

pleadings that relate to any of the non-Anchorage cases shall include that case number as a secondary case number in the caption.

4. All pleadings shall be served on counsel for all parties, including any parties seeking to intervene, at least until any issues of intervention are resolved.

4.1. All pleadings shall be made by delivery of paper documents and other media to the clerk's office at the Nesbett Courthouse. The parties shall consult with the assigned judge on a mechanism to notify the judge when filings have been made. In emergencies a party may file a motion by email to chambers. This option should be rarely used.

4.2. The Court discussed with the parties a requirement that parties file copies of pleadings in their individual cases at the court location where a non-Anchorage case was originally filed. The purpose was to provide local communities with access to a subset of pleadings pertinent to the local case. That proposal may be impractical in light of the limited time for counsel to act and the vague boundary between the five cases. The Board suggested posting substantive pleadings and other documents on a website accessible to the public. The parties shall work with the Board parties to explore that option.

Technical Support.

5. The Alaska Redistricting Board shall immediately provide parties, including those seeking to intervene, with access to any software needed to view and explore census data and district boundaries.

5.1. The Board shall provide the Plaintiffs and Intervenors access to no less than three laptops or computers that include the software the Board and its staff used to explore and evaluate districting options.

5.2. The Board shall explore providing each set of Plaintiffs and the Intervenors with a hard drive that contains the software the Board and its staff used to explore and evaluated districting options.

5.3 The Board shall provide the Plaintiffs and Intervenors with the historical data and parameters the Board and its staff used to explore and evaluate districting options.

6. The parties will engage a real time transcription service to provide transcripts throughout any evidentiary hearings and the trial. All six parties (plus each group of intervenors) will be required to pay 1/x (as of now 1/7) the cost of the transcriber. Each party shall bear any additional cost of getting its copy of the transcript or the live electronic feed. If the parties cannot agree upon a transcription service by **27 December 2021**, then a party may propose a transcription service for the Court's selection.

Trial Timelines.²

7. Civil Rule 90.8(c) requires the case to be done in the superior court 120 days before the filing deadline for the first election using the new districts. That filing deadline is 1 June 2022.³ Thus, the superior court's decision is due by **1 February 2022**.

8. To give the assigned judge time to craft the decision the evidence should be finished by **25 January 2022**. Written closing arguments and proposed findings of fact should be submitted by **27 January 2022**.

9. As a very preliminary estimate, if each set of plaintiffs is given one trial day to present its case in chief and the Board is given 3-5 days for its case in chief, trial will have to begin no later than 11 January and likely sooner than that. The parties are invited to propose start dates for the trial.

Summary Judgment Motions.

10. The Court will permit no motions for summary judgment.

Witnesses.

10.1. Each party shall provide a preliminary witness list and a brief description of the witness' testimony by **29 December 2021**.

² Certain Plaintiffs filed a joint motion to modify specific pretrial deadlines. The Court has not addressed that motion in this Order so that the Board and the Intervenor could respond to the motion.

³ AS 15.25.040(a)(1).

11. Each Plaintiff may call no more than three witnesses at trial. A Plaintiff may present the video deposition testimony of up to three additional witnesses. The Plaintiff must identify those witness in advance and make the witness available for a video deposition by **11 January 2021**.

12. The Board may call no more than seven witnesses at trial. The Board may present the video deposition testimony of up to seven additional witnesses. The Board must identify those witness in advance and make the witness available for a video deposition by **11 January 2021**.

12.1 The video deposition testimony shall be submitted to the Court for its review and not played during the trial.

13. Each party shall file affidavits setting forth the direct testimony of the non-expert witnesses it would call in its case in chief.

13.1. The Plaintiffs shall file their direct testimony by **30 December 2021**.

13.2. The Board and Intervenors shall file their direct testimony by **4 January 2022**.

13.3. At trial the witness shall be called only for cross examination and redirect.

14. Each party shall submit evidentiary objections to the pre-filed direct testimony within three business days. Responses to objections are due two business days after the objections are filed.

15. Each Plaintiff is limited to one expert witness. The Board is limited to three expert witnesses. Each party shall identify the expert witness and the topics of the expert's testimony by **30 December 2021**.

16. Each party shall submit an affidavit of the expert's direct testimony by **6 January 2022**.

Discovery.

17. The Board shall provide the Court, the Plaintiffs, and the pending Intervenors with the record as defined by Civil Rule 90.8(d) by **21 December 2021**.

18. The parties shall be prepared to discuss discovery deadlines and perhaps limits on discovery or deposition at the scheduling hearing on **20 December 2021 at 11:30 a.m.** Parties will be sent a **zoom invitation** by chambers. This overrides the earlier order setting a telephonic hearing.

