ALASKA RULES OF COURT

RULES OF CRIMINAL PROCEDURE

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PART I. SCOPE, PURPOSE AND CONSTRUCTION

Rule 1. Scope.

These rules govern the practice and procedure in the superior court in all criminal proceedings and, insofar as they are applicable, the practice and procedure in all other courts in criminal proceedings.

(Adopted by SCO 4 October 4, 1959; amended by SCO 427 effective August 1, 1980)

Cross References

CROSS REFERENCE: Alaska Const. Art. IV § 15; AS 12.85.010

Rule 2. Purpose and Construction.

These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expenses and delay.

(Adopted by SCO 4 October 4, 1959)

PART II. PRELIMINARY PROCEEDINGS

Rule 3. The Complaint.

(a) The complaint is a written statement of the essential facts constituting the offense charged. A citation issued for the commission of a class C felony, misdemeanor, or violation shall have the same force and effect as a complaint and shall be filed as a complaint; provided, that the citation satisfies the requirements of a valid complaint as provided by these rules. A complaint or citation shall be made upon oath or affirmation before any person authorized by law to administer oaths or affirmations, or signed with a certification under penalty of perjury that the complaint or citation is true.

(b) A copy of the complaint shall be served upon the defendant at the time of service of the summons, and whenever practicable, upon execution of the warrant.

(c) **Defendant and Offense Information To Be Included in Complaint.** The complaint must include the following information in the form shown in the sample published at the end of this rule:

(1) the defendant's full name, including middle name or initial, if known;

(2) the defendant's date of birth, if known;

(3) the defendant's Alaska Public Safety Information Network (APSIN) identification number;

(4) the defendant's driver's license number or state identification number, if known, including the issuing state and whether the license is a commercial driver's license;

(5) the arrest tracking number (ATN) on the Criminal Case Intake and Disposition (CCID) form for the incident;

(6) the three-digit charge tracking number assigned on the CCID form to each offense;

(7) the statute, regulation, or ordinance that the defendant is alleged to have violated, as identified in the Uniform Offense Citation Table.** Regulations not listed in the Uniform Offense Citation Table must be cited by the regulation number;

(8) if a motor vehicle offense is charged, whether the offense occurred in a traffic safety corridor or a highway work zone as provided in AS 28.90.030; and

(9) if a motor vehicle offense is charged involving the use of a commercial motor vehicle as defined in AS 28.90.990, whether the commercial vehicle weighs more than 26,000 lbs, is designed to transport more than 15 passengers, or is used in the transportation of hazardous materials.

(d) **Crimes Involving Domestic Violence.** If a defendant is charged with an offense listed in AS 18.66.990, the complaint must indicate whether the prosecuting authority intends to claim that the alleged offense is a crime involving domestic violence as defined in AS 18.66.990(3) and (5).

(e) **Search Warrant Information.** A complaint must include a listing of the numbers of any search warrants issued in relation to the case, as required by Criminal Rule 37(e)(2).

(f) **Information Not To Be Included in Complaint.** The defendant's social security number may not appear on a complaint. This subsection applies to complaints filed on or after October 15, 2006.

** The Uniform Offense Citation table was developed by the Department of Public Safety. Changes to the table must be approved by either the Department of Law or the appropriate municipal prosecuting authority. It is available at http://www.dps.alaska.gov/statewide/uoct/.

(Adopted by SCO 4 October 4, 1959; amended by SCO 85 effective September 1, 1966; by SCO 157 effective February 15, 1973; by SCO 188 effective July 18, 1974; by SCO 317 effective September 1, 1978; by SCO 427 effective August 1, 1980; by SCO 886 effective July 15, 1988; by SCO 902 effective July 15, 1988; by SCO 936 effective January 15, 1989; by SCO 1289 effective January 15, 1998; by SCO 1587 effective December 15, 2005; by SCO 1614 effective October 15, 2006; by SCO 1702 effective October 15, 2009; by SCO 1738 effective October 15, 2010; by SCO 1798 effective October 15, 2013; SCO 1803 effective October 15, 2013; and by SCO 1926 effective July 1, 2018)

SAMPLE OF CRIMINAL COMPLAINT FORM

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
AT _____

COMPLAINT

Related Search Warrant(s): _____

State of Alaska, Plaintiff, vs. John Clifford Moody aka J.C. Moody, Defendant 1 of 2.		
Date of Birth: 01/01/1964	APSIN: 123456789	
Operator License Number: 0123456 State: ☒ AK ☐ _____ CDL? ☐ Yes ☒ No		
Mailing Address: 1113 Front Street		
City: Anchorage	State: AK	ZIP: 99501

CASE NO. _____

State of Alaska, Plaintiff, vs. Samantha Anne Singleton, Defendant 2 of 2.		
Date of Birth: 11/11/1969	APSIN: 987654321	
Operator License Number: 7755443 State: ☒ AK ☐ _____ CDL? ☐ Yes ☒ No		
Mailing Address: 1113 Front Street		
City: Anchorage	State: AK	ZIP: 99501

CASE NO. _____

THE DISTRICT ATTORNEY CHARGES:

Defendant(s)	ATN	CTN	Date Offense	Offense Location
John Clifford Moody	5656787	001	1/1/13	Anchorage
Statute/Reg/Ordinance (from UOCT)	Offense Title			Modifier
AS 11.41.500(a)(1) Class: B Felony	Robbery 1- Armed w/Deadly Weapon			☒ Attempt - AS 11.31.100 ☐ Solicitation - AS 11.31.110 ☐ Conspiracy - AS 11.31.120 ☐ Gang-Related - AS 12.55.137
DV Related: ☐ Yes ☒ No	☐ Motor Vehicle Used in Commission of Offense – AS 28.15.181(a)			
If Traffic Offense: ☐ Highway Work Zone ☐ Traffic Safety Corridor Commercial Vehicle? ☐ Yes ☐ No If Yes, type: ☐ >26,000 lbs. ☐ >15 passengers ☐ Hazardous Materials				

COUNT I

(TEXT DESCRIPTION OF OFFENSE)

Defendant(s)	ATN	CTN	Date Offense	Offense Location
John Clifford Moody	5656787	002	1/1/13	Anchorage
Samantha Anne Singleton	1112222	001	1/1/13	Anchorage
Statute/Reg/Ordinance (from UOCT)	Offense Title			Modifier
AS 11.61.195(a)(1) Class: B Felony	Misconduct w/ Weapons 2 - Re Drug Crime			☐ Attempt - AS 11.31.100 ☐ Solicitation - AS 11.31.110 ☐ Conspiracy - AS 11.31.120 ☐ Gang-Related - AS 12.55.137
DV Related: ☐ Yes ☒ No	☐ Motor Vehicle Used in Commission of Offense – AS 28.15.181(a)			
If Traffic Offense: ☐ Highway Work Zone ☐ Traffic Safety Corridor Commercial Vehicle? ☐ Yes ☐ No If Yes, type: ☐ >26,000 lbs. ☐ >15 passengers ☐ Hazardous Materials				

COUNT II

(TEXT DESCRIPTION OF OFFENSE)

[After all charges, insert probable cause statement.]

[Insert VRA Certification pursuant to Criminal Rule 44(f) above signature.]

Date

Signature

Type or Print Name

Rule 4. Warrant or Summons Upon Complaint.

(a) **Issuance.**

(1) *Probable Cause.* A warrant or summons shall be issued by a judge or magistrate judge only if it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it.

(2) *Summons or Warrant.* The court must issue a summons as opposed to a warrant unless the judge or magistrate judge finds that an arrest is necessary to ensure the defendant's presence in court, or that an arrest is necessary because the defendant poses a danger to a victim, other persons, or the community.

(3) *Failure of Defendant to Appear After Summons.* If a defendant who has been duly summoned fails to appear or if there is reasonable cause to believe that the defendant will fail to appear, a warrant of arrest shall issue; provided that in the case of a defendant charged with a minor offense as defined in Minor Offense Rule 2, additional summons may issue in lieu of a warrant of arrest. If a defendant corporation fails to appear after having been duly summoned, a plea of not guilty shall be entered by the court if the court is empowered to try the offense for which the summons was issued and the court may proceed to trial and judgment without further process. If the court is not so empowered it shall proceed as though the defendant has appeared.

(4) *Additional Warrants or Summonses.* More than one warrant or summons may issue on the same complaint.

