

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the

2021 Redistricting Plan.

CASE NO. 3AN-21-08869CI

**FOURTH PRETRIAL ORDER<sup>1</sup>**

**I. Pleadings.**

Five cases have been filed challenging the 2021 Redistricting Plan. They are:

*Municipality of Skagway v. Alaska Redistricting Board*, 1JU-21-00944CI;

*The City of Valdez v. Alaska Redistricting Board*, 3VA-21-00080CI;

*Matanuska-Susitna Borough v. Alaska Redistricting Board*, 3PA-21-02397CI;

*Calista Corporation v. Alaska Redistricting Board*, 4BE-21-00372 CI; and

*Felisa Wilson v. Alaska Redistricting Board*, 3AN-21-08869CI.

Pursuant to Civil Rule 90.8(f) the Presiding Judges have consolidated the five cases and moved them to Anchorage.

All pleadings will be filed in Anchorage using the above caption, and the primary case number 3AN-21-08869CI. Parties filing pleadings that relate to any of the non-Anchorage cases shall include that case number as a secondary case number in the caption.

All pleadings shall be served on counsel for all parties, including Intervenors. All pleadings in this case shall be filed electronically to the following email address: [redistrict@akcourts.gov](mailto:redistrict@akcourts.gov).

**II. Amendments to Pleadings**

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<sup>1</sup> This Pretrial Order supersedes the original Pretrial Order (dated December 15, 2021), the Second Pretrial order (dated December 21, 2021) and the Third Pretrial Order (dated December 22, 2021.) Therefore, in the event of any conflict between this Order and the earlier Pretrial orders, this order shall control.

All Plaintiffs have submitted Amended Complaints or Applications pursuant to Civil Rule 15(a), and all are accepted as filed.

Any additional Amendments to pleadings shall be made not later than **January 10, 2022**, or upon motion for good cause shown.

### **III. Trial**

Civil Rule 90.8(c) requires the case to be completed in the superior court 120 days before the filing deadline for the first election using the new districts. That filing deadline is June 1, 2022.<sup>2</sup> Pursuant to Supreme Court Order No. S-18275 (dated December 23, 2021), the deadline has been relaxed by two weeks. Thus, the superior court's decision is due by **February 15, 2022**.

Trial in this matter will commence on **January 21, 2022** and will be conducted by Zoom. The trial will last **11** trial days divided between the parties as follows: each Plaintiff will be allocated 1 trial day. Intervenors will be allocated 1 trial day. The Board will be allocated 5 trial days total – 1 trial day per plaintiff case.

Unless otherwise ordered, trial days will run from **9am to 4:30pm** with a one-hour break for lunch in mid-day (generally from 12-1pm, but the time may be adjusted to accommodate witness testimony), plus a 15-minute break during both the morning and afternoon sessions.

Each party's trial time shall be its total trial time for cross-examination and re-direct questioning of witnesses. Thus, each Plaintiff will be allocated 6.5 hours; Intervenors will be allocated 6.5 hours; and the Board will be allocated a total of 32.5 hours. This equates to one trial day each per case.

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. All requests for the use of a live witness shall be filed and served not later than **January 19, 2022**.

Because the parties will be presenting direct testimony through affidavit, trial in this matter will be dominated by cross-examination of witnesses. While the cases are separate, and the Court has allocated one day for each Plaintiff and one day for the Board per case, there are different approaches to how the trial should expeditiously proceed. While there may be other options, the court see two different alternatives. In Alternative A, each case would be heard in its entirety, and then the next case would proceed. In that scenario, the Board would essentially alternate days in the trial

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<sup>2</sup> AS 15.25.040(a)(1).

calendar with each Plaintiff. In Alternative B, all of the Plaintiffs would present their witnesses, followed by all of the Board's witnesses.

The parties are to meet and confer and advise the Court in their next pre-hearing submissions (due **January 6, 2022**) about their preference for each alternative (or propose a new one). In addition, the parties shall address in their submissions any particular issues with witness availability in light of the now scheduled trial date.

#### **IV. Live-Stream for Public Viewing**

The Court will live-stream the trial for public viewing on its YouTube channel. In order to maintain the consistency of the feed, the "LiveStream" will not be turned off during breaks. Thus, the parties are encouraged to mute their computer microphones during breaks in order to maintain the privacy of their personal communications.

