pretrial Order

The parties shall discuss among themselves possible trial dates and the expected length of trial. Within **15 days** after distribution of the Initial Pretrial Order, the parties shall jointly submit a list of three trial dates that are each approximately 12 months from the date of the Initial Pretrial Order. The submission to the Court should also state the approximate number of trial days the parties believe will be required. A Routine Pretrial Order will be issued based on the parties' report in accordance with the Uniform Pretrial Order.

Initial Disclosures

Unless an earlier date is or has been agreed to by the parties, initial disclosures required under Alaska Civil Rule 26(a)(1) shall be served not later than **30 days** after distribution of the Initial Pretrial Order.

ENTERED this 5th day of May, 2015, at Anchorage, Alaska.


PATRICK J. MORAN
Superior Court Judge

I certify that on 05/05/15 a copy of the above was mailed to each of the following:
James Gottstein | Jeffrey Robinson
Daniel Quinn | Kevin Cuddy
Mark Scheerer
KNixon/Admin. Assistant

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of a)
Uniform Pretrial Order)
_____) Administrative Order 3AO-03-04 (Amended)

UNIFORM PRETRIAL ORDER

In order to establish uniform pretrial scheduling and to encourage the efficient administration of justice, this administrative order is hereby adopted, effective March 3, 2003, and shall apply to any and all civil cases filed in the Alaska Superior Court at Anchorage, except domestic relations, in which a trial is set after March 3, 2003. In accordance with this court's authority under Alaska Rule of Civil Procedure 94, the requirements of Alaska Rule of Civil Procedure 16(a)-(e) and 26(f) are hereby modified and deemed satisfied by adherence to the following order.

A. INITIAL PRETRIAL ORDER

Within **30 days** after the appearance of all defendants, the court shall issue an Initial Pretrial Order in the form attached hereto. If for any reason all defendants do not appear within a reasonable time, any appearing party may move the court to issue an Initial Pretrial Order.

B. CASE CHARACTERIZATION

All civil cases subject to this order will be characterized as either "Routine" or "Non-Routine" by the court. All civil cases are presumed to be Routine, unless the court, upon motion or its own initiative, issues an order characterizing a case as Non-Routine. Non-Routine cases may include:

1. Class actions;
2. Cases requiring unusually extensive discovery;
3. Cases requiring more than ten trial days; and/or
4. Cases involving other special circumstances.

C. ROUTINE PRETRIAL ORDER

The court shall issue a Routine Pretrial Order in all civil cases. The Routine Pretrial Order shall be issued within **ten days** after the parties file the report or reports required by the Initial Pretrial Order. The requirements and deadlines established in the Routine Pretrial Order shall be set in accordance with Section D of this order and in the form attached hereto.

D. REQUIREMENTS AND DEADLINES FOR ROUTINE PRETRIAL ORDER

1. Case Characterization

Motions to change a case characterization to Non-Routine and modify the Routine Pretrial Order must be filed not more than **60 days** after it is distributed. If a case is subsequently characterized as a Non-Routine case by the court, a Non-Routine Pretrial Order shall be issued by the court, pursuant to Section E of this order.

2. Amendment of Pleadings and Addition of Parties

Parties may be added and/or pleadings amended without leave of the court within **30 days** after the Routine Pretrial Order is distributed. Thereafter, motions to add parties or to amend pleadings must be made pursuant to Alaska Civil Rules 14 and 15. If a new party is joined to the action, the party responsible for such joinder must serve (but not file) on the new party a copy of the Routine Pretrial Order and all pleadings and other documents filed to date. Service must take place within **seven days** after appearance by each new party. Proof of service must be filed.

3. Witness Lists

a. Preliminary Witness Lists

Each party must file and serve a preliminary witness list **22 weeks** prior to trial. This list must contain the names, the mailing and physical addresses, and telephone numbers of all witnesses, including rebuttal witnesses, whom the party actually intends to call at trial. This list must identify retained expert witnesses who may be called at trial, as required under Paragraph D4a, and other witnesses who may offer expert opinion testimony (e.g., treating physicians). The list must briefly indicate the topic(s) or subject matter(s) on which each witness is expected to testify.

