

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

In The Matter Of:)
)
Anchorage Superior Court Felony)
Pre-Trial Order,)
) PJ Order # 773
_____)

Anchorage Superior Court Felony Pre-Trial Order

1. Pilot Period.

The goals of this Pre-Trial Order are a) to reduce the time for disposition of felonies after superior court arraignment, b) to minimize the number of calendaring hearings, and c) to provide the parties, counsel, witnesses, and the public a more realistic estimate of when a case will go to trial. The pre-trial order will be in effect for at least one year when it will be re-evaluated. During that period the order may be modified in order to achieve its goals.

2. Effective Dates.

a. *New Cases.* The Pre-Trial Order will apply to all cases in which the defendant is arraigned in superior court on or after **15 October 2018**.

b. *Existing Cases.* For cases in which the defendant was arraigned before 15 October 2018, the next pre-trial conference will be considered a trial scheduling hearing. *See* paragraph 8(d)-(h), below.

3. Deviations from Existing Rule or Practice.

The Pre-Trial Order deviates from existing Criminal Rules or practices in four ways. These deviations have been presented to and approved by the Supreme Court. *See* Admin Rule 46(e)(3) and *Beier v. State*, 413 P.3d 1245, 1247-48 (Alaska App. 2018) (describing process whereby a presiding judge order inconsistent with an Alaska Court Rule may be approved).

a. Criminal Rule 45(a) provides, in part: "Trial dates in criminal cases in the superior court shall be set at the time of arraignment, and if a trial date is thereafter vacated, the trial shall be immediately set for a date certain." Pursuant to the Pre-Trial

Order, no trial date will be set at arraignment. A trial month will be selected at a trial scheduling hearing. *See* paragraph 8(e), below.

b. Criminal Rule 25(d)(2) allows a party five business days after a judicial assignment to exercise a peremptory challenge to that judge. Under defined circumstances this period will be shortened to two days. *See* paragraph 13, below.

c. Criminal Rule 25(d)(3) provides:

(3) *Re-Assignment*. When a request for change of judge is timely filed under this rule, the judge shall proceed no further in the action, except to make such temporary orders as may be absolutely necessary to prevent immediate and irreparable injury before the action can be transferred to another judge. However, if the named judge is the presiding judge, the judge shall continue to perform the functions of the presiding judge.

Pursuant to this Pre-Trial Order the challenged judge may continue to perform calendaring and scheduling functions in that case.

d. Currently, when certain actions that toll Criminal Rule 45 occur, the court expressly identifies the new Rule 45 expiration date. This expression gives the misleading impression that the trial will occur before that newly announced date. However, the expiration date changes constantly, whether by express waiver or by rule, for example, with the defendant's filing of a motion. Pursuant to the Pre-Trial Order, the court system will track and express the number of days that have expired. *See* paragraph 5, below. (During a transition period, in order to ease concerns, the court system may also track the expiration date.) This calculation of expired days is essentially the same as the current practice, but minimizes the impression that a trial will occur before the fluid expiration date. The expression of the number of days that have expired will not change any tolling rule.

4. Arraignment.

a. Each case will be assigned to a judge at the superior court arraignment.

b. A pretrial order will be issued at arraignment that sets dates for discovery reports and pretrial conferences. The default schedule for those pretrial conferences is that set forth in paragraph 8. However, if a significant number of days of Criminal Rule 45 time have run before the superior court arraignment, then an atypical

pretrial order shall provide dates for discovery reports and pretrial conferences that reflect the shortened time period for trial.

c. A defendant, whose case qualifies for atypical treatment pursuant to paragraph 4.b, may opt for the default pretrial schedule. A defendant may exercise this option at arraignment, at the discovery hearing, or by sending an email to the assigned judge's chambers at least two business days before the trial scheduling conference. By exercising this option the defendant waives Rule 45 from the original scheduling hearing until the new (default) scheduling hearing. The court will issue a new scheduling order that reflects the default schedule.

5. Criminal Rule 45.

At the superior court arraignment the court will identify the number of days that have run as of the date of the arraignment. A party must file any objection within five days in writing or the objection will be waived.

6. Trial Date.

The assigned judge shall set a date for the trial at the trial scheduling hearing. A trial date will not be set at arraignment.

7. Discovery.

a. The prosecution shall provide discovery to the defendant's counsel by the 20th day after the superior court arraignment.

b. The prosecution's discovery report shall be served by the 30th day after the superior court arraignment.

c. The defendant's discovery report shall be served by the 40th day after the superior court arraignment.

d. It is expected that the parties will resolve most discovery issues informally, without the assistance of the court. If the parties cannot resolve a discovery dispute, then a party may raise the matter at the discovery pretrial conference.

8. Pretrial Conferences.

Each judge assigned to criminal cases shall have a time reserved for pretrial conferences on a particular day each week. There may be three types of pretrial conferences, each to be set at the same time.

Discovery Hearing.

- a. A discovery hearing will be scheduled before the assigned judge on that judge's last pretrial conference day that within 49 days after the superior court arraignment.
- b. The purpose of the discovery hearing is to address discovery issues that have not been resolved informally by the parties.
- c. The defendant may cancel the discovery hearing by email.

Trial Scheduling Hearing.