#### **V. Witnesses**

Each party has served a preliminary witness list and a brief description of the witness' testimony. Each Party shall timely supplement its preliminary witness list as discovery develops in order to provide reasonable notice to other parties. Any amendments to a parties' witness list shall be made not later than **January 14, 2022**.

Each party shall file affidavits setting forth the direct testimony of the non-expert witnesses it would call in its case in chief. Plaintiffs shall file their direct testimony by **January 5, 2022**. The Board and Intervenors shall file their direct testimony by **January 12, 2022**.

Each Plaintiff may call up to six (6) witnesses to testify either live or by deposition. Intervenors may call up to three (3) witnesses to testify either live or by deposition. The Court's earlier pretrial orders specified three live witnesses and three by deposition (for the Plaintiffs). The Board may call no more than fourteen (14) total witnesses at trial.

Some of the Plaintiff's Preliminary witness lists include "adverse" witnesses, including Board members and others. Since the Board has identified all five (5) board members and its executive director on its Preliminary witness list, the Court presumes those plaintiffs who identified board members will ask their questions on cross-exam. Therefore, those adverse witnesses will not count against a Plaintiff's total of six. However, if any Plaintiff wishes to secure testimony from additional adverse witnesses (beyond the board members or executive director), then such additional witnesses will count against that Plaintiff's total.

At least some of the Plaintiffs requested flexibility to present the witnesses how they choose (live or by deposition), so the court will grant that request. However, the parties are warned that their total allocation of live trial time will not be extended.<sup>3</sup>

Testimony presented solely by deposition will not count against a party's trial time. As a result, all parties are strongly encouraged, but not required, to adhere to the original 3 and 3 witnesses for the Plaintiffs and 7 and 7 witnesses for the Board.

Each Plaintiff is limited to one expert witness. Intervenors are limited to one expert witness. The Board is limited to three expert witnesses. Expert witnesses are in addition to the limits set forth above. The Plaintiffs have identified their expert witnesses and the topics of the expert's testimony. The Board shall identify their expert witnesses and the topics of the expert's testimony **by January 5, 2022**.

Each party shall submit an affidavit of the expert's direct testimony by **January 14, 2022**.

Each party shall submit evidentiary objections to the pre-filed direct testimony within three (3) days. Responses to objections are due two days after the objections are filed.

## **VI. Discovery**

All parties are reminded that discovery is reciprocal, and they are expected to cooperate in scheduling given the extraordinarily condensed timeline for discovery and presentation of evidence.

### **Deposition Discovery**

Deposition of Redistricting Board Members, Executive Director and Deputy Director shall be limited to eight (8) hours, unless otherwise ordered by the court. The Plaintiffs shall consult among themselves and designate a lead lawyer to commence each of the depositions. The lead lawyer will be expected to cover general topics of background and process generally applicable to each case in addition to that lawyer's own particular case. The lead lawyer may question for 3 hours. Each Plaintiff and Intervenors may then question for 1 hour each.

Deposition exhibits shall be tendered 24 hours in advance of the scheduled start time to ensure that each witness has the exhibits available and to minimize administrative time

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<sup>3</sup> For example, if a Plaintiff chooses to present all six of its witnesses live, and uses six hours of its allocated trial time to present re-direct testimony, then that Plaintiff will be left with only 30 minutes of cross-exam for all of the defense case. Similarly, if the Board spends 4 hours cross-examining each of the Plaintiff's witnesses, then the Board will be left with only 12.5 hours to present re-direct of its witness testimony on all cases and all issues.

during the deposition. The parties shall use a numbering system for deposition exhibits consistent with their Trial Exhibits to avoid confusion.

Discovery depositions should be scheduled so as to be completed by **January 17, 2022**. The parties shall meet and confer on the subject and schedule of any perpetuation depositions.

### **Written Discovery**

Responses to Written discovery must be submitted within seven (7) days of service. Objections to written discovery are due within three (3) days of service. The parties are expected to comply with the meet and confer provisions of Civil Rule 37 in resolving any discovery disputes.

The Board is responsible for producing a complete copy of its record of decision pursuant to Civil Rule 90.8(d) (already completed).