(b) **Form and Contents.**

(1) *Warrant.* The warrant shall be signed by the judge or magistrate judge, or by a clerk directed to do so on the record. The warrant shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty, and shall describe the offense charged in the complaint. The warrant shall be directed to any peace officer or other person authorized by law to execute the warrant and shall command that the defendant be arrested and brought before the nearest available judge or magistrate judge without unnecessary delay. The judge or magistrate judge shall endorse the amount of bail upon the warrant.

(2) *Summons.* The summons shall be signed by the judge or magistrate judge or by a clerk directed to do so on the record. The summons shall be in the same form as the warrant, except that it shall summon the defendant to appear before a judge or magistrate judge at the time and place stated therein, and shall inform the defendant that if the defendant fails to appear a warrant will issue for the defendant's arrest.

(c) **Execution or Service and Return.**

(1) *By Whom.* The warrant shall be executed by any peace officer or other officer authorized by law. The summons may be served by any peace officer or by any other person authorized to serve a summons in a civil action.

(2) *Territorial Limits.* The warrant may be executed or the summons may be served at any place within the jurisdiction of the State of Alaska.

(3) *Manner.* The warrant shall be executed by the arrest of the defendant. The officer need not possess the warrant at the time of the arrest, but upon request shall show the warrant to the defendant as soon as possible. If the officer does not possess the warrant at the time of the arrest, the officer shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon the defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or in any other manner provided for service of process in civil actions.

(4) *Return.* The officer executing the warrant shall make return thereof to the judge or magistrate judge before whom the defendant is brought pursuant to Rule 5. At the request of the prosecuting attorney any unexecuted warrant shall be returned to the judge or magistrate judge by whom it was issued and shall be canceled by the judge or magistrate judge. On or before the return day, the person who served the summons shall make return thereof to the judge or magistrate judge before whom the summons is returnable. At any time while the complaint is pending and upon the request of the prosecuting attorney, any unexecuted and uncancelled warrant or unserved original or duplicate summons shall be re-executed or re-served.

(Adopted by SCO 4 October 4, 1959; amended by SCO 98 effective September 16, 1968; by SCO 127 effective April 29, 1971; by SCO 157 effective February 15, 1973; by SCO 224 effective December 15, 1975; by SCO 517 effective October 1, 1982; by SCO 650 effective July 1, 1985; by SCO 904 effective January 15, 1989; by SCO 1100 effective January 15, 1993; by SCO 1153 effective July 15, 1994; SCO 1829 effective October 15, 2014; and by SCO 1929 effective October 15, 2018)

Note: Administrative Bulletin 80 on Warrants standardizes procedures for issuing, recalling, and returning warrants. These procedures apply to warrants issued in all case types (criminal, minor offense, delinquency, and civil.)

Rule 5. Proceedings Before the Judicial Officer.

(a) **Appearance Before Judicial Officer After Arrest.**

(1) Except when the person arrested is issued a citation for a class C felony, misdemeanor, or a violation and immediately thereafter released, the arrested person shall appear before a judicial officer without unnecessary delay and in any event within 24 hours after arrest, absent compelling circumstances, including weekend days and holidays.

(2) If

(A) the judicial officer commits the arrested person to jail for a purpose other than to serve a sentence, and

(B) the jail is situated in a different community from the place where the judicial officer committed the arrested person to jail, and

(C) the arrested person is not represented by counsel, and

(D) the arrested person has not previously had a bail review, and

(E) the arrested person has no date, time and place established for his or her next court appearance,

then the arrested person shall appear before a judicial officer the next business day

(i) in order for bail to be reviewed, and

(ii) in order to determine if the person is represented by counsel, and

(iii) in order for counsel to be appointed, if appropriate.

(3) The responsibility for ensuring that the arrested person appears before a judicial officer as specified in paragraphs (1) and (2) of this subsection shall be borne equally by

(A) municipal police officers and municipal jail personnel, and by

(B) state troopers, state jail personnel, and all other peace officers.

No distinction shall be drawn between cases in which arrest was made pursuant to a warrant and cases in which arrest was made without a warrant.

(4) Whenever the person arrested on a warrant appears before a judicial officer other than the one who issued the warrant, the complaint and any other statement or deposition on which the warrant was granted must be furnished to the defendant and must be communicated to the judicial officer before whom the person arrested appears.

(5) Whenever a person arrested without a warrant appears before a judicial officer, a complaint shall be filed forthwith.

(6) Judicial officers and jail facilities shall be available at all times to receive bail, and each judicial officer individually shall have authority to delegate this duty to the person admitting the defendant to jail, or to such other person as shall in the determination of a judicial officer be qualified for this purpose.

(b) **Rights of Prisoner to Communicate with Attorney and Other Person.** Immediately after arrest, the prisoner shall have the right forthwith to telephone or otherwise to communicate with both an attorney and any relative or friend. Any attorney at law entitled to practice in the courts of Alaska, at the request of either the prisoner or any relative or friend of the prisoner, shall have the right forthwith to visit the prisoner in private. This subsection does not provide a prisoner with the right to initiate communication or attempt to initiate communication under circumstances proscribed under AS 11.56.755.

(c) **Misdemeanor Arraignment or Felony First Appearance.** The judicial officer

(1) shall inform the defendant of the complaint and of any affidavit filed therewith, and

(2) shall require that a copy of the complaint and of any affidavit filed therewith be delivered to the defendant if this has not already been done, and

(3) shall inform the defendant

(A) of the right to retain counsel, and

(B) of the right to request the appointment of counsel at public expense if the defendant is financially unable to employ counsel and could

(i) be sentenced to jail or

(ii) suffer the loss of a valuable license, or

(iii) suffer a fine sufficiently severe to indicate criminality; and

(C) of the right to be admitted to bail.

(4) shall inform the defendant that the defendant is not required to make a statement and that any statement may be used against the defendant, and

(5) shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided by law and by these rules.

(d) **Initial Determination of Probable Cause at Arraignment or Felony First Appearance.**

(1) If the defendant was arrested without a warrant, the judicial officer at the first appearance shall determine whether the arrest was made with probable cause to believe that an offense had been committed and that the defendant had committed it. This determination shall be made from the complaint, from an affidavit or affidavits filed with the complaint, or from an oral statement under oath of the arresting officer or other person which is recorded by the judicial officer. The determination shall be noted in the file.

(2) If the defendant was arrested on a warrant for a failure to appear at a prior proceeding, the judicial officer shall determine from the file whether the defendant's initial arrest was pursuant to a warrant and, if not, whether at a prior proceeding the court made an initial determination of probable cause as required by paragraph (d)(1). If there has been no judicial determination of probable cause, the judicial officer shall proceed as under paragraph (d)(1).

(3) If probable cause is not shown, the judicial officer shall discharge the defendant.

(e) **Felonies—Other Requirements at First Appearance.**

(1) If the charge against the defendant is a felony, the defendant shall not be called upon to plead.

(2) The judicial officer shall inform the defendant of the right to a preliminary examination. A defendant is entitled to a preliminary examination if the defendant is charged with a felony for which the defendant has not been indicted, unless

(A) the defendant waives the preliminary examination, or

(B) an information has been filed against the defendant with the defendant's consent in the superior court.

(3) If the defendant after having had the opportunity to consult with counsel waives preliminary examination, the judicial officer shall forthwith hold the defendant to answer in the superior court.

(4) If the defendant does not waive preliminary examination, the judicial officer shall schedule a preliminary examination. Such examination shall be held within a reasonable time, but in no event later than

(A) 10 days following the initial appearance, if the defendant is in custody, or

(B) 20 days following the initial appearance, if the defendant is not in custody.

With the consent of the defendant and upon a showing of good cause, taking into account the public interest in prompt disposition of criminal cases, the judicial officer may extend the time limits specified in this subsection one or more times. In the absence of consent by the defendant, the judicial officer may extend these time limits only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interest of justice.

(f) **Misdemeanors—Other Requirements at Arraignment.**

(1) The judicial officer shall ask the defendant to enter a plea pursuant to Criminal Rule 11.

(2) If the defendant pleads not guilty, the judicial officer shall fix a date for trial at such time as will afford the defendant a reasonable opportunity to prepare.

(3) The judicial officer shall inform the defendant that the case may not be tried before a magistrate judge without the defendant's written consent.

(4) The judicial officer shall inform the defendant that the defendant may peremptorily disqualify the judicial officer to whom the case is assigned pursuant to AS 22.20.022.