- d. A trial scheduling hearing will be scheduled before the assigned judge on that judge's last pretrial conference day that is within 63 days after the superior court arraignment.
- e. The purpose of the trial scheduling hearing is to identify the month of trial, filing deadlines, and to set evidentiary hearings, if needed.
- f. At the trial scheduling hearing counsel shall provide an estimate of the number trial days needed.
- g. If a party seeks to set new deadlines for the identification of experts and the exchange of expert reports, different than those set by **Criminal Rule 16**, the party shall discuss that request with the other parties in advance and be prepared to address the deadlines at the mandatory scheduling hearing.
- h. The trial scheduling hearing may be continued once. If a defendant requests a continuance, then Rule 45 is tolled from the initial trial scheduling hearing until the new trial scheduling hearing. The defendant may cancel the initial trial scheduling hearing by email.

Compliance Hearing.

- i. A party may request a compliance hearing to address allegations of the failure of a party to adhere to its obligations concerning discovery, disclosure requirements, or other matters. The judge may set the compliance hearing on that judge's pretrial conference day or at another time.

9. Trial Setting Target Periods.

a. For the purpose of scheduling the trial, each case shall be assigned to a category that is defined by the most serious charge pending against the defendant.

b. There are four categories: i) unclassified and class A felonies; ii) class B and C felonies charging crimes defined in AS 11.41; iii) non-AS 11.41 class B felonies; and iv) non-AS 11.41 class C felonies.

c. Each case wherein the most serious charge is an unclassified or class A felony can be expected to take over one year to go to trial after superior court arraignment. These cases will be scheduled according to their unique needs.

d. Each case wherein the most serious charge is a class B or C AS 11.41 felony shall be expected to go to trial within 12 months of superior court arraignment.

e. Each case wherein the most serious charge is a class B non-AS 11.41 felony shall be expected to go to trial within 10 months of superior court arraignment.

f. Each case wherein the most serious charge is a class C non-AS 11.41 felony shall be expected to go to trial within 9 months of superior court arraignment.

10. Defendant's Selection of the Trial Month.

a. The parties are expected to discuss the selection of a trial month prior to the scheduling hearing in order to explore the availability of witnesses.

b. At the scheduling hearing the defendant shall select the month within which trial should occur, as long as the selected month is within the expected time for trial for that category of cases. The court will consider the prosecution's position before setting the trial month.

c. The defendant's selection shall constitute a tolling of Rule 45 from the date of the scheduling hearing until the last day of the month selected. Rule 45 will begin running on the first day of the month after the selected trial month.

d. If, at the scheduling hearing, the defendant does not want to toll Rule 45, then the judge will set a date for trial before the current expiration of Rule 45.

11. Monitoring of Cases Assigned to Each Month.

Defense counsel shall be expected to monitor and limit the number of their assigned cases that are set in a single month.

12. The Trial Month.

a. The deputy presiding criminal judge or that judge's designee shall hold a monthly calendaring hearing in the middle of the month before the trial month. All cases scheduled to go to trial during the trial month will be addressed. The judge will assign the sequence in which the cases will proceed to trial.

b. The presiding and deputy presiding criminal judges or their designees shall monitor trials and other dispositions of cases during the trial month to select cases to go to trial during the month as other cases are resolved.

c. The presiding and deputy presiding criminal judges or their designees shall ensure that sufficient judges are available to try all criminal cases set for a trial month. Cases may be assigned to appellate court justices or judges, civil superior court judges, district court judges, or pro tem judges.

13. Shortened Period For Certain Peremptory Challenges.

If a judicial assignment is made in a criminal case during the week before trial is scheduled to begin, the time for filing a Criminal Rule 25 peremptory challenge to the newly assigned judge shall be two business days following notice of the assignment.

14. Motions.

a. *Daubert-Coon* motions must be filed at least thirty days before the first day of the trial month to allow time for an evidentiary hearing if one is needed. Failure to file these motions by the deadline will constitute a waiver of the issue.

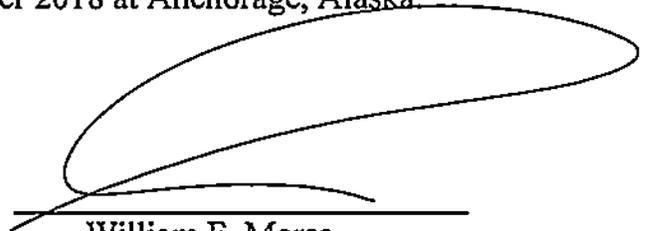
b. The proponent of evidence subject to **Evidence Rule 404(b)** shall file a motion to allow that evidence at least thirty days before the first day of the trial month to allow time for an evidentiary hearing if one is needed. The proponent must identify the specific conduct sought to be admitted and the Rule 404(b)(1) theory of admissibility. Failure to file the motion by the deadline may constitute a waiver of the issue and prohibition of the evidence.

c. Motions *in limine* and motions for trial protective orders must be filed at least two days before the first day of the trial month to allow time for an evidentiary hearing if one is needed. Failure to file these motions by the deadline may constitute a waiver of the issues.

15. Bail Hearings.

Bail hearings must be requested in writing through Calendaring by faxing to 907.264.0637 a completed Application for First Bail Review (CR-301) or Application for Subsequent Bail Review (CR-302). Bail hearings will be set by Calendaring before the first available judge. Bail review is limited to the requests made on Forms DR-301 and CR-302. If a defendant is unable to proceed at the scheduled bail hearing, then the bail hearing will be continued to the next available date and time. Bail hearings will not be scheduled before the assigned judge unless that judge makes that request.

DATED this 18th day of September 2018 at Anchorage, Alaska



William F. Morse
Presiding Judge
Third Judicial District

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