The Board shall prepare in electronic form for supplementation by December 31, 2021 to the parties all correspondence to or from the board members or staff, excluding only correspondence that is claimed to be protected by attorney client privilege. For such privilege communications, the Board shall prepare and serve a summary of the communications, identifying in at least general terms the number of documents or communications withheld and the date range. While the Court has not ordered a document by document privilege log at this time, the Board must prepare a separate file of such documents to aid in the resolution of any privilege assertion and for *in camera* filing. Any Motions relating to the Board's assertion of privilege shall be filed by **January 10, 2022**.

The last day to serve written discovery shall be **January 7, 2022**.

All parties are expected to supplement their discovery materials within 48 hours of receipt of new information or documents.

The parties are expected to hold a separate off-record "meet and confer" on at least a weekly basis to address discovery, witness identification and trial preparation as necessary.

### **VII. Pretrial Hearings**

Discovery and case planning hearings will be held weekly, or more often as the case develops. Not later than 4pm the day prior to the hearing, each party shall file and serve a brief bullet point summary of discovery or case management issues to be addressed at the hearing. The current schedule for hearings will be as follows:

- a. Friday January 7, 2022 at 11am
- b. Friday January 14, 2022 at 10am
- c. Wednesday January 19, 2022 at 11am

## VIII. Trial Exhibits

The parties shall exchange and file anticipated trial exhibits by **January 14, 2022**. Objections to Exhibits shall be served by **January 18, 2022**. The parties shall meet and confer in advance of trial and provide a stipulation to the court for exhibits as to which there is no objection. Given the extremely condensed time for this case, the parties are strongly encouraged to avoid *pro forma* objections to authenticity and foundation. Counsel for the Board shall be responsible for preparing a stipulation regarding exhibits and submitting it to the Court by 12noon on **January 20, 2022**.

Each party shall utilize a unique set of numbers, preferably with a prefix for its Trial Exhibits consistent with the following protocol:

Board	1000-1999
Skagway	2000-2999
Valdez	3000-3999
Mat-Su	4000-4999
Calista	5000-5999
East Anc	6000-6999
Intervenors	7000-7999

## IX. Pretrial Motions

The court has one fully briefed Pretrial Motion to Dismiss filed by the Board. Oral argument was requested, but that request has since been withdrawn. In order to be sure that no other party was relying upon the Request made by Valdez, the parties shall have until Wednesday, **January 5, 2022 at 12 noon** to request oral argument on the pending motion, or the argument hearing will be cancelled.

No Summary Judgment Motions will be considered.

Any further Motions (non-discovery) must be submitted not later than **January 10, 2022**. Oppositions will be due January 14, with Replies by January 18 at 12noon.

## X. Trial Briefs & Opening Statements

The parties shall submit trial briefs outlining their claims and defenses, and the evidence they anticipate by **January 14, 2022**. The parties may submit an additional written opening statement by **January 19, 2022**. Oral opening statements will not be given.

## XI. Post-Trial Submission of Proposed Findings of Fact and Conclusions

Proposed Findings of Fact and Conclusions of law should be submitted not later than **February 9, 2022**. The parties are expected to reference trial testimony by page/line number of the transcript, the Record of decision by ARB number, Trial Exhibits by the

appropriate Number, and Direct testimony by the page / paragraph number of the Affidavit.

The proposed findings shall be tailored to the evidence actually presented, not the evidence a party might have wished for. Post-trial motions which merely restate a parties' argument without reference to the record will not be helpful to the Court and are discouraged. In addition to its regular submission, the parties shall separately provide a copy of their proposed FFCL in Word format for the court's use.

The parties may also submit a written closing argument in addition to their proposed Findings by **February 9, 2022**.

**IT IS SO ORDERED.**

DATED at Anchorage, Alaska this 4th day of January, 2022.



Thomas A. Matthews  
Superior Court Judge

I certify that on 1.4.22 a copy  
of the following was mailed/emailed to each  
of the following at their addresses of record.



Administrative Assistant

Stani  
Stone  
Goold  
Pirvna  
Staser  
Farkash  
Schachter  
Falsy  
Mandelitz  
Wells  
Leonard  
Andrew-Clark

Tanner  
Baxter  
Swiger  
Flynn