(g) **Video or Telephonic Appearance.** The appearances referenced in this rule may be

(1) by court-approved video link under Criminal Rule 38.2; or

(2) by telephone if

(A) the proceeding is held on a weekend day, a holiday, or otherwise outside the court's regular business hours; or

(B) the proceeding is held during the court's regular business hours, but there is no judicial officer available where the defendant is located.

(Adopted by SCO 4 October 4, 1959; amended by SCO 98 effective September 16, 1968; by SCO 157 effective February 15, 1973, by SCO 165 dated June 25, 1973 and by directive from the Clerk of the Court dated June 28, 1973; renumbered by Amendment No. 3 to SCO 157 effective February 15, 1973; by SCO 427 effective August 1, 1980; by SCO 458 effective May 1, 1981; and by SCO 719 effective August 1, 1986; by SCO 723 effective December 15, 1986; by SCO 1153 effective July 15, 1994; by SCO 1189 effective July 15, 1995; by SCO 1339 effective June 13, 1998; by SCO 1739 effective nunc pro tunc to July 1, 2010; by SCO 1763 effective nunc pro tunc to July 1, 2011; by SCO 1799 effective October 15, 2013; by SCO 1829 effective October 15, 2014; by SCO 1883 effective July 1, 2016; SCO 1898 effective January 1, 2017; and by SCO 1927 effective nunc pro tunc to January 1, 2018)

Note to SCO 1339: Criminal Rule 5(b) was amended by § 17 ch. 86 SLA 1998 to make it clear that the rule does not give a prisoner the right to contact a victim or witness in violation of AS 11.56.755. Section 1 of this order is adopted for the sole reason that the legislature has mandated the amendment.

Note: The Alaska Legislature amended Criminal Rule 5(a) to change the time within which an arrested person must be brought before a judicial officer for a first appearance from 24 hours to 48 hours. Ch. 19, §§ 23 and 24, SLA 2010 (HB 324) (eff. July 1, 2010). The changes to Criminal Rule 5 are adopted for the sole reason that the legislature has mandated the amendments. That legislative rule change creates an apparent conflict with AS 12.25.150(a), which provides that an arrested person must be taken before a judge or magistrate "in any event within 24 hours after arrest."

Note: Chapter 20, section 25, SLA 2011 (HB 127), effective July 1, 2011, amended Criminal Rule 5(a)(1) relating to time for a first appearance. The changes to Criminal Rule 5(a)(1) are adopted for the sole reason that the legislature has mandated the amendments.

Cross References

(a) **CROSS REFERENCE:** AS 12.25.150

(b) **CROSS REFERENCE:** AS 12.25.150

(c) **CROSS REFERENCE:** AS 12.30.010

Rule 5.1. Preliminary Examination in Felony Cases.

(a) **Representation by Counsel.** The defendant is entitled to be represented by counsel. If the defendant cannot secure counsel, counsel shall be appointed for the defendant.

(b) **Order of Proof—Witnesses Called by the State.** The state shall first present the evidence in support of its case. All witnesses called by the state shall be examined in the presence of the defendant and may be cross-examined by the defendant's or by the defendant's counsel.

(c) **Witnesses Called by the Defendant.** The defendant may produce and examine witnesses on the defendant's behalf. All witnesses, including the defendant should the defendant choose to testify, may be cross-examined. The production of witnesses shall be governed by Rule 17, so far as it is applicable.

(d) **Evidence.** At the preliminary examination, the admissibility of evidence other than written reports of experts shall be governed by the Alaska Rules of Evidence. Rulings pertaining to the admissibility of evidence shall not be binding upon any subsequent judicial proceeding.

(e) **Telephonic Testimony.**

(1) A witness may participate telephonically if the witness:

(A) would be required to travel more than 50 miles to court; or

(B) lives in a place from which people customarily travel by air to the court.

(2) A witness who is not entitled to participate telephonically under subparagraph (1) may participate telephonically with approval of the court.

(f) **Record.** The proceedings shall be electronically recorded.

(g) **Exclusion of Witnesses.** At the request of either party, the judge or magistrate judge shall exclude from the courtroom any witness of an adverse party, if at the time of the request the witness is not under examination.

(h) **Discharge of the Defendant.** If from the evidence, it appears that

(1) there is no probable cause to believe that an offense has been committed, or

(2) if there is probable cause to believe that an offense has been committed, but no probable cause to believe that defendant committed the offense, then the judge or magistrate judge shall dismiss the complaint and discharge the defendant. The discharge of the defendant shall not preclude the state from instituting a subsequent prosecution for the same offense.

(i) **Commitment of Defendant.** If from the evidence it appears that there is probable cause to believe that an offense has been committed and that the defendant committed it, the judge or magistrate judge shall enter an order holding the defendant to answer to the charge and committing the defendant to proper custody. The judge or magistrate judge shall admit the defendant to bail as provided by law and by these rules.

(j) **Records.** When a judge or magistrate judge has held a defendant to answer, the judge or magistrate judge shall transmit to the clerk of the superior court of the judicial district in which the offense is triable all papers in the proceedings, any bail taken by the judge or magistrate judge, and all exhibits introduced at the examination.

(k) **Counsel for Complaining Witness—Counsel for Prosecution.** A complaining witness may be represented by counsel at every stage of the preliminary hearing. The attorney general or some attorney authorized to act for the attorney general may appear on behalf of the State of Alaska and control the conduct of the prosecution.

(Added by SCO 157 effective February 15, 1973; amended by SCO 368 effective August 1, 1979; by SCO 1153 effective July 15, 1994; by SCO 1460 effective October 15, 2003; by SCO 1799 effective October 15, 2013; and by SCO 1829 effective October 15, 2014)

PART III. INDICTMENT AND INFORMATION

Rule 6. The Grand Jury.

(a) **By Whom Convened.** The presiding superior court judge of the judicial district encompassing the grand jury location specified in section (b) shall convene the grand jury.

(b) **Where Grand Juries Shall Be Convened.** The grand jury shall be convened at the superior court location shown in the following table, based on the superior court venue district in which the matter under investigation occurred. The superior court venue districts are defined in the Criminal Rule 18 venue map.

Superior Court Venue District in which the matter under investigation occurred	Location at which the grand jury will be convened
Anchorage	Anchorage
Bethel	Bethel
Cordova	Anchorage or Palmer
Craig	Juneau, Ketchikan, or Sitka
Delta Junction	Fairbanks
Dillingham	Dillingham or Anchorage
Fairbanks	Fairbanks
Glennallen	Anchorage or Palmer
Homer	Kenai
Juneau	Juneau, Sitka, or Ketchikan
Kenai	Kenai
Ketchikan	Ketchikan, Sitka, or Juneau
Kodiak	Kodiak
Kotzebue	Kotzebue

Naknek	Anchorage
Nenana	Fairbanks
Nome	Nome
Palmer	Palmer
Petersburg	Juneau, Ketchikan, or Sitka
Seward	Kenai
Sitka	Sitka, Juneau, or Ketchikan
Tok	Fairbanks
Unalaska	Anchorage
Utqiagvik – (formerly Barrow)	Utquiagvik - (formerly Barrow)
Valdez	Anchorage or Palmer
Wrangell	Juneau, Ketchikan, or Sitka

The presiding judge of a judicial district shall be empowered to call a special jury to be convened at a site other than the site designated in this subsection if the presiding judge determines that the designation of a special site is necessary in the interest of justice.

(c) **Selection of Prospective Grand Jurors.** Prospective grand jurors shall have the qualifications and shall be drawn and selected as set forth by law, with the additional provisions:

(1) prospective grand jurors shall be selected from the population within a fifty-mile radius of the place where the grand jury is convened, and

(2) the presiding judge of the superior court may with the approval of the administrative director select prospective grand jurors at large from the judicial district in which the matter under investigation occurred.

(d) **Summoning Grand Jurors.** At least once each year the presiding judge of the superior court in each judicial district shall order one or more grand juries to be convened at such times as the public interest requires. The grand jury shall consist of not less than 12 nor more than 18 members. The court shall direct that a sufficient number of legally qualified persons be summoned to meet this requirement. Any qualified member of the grand jury panel not designated to serve as a member of the grand jury may be placed on the petit jury panel. An otherwise qualified person called for petit jury service may be placed on the grand jury panel. A grand jury shall serve until discharged by the presiding judge but no grand jury may serve more than 4 months, unless this period is extended for good cause.