Listing by category is not sufficient (e.g., all witnesses on opponent's witness list). Witnesses not listed may not be called at trial absent good cause.

b. Testimony by Telephone, Video-Conference or Deposition

No later than **six weeks** before trial, each party must file and serve a list of all witnesses whose testimony is expected to be presented by telephone, video-conference or deposition at trial. The proponent of deposition testimony must specifically designate in the list, by page and line, those portions of the depositions which are proposed to be read or shown. Copies of the designated portions of deposition testimony must be filed with the list. Any objections or counter-designations (also by page and line) must be filed and served with copies of the counter-designated portions of deposition testimony no later than **five weeks** before trial. Objections to counter-designations must be filed and served no later than **four weeks** before trial. Absent a showing of good cause, objections which are not timely filed will be deemed waived, and the objecting party will be deemed to have accepted the designations.

c. Final Witness Lists

Each party must file and serve a final list of witnesses the party will call at trial. Plaintiff(s) must file and serve this list **two weeks** before trial. Defendant(s) and any third-parties must file and serve this list **ten days** before trial. Witnesses not identified on the preliminary witness list may not be included on the final witness list, absent good cause.

d. Witness Order Notification

Each party must inform the other parties and the court of the order in which witnesses will testify on the **court day prior** to the testimony of those witnesses.

4. Expert Witnesses

a. Retained Expert Witness Identification

(1) Each party must identify each retained expert witness who may be called at trial to present evidence under Evidence Rules 702, 703, or 706, and the general subject matter or nature of the proposed testimony. A retained expert is a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony. This identification must be made no later than **22 weeks** prior to trial, as a part of the preliminary witness list described in Paragraph D3a of this order.

(2) A party may respond to any other party's retained expert witness identification by adding a retained expert witness on a topic disclosed in another parties' preliminary witness list. A party may not add a new topic for expert witness testimony. Any supplemental retained expert witness list must be filed and served no later than **20 weeks** prior to trial.

b. Retained Expert Witness Reports

Each party must serve (but not file) an expert report for each retained expert witness no later than **16 weeks** before trial. Each report must contain the information required by Alaska Civil Rule 26(a)(2)(B) or the witness may be barred from testifying at trial.

c. Other Expert Opinion Testimony Summary

No later than **22 weeks** before trial each party must serve (but not file) a summary of the anticipated testimony of **any other witness offering expert opinion testimony** (e.g., treating physician), **unless such expert opinion has already been disclosed in discovery**. The summary shall be signed by a party or counsel.

5. Discovery

a. Written Discovery and Motions for Examination

All discovery requests pursuant to Alaska Rules of Civil Procedure 33, 34, and 36, and all motions for examination under Alaska Rule of Civil Procedure 35, must be served no later than **16 weeks** prior to trial.

b. Non-Expert Witness Depositions

Depositions must be completed no later than **12 weeks** before trial.

c. Expert Witness Depositions

Depositions of expert witnesses must be completed no later than **8 weeks** before trial. Except as otherwise agreed by all parties, **any party is entitled to conduct a discovery deposition of any expert witness before a deposition is taken to perpetuate the testimony of that witness for trial.**

d. Supplementation

Initial disclosures, expert disclosures, and discovery responses must be supplemented under Alaska Rule of Civil Procedure 26(e)(1) and (2). Supplementation must occur as soon as possible after receipt of additional information and not later than **thirty days** from receipt.

6. Motions

a. General Requirements

Briefs in support of motions are limited to 20 pages, oppositions to motions are limited to 20 pages, and replies to oppositions are limited to 10 pages. Briefs not meeting these requirements will be rejected. Motions to accept briefs in excess of the page limitations must be filed prior to or simultaneously with the brief in question. Motions to accept briefs in excess of the page limitations will not be granted unless the motion and brief in question are filed and served at least four weeks before the motion deadlines set out in Paragraphs D6c-f, below.

b. Briefing Time Extensions

Where motions are filed at or near motion deadlines, the court may refuse to grant briefing extensions. Thus, parties should seek extensions well in advance and should not assume stipulated extensions will be granted.

c. Dispositive & Law of Case Motions

Summary judgment motions, motions to dismiss, and motions for rulings of law must be filed and served no later than **12 weeks** before trial.

d. Expert Testimony Motions

Motions to admit, limit or exclude expert opinion evidence must be filed and served no later than **eight weeks** before trial.

e. Discovery Motions

Motions to compel discovery must be filed and served no later than **eight weeks** before trial.

f. Other Motions

Motions in limine, evidentiary motions, and all other pre-trial motions (not related to expert opinion evidence) must be filed and served no later than **four weeks** before trial.