19. The Court encourages the parties to begin discussions regarding discovery and the scheduling of specific depositions in advance of the scheduling hearing.

20. All witnesses must be made available for depositions no later than the **week of 3 January 2022**.

20.1. There will be a discovery hearing on **22 December at 9:00 a.m.** Parties will be sent a **zoom invitation** by chambers. **For purposes of Civil Rule 42 this is a substantive hearing.**

20.2. There will be a periodic (likely weekly) discovery hearing at a time set by the assigned judge. The parties shall provide the Court and other parties with a brief description of issues to be addressed at the hearing by noon the prior day.

Privilege Logs.

20.3 Any assertion of the attorney-client privilege in response to an initial discovery obligation or a discovery request must be accompanied by a privilege log that specifies the documents being withheld. The log must refer to documents by an identifier and Bates stamp pages. The party asserting the privilege must assume that the Court will be asked to review the assertion and prepare copies of the material subject to the assertion for a rapid *in camera* filing.

Sequences of Party and Witness Presentation.

21. At a date to be determined, the Plaintiffs shall discuss and propose a sequence for when each shall make their witnesses available for cross examination and redirect at the trial.

22. At a date to be determined, the Board shall propose a sequence for when it shall make its witnesses available for cross examination and redirect at the trial.

Judicial Assignment.

23. The judge to be permanently assigned to the case will be identified shortly after the scheduling conference.

24. The parties shall have **two business days** after the distribution of a judicial assignment order to exercise a Civil Rule 42(c) challenge.⁴

25. The assigned judge may revisit these pretrial orders as the case develops.

26. The case is permanently assigned to **Judge Thomas Matthews**.⁵

Trial Format.

27. The trial will take place by zoom, subject to the possible need to use live witnesses in order to present testimony involving maps or other visual displays of information. A request for the use of a live witness shall be presented to the assigned judge.

28. Each party is invited to submit a pretrial brief 7 calendar days before the first day of trial.

Application to the Supreme Court.

29. At the hearing on 20 December 2021 all parties expressed pessimism that there was sufficient time available for parties to conduct discovery, prepare witnesses, present evidence, and for the assigned judge to issue a decision

⁴ This modification of Civil Rule 42(c)(3) is made pursuant to Civil Rule 84.

⁵ This assignment was announced at the pretrial hearing on 20 December 2021.

by the current deadline of 1 February 2022. At the parties' request the undersigned spoke to the Chief Justice about that issue. He recommended that the parties file a petition with or an original application to the Supreme Court. In light of the possible revision of the ultimate deadline, many of the pretrial deadlines may be further revisited.

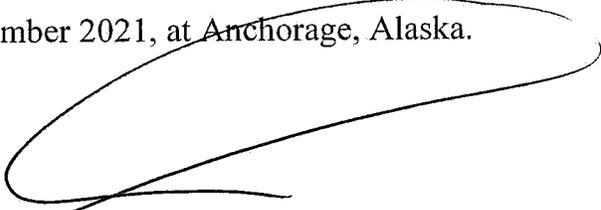
30. Although the Court does not know how much of an extension the parties might request, the Court recommends that the Supreme Court extend the deadline for the superior court's decision until no sooner than **15 February 2022**. The primary reason why the extension is needed is the delay of over four months in the delivery of census data to the Board and thus the atypically late delivery of the plan to the public. The delivery of the plan on 10 November 2021 meant that challengers had until 10 December 2021 to file.⁶ That pushed to preparation time into the holiday season when witness and attorney availability is reduced.

The number of challengers adds to the complexity of the litigation. One of the most important function of the superior court proceedings is the creation of a full and nuanced record for the inevitable appellate review. The existing timeline must either shorten the parties' preparation time in order to allow the superior court time to digest the evidence and craft a decision or shorten the

⁶ Civil Rule 90.8(b)(1).

judge's decision time in order to allow the parties more time to prepare and present evidence. Neither option will provide the Supreme Court with the quality of a record that an extension will permit. The Supreme Court and the public are better served by a modest but necessary extension of the date by which the superior court must issue its decision.

DONE this 21st day of December 2021, at Anchorage, Alaska.



William F. Morse
Superior Court Judge

CERTIFICATE OF SERVICE

I certify that on 21 December 2021 a copy of the above was emailed/mailed to each of the following at their addresses of record:

Stacey Stone
Holly Wells
Nathaniel Amdur-Clark
Robin Brena
Eva Gardner
Matthew Singer
T. Flynn



Ellen Bozzini
Judicial Assistant