(e) **Swearing and Instructing Jurors.**

(1) The following oath shall be administered by the clerk of the superior court to the persons selected for grand jury duty:

"You and each of you as members of this grand jury for the State of Alaska, do solemnly swear or affirm that you will diligently inquire and true presentment make of all such matters as shall be given to you for consideration, or shall otherwise come to your knowledge in connection with your present service; that you will preserve the secrecy required by law as to all proceedings had before you; that you will present no one through envy, hatred or malice, or leave any one unpresented through fear, affection, gain, reward, or hope thereof; but that you will present all things truly and impartially as they shall come to your knowledge according to the best of your understanding."

(2) When the grand jury is sworn, the court shall charge the jury with written instructions, which the court deems proper, concerning the powers and duties of the grand jury.

(f) **Alternate Jurors.** The presiding judge may direct that alternate jurors be designated at the time a grand jury is selected. Alternate jurors in the order in which they were designated may thereafter be impaneled as provided in paragraph (s) of this rule. Alternate jurors shall be drawn in the same manner and shall have the same qualifications as the regular jurors, and if impaneled shall be subject to the same challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors.

(g) **Objections to Grand Jury and to Grand Jurors.** A motion to dismiss the indictment or to expunge a report of the grand jury may be based upon objections to the array or the lack of legal qualification of an individual juror. An indictment shall not be dismissed nor a report expunged upon the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to paragraph (h) of this rule that a majority of the total number of grand jurors comprising the grand jury when the grand jury is sworn and charged with instructions, after deducting the number not legally qualified, concurred in finding the indictment or making the report.

(h) **Foreperson and Deputy Foreperson.** The presiding judge shall appoint one of the jurors to be foreperson and another to be deputy foreperson. The foreperson shall have power to administer oaths and affirmations and shall sign all indictments and reports. The foreperson or another juror designated by the foreperson shall keep a record of the number of jurors concurring in the finding of every indictment and the issuance of every report and shall file the record with the clerk of the court, but the record shall not be made public except on order of the presiding judge. During the absence of the foreperson, the deputy foreperson shall act as foreperson.

(i) **Preparing Indictments and Presentments.** The prosecuting attorney shall prepare all indictments and presentments for the grand jury, and shall attend their sittings to advise them of their duties and to examine witnesses in their presence.

(j) **Record of Proceedings.** All proceedings before the grand jury, including the testimony of witnesses and any statements made by the prosecuting attorney or by any of the jurors, shall be electronically recorded.

(k) **Who May Be Present.** The prosecuting attorney, the witness under examination, a court clerk for the purpose of recording the proceedings, and, when needed, an interpreter, a person transcribing for the deaf, and any law enforcement officer who has custody of the witness being examined may be

present while the grand jury is in session. No persons other than the jurors and any interpreter or transcriber necessary to assist a juror who is hearing or speech impaired shall be present while the grand jury is deliberating or voting.

(*l*) **Secrecy of Proceedings and Disclosure.**

(1) The selection, swearing, and charging of grand jurors and all matters occurring before the grand jury are secret, except as otherwise provided by this rule. Disclosure of matters, other than the grand jury's deliberations and the vote of any juror, may be made to the prosecuting attorney for use in the performance of the prosecuting attorneys' duties. Otherwise a judge, juror, attorney, interpreter, person transcribing for the deaf, law enforcement officer, court clerk, or a typist who transcribes recorded testimony may disclose matters only when so directed by the court preliminary to or in connection with a judicial or administrative proceeding.

(2) The returns of indictments to the superior court are public proceedings, unless the court directs that the proceedings be closed to the public and the indictment kept secret until the defendant is in custody or has given bail. In that event, the clerk shall seal the indictment and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.

(3) No obligation of secrecy may be imposed upon any person except in accordance with this rule.

(m) **Availability of Grand Jury Record to Defendant.** Upon request, a defendant shall be entitled to listen to the electronic recording of the grand jury proceedings and inspect all exhibits presented to the grand jury. Upon further request the defendant may obtain a transcript of such proceedings and copies of such exhibits. The trial of the case shall not be delayed because of the failure of a defendant to request the transcript. The availability of a grand jury report is governed by Criminal Rule 6.1.

(n) **Finding and Return of Indictment.**

(1) An indictment may be found only upon the concurrence of a majority of the total number of jurors comprising the grand jury when the grand jury is sworn and charged with instructions, after deducting the number not legally qualified.

(2) If an indictment is not found, the indictment shall be endorsed "not a true bill" and signed by the foreperson. If an indictment is found, the indictment shall be endorsed "a true bill" and signed by the foreperson.

(3) (i) If an indictment is endorsed "a true bill," the indictment shall be presented in open court and filed with the clerk where it shall be open to public inspection.

(ii) If an indictment is endorsed "not a true bill" and a complaint or information was previously filed in a district court, the indictment shall be presented in open court and filed with the clerk where it shall be open to public inspection.

(iii) If an indictment is endorsed "not a true bill" and no complaint or information was previously filed in district court, the indictment shall be filed with the clerk and held under seal.

(iv) The foreperson or deputy foreperson may present an indictment in open court without the presence of other grand jury members.

(4) If no indictment is found, the court shall hold the minutes, log notes, and record of the grand jury proceeding under seal. If an indictment is found, the log notes, transcript, and record of the grand jury proceeding will be confidential, as defined in Administrative Rule 37.5(c), except that the grand jury documents may be used by a party or counsel and by their staff, investigators, experts, and others as necessary for the preparation of the case. This paragraph does not preclude a party from attaching relevant portions of these documents to a pleading or motion, so long as victim and witness information is protected as provided in AS 12.61.100–.150.

(5) The return of exhibits used during the grand jury proceedings is governed by Criminal Rule 26.1(h).

(o) **Presentment.**

(1) Whenever there is doubt from the evidence presented

(i) whether the facts constitute a crime, or

(ii) whether a defendant is subject to prosecution by reason of either a lapse of time or a former acquittal or conviction, then the grand jury by a concurrence of at least five members may make a presentment of the facts of the case to the court with a request for instructions on the law.

(2) The presentment shall be made by the foreperson in the presence of the grand jury.

(3) The presentment shall not mention the names of individuals. The presentment shall not be filed with the court, nor shall it be kept by the court beyond the time that the grand jury is discharged.

(4) When the presentment is made the court shall give such instructions on the law as it considers necessary.

(p) **Defense Witnesses.** Although the grand jury has no duty to hear evidence on the behalf of the defendant, it may do so.

(q) **Sufficiency of Evidence.** When the grand jury has reason to believe that other available evidence will explain away the charge, it shall order such evidence to be produced and for that purpose may require the prosecuting attorney to subpoena witnesses. An indictment shall not be found nor a presentment made upon the statement of a grand juror unless such grand juror is sworn and examined as a witness. The grand jury shall find an indictment when all the evidence taken together, if unexplained or uncontradicted, would warrant a conviction of the defendant.

(r) **Admissibility of Evidence.**

(1) Evidence which would be legally admissible at trial shall be admissible before the grand jury. In appropriate cases, however, witnesses may be presented to summarize admissible evidence if the admissible evidence will be available at trial. Except as stated in subparagraphs (2), (3), and (6), hearsay evidence shall not be presented to the grand jury absent compelling justification for its introduction. If hearsay evidence is presented to the grand jury, the reasons for its use shall be stated on the record.

(2) In a prosecution for an offense under AS 11.41.410—11.41.458, hearsay evidence of a statement related to the offense, not otherwise admissible, made by a child who is the victim of the offense may be admitted into evidence before the grand jury if

(i) the circumstances of the statement indicate its reliability;

(ii) the child is under 10 years of age when the hearsay evidence is sought to be admitted;

(iii) additional evidence is introduced to corroborate the statement; and

(iv) the child testifies at the grand jury proceeding or the child will be available to testify at trial.

(3) Hearsay evidence related to the offense, not otherwise admissible, may be admitted into evidence before the grand jury if

(i) the individual presenting the hearsay evidence is a peace officer involved in the investigation; and

(ii) the hearsay evidence consists of the statement and observations made by another peace officer in the course of an investigation; and

(iii) additional evidence is introduced to corroborate the statement.

(4) If the testimony presented by a peace officer under paragraph (3) of this section is inaccurate because of intentional, grossly negligent, or negligent misstatements or omissions, then the court shall dismiss an indictment resulting from the testimony if the defendant shows that the inaccuracy prejudices substantial rights of the defendant.

(5) In this section "statement" means an oral or written assertion or nonverbal conduct if the nonverbal conduct is intended as an assertion.