7. Jury Instructions

a. General

Each party must propose instructions and verdict forms appropriate to the case. No party shall be required to submit instructions on an issue for which it does not carry the burden of proof.

b. Proposal of Instructions

No later than **four weeks** before trial each party must serve (but not file) on the opposing party one set of proposed instructions with citations to appropriate authority.

c. Meeting Regarding Proposed Instructions

No later than **three weeks** before trial each party must meet with opposing counsel or unrepresented parties to discuss and attempt to resolve any objections to the proposed instructions.

d. Objections to Proposed Instructions

No later than **two weeks** before trial each party must serve and file any remaining objections to the instructions, with citations to appropriate authority. Any objection made on grounds that another party's proposed instruction is either an incorrect statement of the law or inappropriately worded must be accompanied by a proposed substitute instruction.

e. Filing Proposed Instructions

No later than **one week** before trial each party must file its proposed instructions. Two sets of instructions must be filed: a numbered working copy with appropriate authority and a clean unmarked original. Each page of the working copy should reference the proposed instruction number and identify the proposing party. The instructions within each set must be grouped and identified as follows:

- (1) Instructions about which there is no dispute; and
- (2) Instructions to which any party objects.

8. Exhibits

a. Exhibit Numbers

Parties shall be automatically be assigned sets of numbers for marking exhibits. The numbers will be assigned in increments of one thousand, beginning with 1000. Sets of exhibit numbers shall be assigned based upon order of appearance in the case caption. **The plaintiff shall be assigned 1000 through 1999 as exhibit numbers.** The next party listed in the case caption shall be assigned 2000 through 2999 as exhibit numbers, and so on. A single attorney or firm representing multiple parties shall be assigned only one set of exhibit numbers, specifically the set assignable to the first client appearing in the case caption. Parties should consult with each other to verify exhibit number assignments.

b. Proposed Exhibits

No later than **four weeks** before trial each party must each party must serve (but not file) a list of proposed exhibits. Upon request, a copy of any or all exhibits must also be provided to the other parties and the originals must be made available for inspection. All exhibits which a party intends to introduce at trial must be included at that time, except for exhibits intended for impeachment.

c. Meeting Regarding Exhibits

(1) No later than **three weeks** before trial each party must meet with opposing counsel or unrepresented parties to discuss and attempt to resolve any objections to the exhibits. To the extent possible, the parties must stipulate to the admissibility of exhibits, the existence of adequate foundation and waiver of the best evidence rule.

(2) At this meeting, the parties must also combine the proposed exhibits into a joint set of exhibits and prepare a joint exhibit list. This list must be on form TF-200. All proposed exhibits must be placed in numerical order. Duplicate exhibits must be eliminated by retaining only the lowest numbered exhibit of any duplicate. Plaintiff must file and serve the joint exhibit list no later than **two weeks** before trial. Exhibits not included in the joint exhibit list, other than exhibits used for impeachment, shall not be admitted at trial absent good cause.

d. Objections to Exhibits

No later than **two weeks** before trial each party must file and serve any remaining objections to the proposed exhibits, with citations to appropriate authority and copies of the disputed exhibits when practical.

e. Joint Exhibit List

On the **first day** of trial, plaintiff must file the original and one copy of the joint exhibit list with the in-court clerk. Any party may utilize and seek admission of any exhibit appearing on that list.

f. Custody of Exhibits

Unless otherwise agreed by the parties or ordered by the court, each party shall bring original exhibits with numbers assigned to that party to the courtroom each day. Parties may consult

with the in-court clerk regarding the availability of secure storage in the courtroom for unadmitted exhibits. Exhibits admitted into evidence shall be retained by the in-court clerk.

9. Trial Briefs

Each party must file and serve a trial brief not to exceed five pages no later than **two weeks** before trial. The purpose of the trial brief is to educate the court and the other parties of the facts and legal issues that will arise at trial.

10. Pretrial Conference

A pretrial conference shall be held approximately **one week** before trial to consider pending motions, objections, and other matters that may tend to expedite trial of the case. The time and date of the pretrial conference shall be established in the Routine Pretrial Order.

11. Settlement

Plaintiff's attorney must immediately notify the trial judge by telephone, if the parties have agreed to settle the case.

12. Changes to Deadlines

No changes to the deadlines set out in this order shall be permitted, except by order of the court. Parties may request such changes by motion or stipulation, but should not presume that changes will be granted, particularly when the change requested affects the ability of the court to timely complete its work.

E. REQUIREMENTS AND DEADLINES FOR NON-ROUTINE PRETRIAL ORDER

The requirements and deadlines for Non-Routine cases may vary from the Routine Pretrial Order as the needs of the case may require in the discretion of the court. A Non-Routine Pretrial Order shall be issued and state, with specificity, the particular variations from the Routine Pretrial Order authorized. Except as specified in the Non-Routine Pretrial Order, the requirements and deadlines for Routine cases, as set out in the original Routine Pretrial Order, shall apply.

Dated this _____ day of February, 2003.

Hon. Dan Hensley
Presiding Judge