(6) When a prior conviction is an element of an offense, hearsay evidence received through the Alaska Public Safety Information Network or from other government agencies of prior convictions may be presented to the grand jury.

(s) **Excusing Grand Jurors.** A seated juror may be excused for a particular case, permanently excused, or temporarily excused under the following circumstances:

(1) The prosecutor shall excuse a juror for a particular case when the juror informs the prosecutor that the juror cannot be fair or impartial in deciding that case. The prosecutor may ask the presiding judge to impanel an alternate.

(2) If the prosecutor is made aware of a grand juror's potential prejudice or bias that could affect the grand jury's impartial deliberations, or if the prosecutor seeks to challenge a juror for cause, the prosecutor shall present the information as to prejudice or bias or the challenge to the presiding judge. The judge shall provide the juror with notice of the prosecutor's action and shall question the juror concerning the potential bias or challenge. After hearing from the juror, the judge may request additional information from the prosecutor, other jurors, or other sources. If potential bias or cause is shown, the judge may excuse the juror permanently or for a particular case. The judge may impanel an alternate juror in place of the juror excused. If no potential bias or cause is shown, the judge shall allow the juror to remain and may take other appropriate action.

(3) The presiding judge may excuse a juror temporarily because of illness or a personal or business matter that requires the juror's attention. The presiding judge may delegate this authority to another judicial officer.

(4) An alternate juror must be present during the presentation of all evidence related to that case in order to vote on the proposed bill.

(t) **Delegation of Duties.** Whenever a superior court is sitting other than where the presiding judge is sitting, or the presiding judge is unavailable, the presiding judge may delegate duties under this rule to another judicial officer. However, the presiding judge may delegate duties under Criminal Rule 6.1 only to another superior court judge.

(u) **Telephonic Testimony.**

(1) A witness may participate telephonically in grand jury proceedings if the witness:

(A) would be required to travel more than 50 miles to the situs of the grand jury; or

(B) lives in a place from which people customarily travel by air to the situs of the grand jury.

(2) A witness who is not entitled to participate telephonically under subparagraph (1) may participate telephonically with approval of the presiding judge of the judicial district, or the presiding judge's designee. A motion to allow telephonic testimony under this subparagraph may be ex parte and shall be accompanied by an affidavit of the prosecuting attorney that states the reason telephonic testimony is requested.

(3) If a witness participates telephonically in grand jury proceedings, after the witness is sworn, the prosecuting attorney shall require the witness to:

(A) state the location from which the witness is testifying; and

(B) verify

(i) that the witness' conversation cannot be overheard;

(ii) that no extension for the telephone from which the witness is testifying is in use; and

(iii) that the witness will notify the grand jury immediately if any person can overhear the witness' testimony or if the witness becomes aware that an extension for the telephone enters use during the testimony.

(Adopted by SCO 4 October 4, 1959; amended by SCO 30 effective February 1, 1961; by SCO 49 effective January 1, 1963; by SCO 136 dated August 27, 1971; by SCO 136A dated September 13, 1971; by Amendment No. 1 to SCO 136 dated October 17, 1972; by SCO 146 effective October 31, 1971; by Amendment No. 1 to SCO 146 effective October 31, 1971; by SCO 157 effective February 15, 1973; by SCO 216 effective October 1, 1975; by SCO 261 effective December 30, 1976; by SCO 539 effective October 1, 1982; by SCO 706 effective May 21, 1986; by SCO 711 effective September 15, 1986; by SCO 881 effective July 15, 1988; by SCO 937 effective January 15, 1989; by SCO 945 effective January 15, 1989; by SCO 956 effective July 15, 1989; by SCO 967 effective July 15, 1989; by SCO 969 effective July 15, 1989; by SCO 973 effective July 15, 1989; by SCO 991 effective January 15, 1990; by SCO 997 effective January 15, 1990; by SCO 1012 effective January 15, 1990; by SCO 1039 effective January 15, 1991; by SCO 1046 effective January 15, 1991; by SCO 1061 effective July 15, 1991; by SCO 1115 effective November 12, 1992; by SCO 1171 effective July 15, 1995; by SCO 1181 effective July 15, 1995; by SCO 1204 effective July 15, 1995; by SCO 1269 effective July 15, 1997; by SCO 1293 effective January 15, 1998; by SCO 1338 effective June 11, 1998; by SCO 1381 effective April 15, 2000; by SCO 1439 effective October 15, 2001; by SCO 1482 effective October 15, 2002; by SCO 1490 effective October 15, 2002; by SCO 1618 effective October 15, 2006; by SCO 1646-Amended effective October 15, 2007; by SCO 1745 effective April 15, 2011; by SCO 1760 effective October 14, 2011; by SCO 1872 effective April 27, 2016; by SCO 1916 effective January 1, 2018 and by SCO 1949 effective July 9, 2019)

Note to SCO 1269: Criminal Rule 6(r) was amended by §§ 18 & 19 ch. 143 SLA 1996 to allow certain hearsay evidence to be presented to the grand jury in a prosecution for felony DWI or felony refusal to submit to a chemical test. Section 21 of this order is adopted for the sole reason that the legislature has mandated the amendments.

Note: Subparagraphs (r)(2) and (3) of Criminal Rule 6 were added by ch. 41, §§ 1-2, SLA 1985, adopting AS 12.40.110.

Note to SCO 1204: Criminal Rules 6(r)(3) & (4) were added by ch. 114 § 2 SLA 1994. Section 4 of this order is adopted for the sole reason that the legislature has mandated the amendments.

Note to SCO 1293: Criminal Rule 6(u) was amended by §§ 20 & 25 ch. 63 SLA 1997 to eliminate the requirement that the prosecution must obtain permission from the court before a victim can testify by telephone. Section 1 of this order is adopted for the sole reason that the legislature has mandated the amendment.

Note to SCO 1338: Criminal Rule 6(r)(2) was amended by § 21 ch. 81 SLA 1998 to allow hearsay evidence of a statement made by a child to be admitted before the grand jury in a prosecution for first degree indecent exposure as well as the other sex offenses defined in AS 11.41. Section 1 of this order is adopted for the sole reason that the legislature has mandated the amendment.

Note: Chapter 10, SLA 2019 (HB 49) enacted a number of changes relating to criminal procedure. Section 135 of the Act amended paragraph (r)(6) to allow the admissibility of an Alaska Public Safety Information Network or other government agency report of prior convictions if the prior conviction is an element of the offense. This rule change is adopted for the sole reason that the legislature has mandated the amendment.

Cross References

(b) **CROSS REFERENCE:** AS 12.40.030; AS 12.40.040; AS 12.40.050; AS 12.40.060

Rule 6.1. Grand Jury Reports.

(a) **Authority to Issue Reports.**

(1) A grand jury may investigate and make reports and recommendations concerning the public safety or welfare. An indictment is not a "report" as used in this rule and Criminal Rule 6.

(2) A grand jury report may be made only upon the concurrence of a majority of the total number of grand jurors on the panel at the commencement of the proceedings resulting in the report. The report must be signed by the foreperson. A grand jury report may include allegations of criminal conduct.

(b) **Initial Judicial Review.** The grand jury shall present any proposed report to the presiding judge of the judicial district. The judge shall examine the report and the grand jury record before the grand jury is discharged. The judge may order production of audio copies or transcripts of the grand jury proceeding and may request the prosecuting attorney to submit a summary of the evidence presented to the grand jury. The judge shall make specific findings on the record as required by the following subparagraphs.

(1) The judge shall determine first whether the report satisfies the requirements of subparagraphs (a)(1) & (2). If it does not, the judge shall proceed under subparagraph (b)(3).

(2) The judge shall then determine if publication of the report would improperly infringe upon a constitutional right of any person, including but not limited to improper interference with a person's right to privacy or right to a fair trial in a pending or planned criminal proceeding. The judge shall make an ex parte on the record inquiry of the prosecuting attorney about any planned or pending criminal prosecutions related to the subject of the grand jury report.

(3) If the judge determines that the report does not meet the standards of subparagraphs (a)(1), (a)(2) or (b)(2) the judge shall return the report to the grand jury with an explanation of the reasons for returning the report. The grand jury may conduct further proceedings, revise the report, or seek appellate review of the judge's decision not to release the report.

(c) **Judicial Review If Report Adversely Reflects on Identifiable Person.** If the judge determines that the standards of paragraph (b) are satisfied, the judge shall determine whether any part of the report may reflect adversely on any person who is named or otherwise identified in the report. "Person" includes a natural person or an organization, but does not include a governmental subdivision or agency. If the report may adversely reflect on any identifiable person, the judge shall proceed under the following subparagraphs (c)(1)–(5).

(1) The judge shall order that notice of the report be provided to the person. The notice must advise the person of his or her rights as provided in this paragraph.

(2) The person may move, within ten days of notice of the report, for a hearing. The hearing will be held in camera and on the record.

(3) The person must be given a reasonable period of time prior to the hearing to examine the grand jury report and the record of the grand jury proceedings. A person receiving notice or a copy of the report and record may not disclose any matter occurring before the grand jury except as permitted by the court. Each person receiving these materials must be advised of this obligation.

(4) The person named or otherwise identified in the report may be represented by counsel at the hearing and may present argument as to whether the standards stated in subparagraph (c)(5) are satisfied. The prosecuting attorney may be present at this hearing and may also present argument. Neither side may present evidence nor examine witnesses, except that the named or otherwise identifiable person may submit a written response to the grand jury report which the person may request that the court issue with the report under paragraph (d).

(5) The judge shall determine at the close of the hearing whether that part of the report which may adversely reflect upon a named or otherwise identified person is supported by substantial evidence or, if raised at the hearing, whether the report satisfies the requirements of paragraph (b) of this rule and paragraph (g) of Criminal Rule 6. If the judge finds that these requirements are not satisfied, the judge shall return the report to the grand jury with an explanation of why the report has not been released. The court may request that the grand jury consider further evidence as to the named or otherwise identifiable person. The grand jury may conduct further proceedings, revise the report, or seek appellate review of the decision not to release the report.

(d) **Release of Report.**

(1) The court shall withhold publication of the report until the expiration of the time for making a motion for a hearing under paragraph (c). If such a motion is made, publication must be withheld pending a ruling on the motion or pending any review under paragraph (e). All proceedings under this rule are confidential until the presiding judge orders the report released.

(2) If the judge finds that the standards of paragraphs (b) and (c) are met, the judge shall order the report released. The judge may order that a response to the report by a person named or otherwise identified, or other additional materials, be attached to the report as an appendix. The report and any appendices will be filed with the clerk of the court and made available for public inspection. The court shall also direct that copies of the report and any appendices be sent to other persons as reasonably requested by the grand jury.

(e) **Appeal.**

(1) A judicial determination under paragraph (d) of this rule is a final order for purposes of appeal. Such an appeal is governed by Appellate Rule 216 except that the appeal is to the Supreme Court. Any named or otherwise identifiable person, the state, or the grand jury by majority vote may seek review of the presiding judge's decision.

(2) The grand jury will be permitted access to the record of the in camera hearing to assist it in determining whether to pursue appellate review. The grand jury shall maintain the confidentiality of this record.

(Added by SCO 938 effective January 15, 1989)

Rule 7. Indictment and Information.

(a) **Use of Indictment and Information.** An offense which may be punished by imprisonment for a term exceeding one year shall be prosecuted by indictment, unless indictment is waived. Any other offense may be prosecuted by indictment or information. Any information may be filed without leave of court.

(b) **Waiver of Indictment.** An offense which may be punished by imprisonment for a term exceeding one year may be prosecuted by information if the defendant, after having been advised of the nature of the charge and of the defendant's rights, waives in open court prosecution by indictment.

(c) **Nature and Contents—Defects of Form Do Not Invalidate.**

(1) The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means.

(2) An indictment or information must include:

(A) the defendant and offense information required by Criminal Rule 3(c);

(B) search warrant information as required by Criminal Rule 37(e)(2);

(C) the victim information certificate required by Criminal Rule 44(f); and

(D) if the defendant is charged with an offense listed in AS 18.66.990, whether the prosecution claims that the alleged offense is a crime involving domestic violence as defined in AS 18.66.990(3) and (5).

(3) The defendant's social security number may not appear on an indictment or information. This subsection applies to an indictment or information filed on or after October 15, 2006.

(4) Error in a citation or omission of a citation to the statute, regulation, or ordinance that the defendant is alleged to have violated shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice. No indictment is insufficient nor can the trial, judgment or other proceedings thereon be affected, by reason of a defect or imperfection in matter of form in the indictment which does not tend to prejudice the substantial rights of the defendant.

(5) When an indictment is found, the names of all witnesses examined before the grand jury must be inserted at the foot of the indictment, or endorsed thereon, before it is presented to the court.

(d) **Surplusage.** The court, on motion of the defendant, may strike surplusage from the indictment or information.

(e) **Amendment of Indictment or Information.** The court may permit an indictment or information to be amended at any time before verdict or finding if no additional or different offense is charged and the substantial rights of the defendant are not prejudiced.

(f) **Bill of Particulars.** The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within ten days after arraignment or at such later time as the court may permit. A bill of particulars may be amended at any time subject to such conditions as justice requires.

(Adopted by SCO 4 October 4, 1959; amended by SCO 98 effective September 16, 1968; amended by SCO 483 effective November 2, 1981; by SCO 1153 effective July 15, 1994; by SCO 1289 effective January 15, 1998; by SCO 1304 effective January 15, 1998; by SCO 1587 effective December 15, 2005; and by SCO 1614 effective October 15, 2006)

Note: SCO 906 incorporated changes in Criminal Rule 8(a) made by the legislature in ch. 66, §§ 8 and 9. SLA 1988. The legislation added the language in subparagraph (a)(1), "and it can be determined before trial that it is likely that evidence of one charged offense would be admissible to prove another charged offense."

Note: SCO 906 is amended by adding a new paragraph 3 which provides: "3. This order is made for the sole reason that the legislature has mandated the above amendments. If the act mandating these amendments is invalidated by a court of competent jurisdiction, this order shall be considered automatically rescinded." This amendment is effective retroactively to May 28, 1988.

Note: Paragraph (b) was amended by ch. 79, § 2, SLA 1991.

Cross References

(a) **CROSS REFERENCE:** AS 12.80.020

(b) **CROSS REFERENCE:** AS 12.80.020

(c) **CROSS REFERENCE:** AS 12.40.100

Rule 8. Joinder of Offenses and of Defendants.

(a) **Joinder of Offenses.** Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies, misdemeanors or both,

(1) are of the same or similar character and it can be determined before trial that it is likely that evidence of one charged offense would be admissible to prove another charged offense,

(2) are based on the same act or transaction, or

(3) are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) **Joinder of Defendants.** Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses, or if the defendants are parties to an express or tacit agreement to aid each other to commit an act or transaction constituting a criminal offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count. The disposition of the indictment or information as to one of several defendants joined in the same indictment or information shall not affect the right of the state to proceed against the other defendants.

(Adopted by SCO 4 October 4, 1959; amended by SCO 906 effective nunc pro tunc May 28, 1988; by SCO 1092 effective July 15, 1992; corrected January, 1993)

Note: SCO 906 incorporated changes in Criminal Rule 8(a) made by the legislature in ch. 66, §§ 8 and 9. SLA 1988. The legislation added the language in subparagraph (a)(1), "and it can be determined before trial that it is likely that evidence of one charged offense would be admissible to prove another charged offense."

Note: SCO 906 is amended by adding a new paragraph 3 which provides: "3. This order is made for the sole reason that the legislature has mandated the above amendments. If the act mandating these amendments is invalidated by a court of competent jurisdiction, this order shall be considered automatically rescinded." This amendment is effective retroactively to May 28, 1988.

Note: Paragraph (b) was amended by ch. 79, § 2, SLA 1991.

Rule 9. Warrant or Summons Upon Indictment or Information.

(a) **Issuance of Summons or Warrant.** Upon the return of the indictment or filing of the information, the court shall issue either a summons or a warrant for each defendant named in the indictment or information unless the defendant is already on bail or recognizance for the same offense(s). The court must issue a summons as opposed to a warrant unless the court finds that an arrest is necessary to ensure the defendant's presence in court, or that an arrest is necessary because the defendant poses a danger to a victim, other persons, or the community. No summons or warrant may issue for a defendant named in an information unless the allegations are supported by statements made under oath.

(b) **Form.**

(1) *Warrant.* The form of the warrant shall be as provided in Rule 4 (b) (1) except that it shall be signed by the clerk, it shall describe the offense charged in the indictment or information and it shall command that the defendant be arrested and brought before the court. The amount of bail shall be fixed by the court and endorsed on the warrant.

(2) *Summons.* The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court at a stated time and place.

(c) **Execution or Service and Return.**

(1) *Execution or Service.* The warrant shall be executed or the summons served as provided in Rule 4(c) (1), (2), and (3). A summons to a corporation shall be served by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service, by also mailing a copy to the corporation's last known address within the state or at its principal place of business elsewhere in the United States. The officer executing the warrant shall bring the arrested person promptly before the court or, for the purpose of admission to bail, before a magistrate.

(2) *Return.* The officer executing a warrant shall make return thereof to the court. At the request of the prosecuting attorney any unexecuted warrant shall be returned and canceled. On or before the return day the person to whom a summons was delivered for service shall make return thereof. At the request of the prosecuting attorney made at any time while the indictment or information is pending, a warrant returned unexecuted and not canceled or a summons returned unserved or a duplicate thereof may be delivered by the clerk to a peace officer or other person authorized for execution or service.

(3) *Service of Summons by Mail.* In addition to other methods of service provided by this rule, summons instead of a warrant as issued under the provisions of subdivision (a) of this rule may also be served upon a defendant of known residence within the jurisdiction of the State of Alaska by registered or certified mail. In such case a copy or copies of the summons shall be mailed by the clerk to each defendant named in the indictment or the information for delivery only to each such named defendant. The returned delivery receipts shall be

attached to the copies of summons retained by the clerk. If a delivery receipt is returned unsigned by the defendant named in the indictment or information to whom the summons was addressed, at the request of the prosecuting attorney made at any time while the indictment or information is pending the summons or duplicate thereof may be delivered by the clerk to a peace officer or other authorized person for service.

(Adopted by SCO 4 October 4, 1959; amended by SCO 90 effective July 24, 1967; amended by SCO 127 effective April 29, 1971; SCO 1153 effective July 15, 1994; and by SCO 1929 effective October 15, 2018)

PART IV. ARRAIGNMENT AND PREPARATION FOR TRIAL

Rule 10. Felony Arraignment in Superior Court.

(a) Generally. Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead thereto. The defendant may appear by use of telephonic or contemporaneous two-way videoconference equipment pursuant to Criminal Rules 38.1 and 38.2.

(b) **Defendant's Name.**

(1) When arraigned, the defendant shall be informed of the name which appears in the indictment or information.

(2) The defendant shall then be given the opportunity to declare the defendant's true name.

(i) If the defendant states that another name is the defendant's true name, the court shall direct entry thereof to be made in the record. Subsequent proceedings on the indictment or information shall be had against the defendant by both the declared true name and the name which appears on the indictment or information.

(ii) If the defendant declares no other name to be the defendant's true name, the case against the defendant shall proceed under the name which appears in the indictment or information.

(c) **Peremptory Disqualification of the Judge.** At the arraignment any defendant who has waived counsel shall be advised that the defendant may peremptorily disqualify the judge to whom the defendant's case has been assigned on the grounds that the defendant believes the defendant cannot obtain a fair and impartial trial before that judge. In any court in the state where a master calendar system has been adopted, a defendant who has waived counsel shall be advised at the arraignment that the defendant may give notice of change of judge under Rule 25 (d).

(Adopted by SCO 4 October 4, 1959; amended by SCO 49 effective January 1, 1963; amended by SCO 157 effective February 15, 1973; by SCO 255 effective December 30, 1976; by SCO 589 effective January 1, 1984; by SCO 606 effective October 4, 1984; by SCO 660 effective November 7, 1985; by SCO 719 effective August 1, 1986; by SCO 1153 effective July 15, 1994; by SCO 1799 effective October 15, 2013 and by SCO 1951 nunc pro tunc July 9, 2019)

Rule 11. Pleas.

(a) Alternatives. A defendant may plead not guilty, guilty, or nolo contendere. If a defendant refuses to plead, stands mute, or if a defendant corporation fails to appear, the court shall enter a plea of not guilty. The defendant may appear by use of telephonic or contemporaneous two-way videoconference equipment pursuant to Criminal Rules 38.1 and 38.2.

(b) **Extension of Time for Pleading.** If the defendant requests an extension of time for entering a plea, then the court shall allow the defendant until the next day following the arraignment, or until such further time as the court considers reasonable, to plead to the indictment or information.

(c) **Pleas of Guilty or Nolo Contendere.** The court shall not accept a plea of guilty or nolo contendere from a defendant without first addressing the defendant personally and

(1) determining that the defendant understands the nature of the charge; and

(2) informing the defendant that by a plea of guilty or nolo contendere the defendant waives the right to trial by jury or trial by a judge and the right to confront adverse witnesses; and

(3) informing the defendant:

(A) of the mandatory minimum punishment, if any, and the maximum possible punishment provided by the statute defining the offense to which the plea is offered, and

(B) that the defendant has the right to plead not guilty or to persist in that plea if it has already been made, or to plead guilty, and

(C) that if the defendant is not a citizen of the United States, a conviction of a crime may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to federal law; and

(4) if the defendant is charged with a sex offense as defined in AS 12.63.100 or child kidnapping as defined in AS 12.63.100, informing the defendant in writing of the requirements of AS 12.63.010 and, if it can be determined by the court, the period of registration required under AS 12.63; and

(5) in cases when a plea agreement has been accepted by a court, informing the defendant:

(A) that the defendant waives the right to appeal a sentence as excessive and waives the right to seek reduction of a sentence under Criminal Rule 35 if a plea agreement between the defendant and the prosecuting attorney provides for a specific sentence or a sentence equal to or less than a specified maximum; and

(B) that the defendant waives the right to appeal as excessive that portion of a sentence that is less than or equal to a minimum sentence specified in a plea agreement between the defendant and the prosecuting attorney and waives the right to seek reduction of a sentence under Criminal Rule 35 to a length less than the length of the minimum sentence.

(d) **Insuring That the Plea is Voluntary.** The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire of the prosecuting attorney, defense counsel and the defendant to determine whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney for the state and the defendant or the defendant's attorney.

(e) **Plea Agreement Procedure.**

(1) *Disclosure of Sentencing Agreement.* If the parties reach a sentencing agreement, the court shall require disclosure of the agreement in open court at the time the plea is offered. Once the agreement has been disclosed, the court may accept or reject the agreement, or may defer that decision until receipt of a presentence report. If the court accepts the agreement, the court may impose sentence without a presentence investigation.

(2) *Acceptance of Agreement.* If the court accepts the agreement, the court shall impose sentence in accordance with the terms of that agreement.

(3) *Rejection of Agreement.* If the court rejects the agreement, the court shall inform the parties of this fact and advise the prosecuting attorney and the defendant personally in open court that the court is not bound by the agreement. If the court rejects the agreement as too lenient, the court shall then afford the defendant the opportunity to withdraw the plea. If the court rejects the agreement as too severe, the court shall then afford the prosecuting attorney the opportunity to withdraw from the agreement.

(f) **Determining the Accuracy of Plea.** The court shall not enter a judgment upon a plea of guilty without first being satisfied that there is a reasonable basis for the plea.

(g) **Record.** An electronic recording shall be made of the entire proceeding or proceedings.

(h) **Plea Withdrawal.**

(1) A defendant may not withdraw a plea of guilty or nolo contendere as a matter of right. A defendant may move for withdrawal of the plea without alleging innocence of the charge to which the plea has been entered.

(2) Before sentencing, the trial court shall allow a defendant to withdraw a plea whenever the defendant, upon timely motion, proves that withdrawal is necessary to correct manifest injustice. Absent a showing that withdrawal is necessary to correct manifest injustice, the trial court may in its discretion allow the defendant to withdraw a plea for any fair and just reason unless the prosecution has been substantially prejudiced by reliance upon the defendant's plea.

(3) After imposition of sentence, the withdrawal of a plea may be sought only under AS 12.72. A defendant requesting post-sentence plea withdrawal must prove that withdrawal is necessary to correct a manifest injustice.

(4) Withdrawal is necessary to correct a manifest injustice whenever it is demonstrated that:

(A) The defendant was denied the effective assistance of counsel guaranteed by constitution, statute or rule, or

(B) The plea was not entered or ratified by the defendant or a person authorized to act in the defendant's behalf, or

(C) The plea was involuntary, or was entered without knowledge of the charge or that the sentence actually imposed could be imposed, or

(D) The defendant did not receive the charge or sentence concessions contemplated by the plea agreement, and

(i) the prosecuting attorney failed to seek or opposed the concessions promised in the plea agreement, or

(ii) after being advised that the court no longer concurred and after being called upon to affirm or withdraw the plea, the defendant did not affirm the plea.

(5) A plea of guilty or nolo contendere which is not accepted or has been withdrawn shall not be received against the defendant in any criminal proceeding.

(i) **Restorative Justice Programs**.

(1) With the consent of the victim(s), the prosecutor, and the defendant(s), the judge may refer a case to a restorative justice program. The parties must inform the restorative justice program about any applicable mandatory sentencing provisions at the time the matter is submitted to the program. The parties may propose to the court the sentence recommended by the participants in proceedings convened by that program.

(2) The parties may include the recommendations of the restorative justice program in a sentencing agreement subject to the provisions of subsection (e).

(3) The term "restorative justice program" means a program using a process in which persons having an interest in a specific offense collectively resolve how to respond to the offense, its aftermath, and its implications for the future. Restorative justice programs include, but are not limited to, circle sentencing, family group conferencing, reparative boards, and victim/offender mediation. For purposes of this rule, the term "restorative justice program" does not include the Alaska Court System's therapeutic courts.

(4) Except as provided below, the sentencing judge shall not participate directly in any restorative justice program to which a case is referred for sentencing recommendations.

(A) The judge may be present during the proceedings of the program provided that:

(i) the proceedings are conducted on the record; or

(ii) minutes of the proceedings are kept in a manner that the parties agree will fairly and accurately represent what is said at those proceedings.

(B) The judge may speak at these proceedings provided that the judge's comments do not detract or appear to detract from the judge's neutrality.

(Adopted by SCO 4 October 4, 1959; amended by SCO 98 effective September 16, 1968; amended by SCO 157 effective February 15, 1973; by SCO 427 effective August 1, 1980; by SCO 589 effective January 1, 1984; by SCO 606 effective October 4, 1984; SCO 660 effective November 7, 1985; by SCO 662 effective March 15, 1986; and by SCO 719 effective August 1, 1986; by SCO 750 effective December 15, 1986; by SCO 1153 effective July 15, 1994; by SCO 1194 effective July 15, 1995; by SCO 1204 effective July 15, 1995; by SCO 1222 effective August 8, 1995; by SCO 1242 effective July 15, 1996; by SCO 1343 effective January 1, 1999; by SCO 1382 (as revised by SCO 1413) effective April 15, 2000; by SCO 1590 effective April 15, 2006; by SCO 1816 effective April 15, 2014 and by SCO 1951 nunc pro tunc July 9, 2019)

Note to SCO 1204: Criminal Rule 11(c)(4) was added by ch. 41 § 10 SLA 1994. Section 5 of this order is adopted for the sole reason that the legislature has mandated the amendments.

Note to SCO 1242: Criminal Rules 11(c) and (h) were amended by ch. 79 §§ 24 & 26 SLA 1995. Sections 1 and 2 of this order are adopted for the sole reason that the legislature has mandated the amendments.

LAW REVIEW COMMENTARIES

"Guilty But Mentally Ill: The Ethical Dilemma of Mental Illness as a Tool of the Prosecution," 32 Alaska L. Rev. 1 (2015).

"Advancing Tribal Court Criminal Jurisdiction in Alaska," 32 Alaska L. Rev. 93 (2015).

Rule 12. Pleadings and Motions Before Trial—Defenses and Objections.

(a) **Pleadings and Motions.** Pleadings in criminal proceedings shall be the complaint, the indictment and the information, and the pleas of not guilty, guilty and nolo contendere. All other pleas, demurrers and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

(b) **Pretrial Motions*.** Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Any or all of the following shall be raised prior to trial:

(1) Defenses and objections based on defects in the institution of the prosecution;

(2) Defenses and objections based on defects in the indictment or information (other than a failure to show jurisdiction in the court or to charge an offense, which objections shall be noticed by the court at any time during pendency of the proceeding);

(3) Motions to suppress evidence on the ground that it was illegally obtained;

(4) Requests for a severance of charges or defendants under Rule 14.

(c) **Pretrial Motion Date.** All pretrial motions listed in Rule 12(b) must be filed within 45 days after the defendant's arraignment. The court may vary the time for good cause shown.

(d) **Ruling on Motion.** A motion made before trial shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue. Where factual issues are involved in determining a motion to suppress evidence, the court shall state its essential findings on the record.

(e) **Effect of Failure to Raise Defenses or Objections.** Failure by the defendant to raise defenses or objections or to make requests which must be made prior to trial, at the time set by the court pursuant to section (c), or prior to any extension thereof made by the court, shall constitute waiver thereof, but the court for cause shown may grant relief from the waiver.

(f) **Record.** An electronic recording shall be made of all judicial proceedings under this rule.

(g) **Effect of Determination.** If the court grants a motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that the defendant be held in custody or that bail be continued for a specified time pending the filing of a new indictment or information.

(h) **Continuance of Trial.** A motion for continuance of a trial date will be granted by the court only for cause shown. In deciding whether to grant the motion, the court shall consider the victim's circumstances and the effect the delay would have on the victim, particularly a victim of advanced age or extreme youth. The court shall place its findings on the record. The presiding judge of a judicial district may require that a visiting or pro tem judge obtain approval from the presiding judge before granting any continuance of trial.

(Adopted by SCO 4 October 4, 1959; amended by SCO 157 effective February 15, 1973; by SCO 557 effective April 4, 1983; by SCO 894 effective July 15, 1988; by SCO 1126 effective July 15, 1993; by SCO 1153 effective July 15, 1994; by SCO 1592 effective April 15, 2006; and by SCO 1787 effective July 1, 2012)

*See Chapter 119 SLA 1972 effective September 10, 1972.

Note: Chapter 71, section 46, SLA 2012 (SB 86), effective July 1, 2012, amended Criminal Rule 12(h) relating to the protection of vulnerable adults, as reflected in section 2 of this Order. The changes to Criminal Rule 12(h) are adopted for the sole reason that the legislature has mandated the amendments.

Rule 13. Trial of Indictments or Informations Together.

The court may order two or more indictments or informations or both to be tried together if the offenses, and the defendants, if there is more than one, could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information.

(Adopted by SCO 4 October 4, 1959)

Rule 14. Relief From Prejudicial Joinder.

If it appears that a defendant or the state is unfairly prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants, or provide whatever other relief justice requires. A showing that evidence of one offense would not be admissible during a separate trial of a joined offense or a codefendant does not constitute prejudice that warrants relief under this rule. In ruling on a motion by a defendant for severance the court may order the attorney for the state to deliver to the court for inspection in camera any statements or confessions made by the defendants which the state intends to introduce at trial.

(Adopted by SCO 4 October 4, 1959; amended by SCO 98 effective September 16, 1968; and by SCO 1092 effective July 15, 1992)

Note: The rule was amended by ch. 79 § 3, SLA 1991.

Rule 15. Depositions.

(a) **When Taken.** The deposition of a prospective witness may be taken by either party, upon notice as provided in (b) of this rule and upon motion filed with the court if the court finds by clear and convincing evidence that (1) the witness will not be present to testify at trial; or (2) due to exceptional circumstances, the deposition is necessary to prevent a failure of justice. Any designated book, paper, document, record, recording, or other material not privileged may be subpoenaed at the same time and place of the taking of the deposition. If a witness is committed for failure to give bail or appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that the witness' deposition be taken. After the deposition has been subscribed the court may discharge the witness. In considering a request for the taking of depositions, the court shall grant such motion only if the taking of such deposition will not cause unreasonable delay in the trial of the action and shall apply a presumption against granting a deposition under (a)(2) of this rule if, in regard to that action, the witness has testified before the grand jury or in a prior court proceeding, or has given a recorded statement to a law enforcement agency and the moving party had the opportunity to obtain such a recorded statement.

(b) **Notice of Taking.** The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time.

(c) **How Taken.** The court shall preside over a deposition it orders under (a) of this rule. The deposition shall be conducted in a closed proceeding and recorded in the same manner as other closed court proceedings. This rule does not preclude a party from also recording the deposition by other means approved by the court. In no event shall a deposition be taken of a party defendant without that defendant's consent.

(d) **Use.** At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used by stipulation of the parties or if the witness is unavailable, as defined in section (e) of this rule, or if the witness gives testimony at the trial or hearing inconsistent with the witness' deposition. If only a part of a deposition is offered in evidence by a party, an adverse party may require the offering of all of it which is relevant to the part offered and any party may offer other parts.

(e) **Unavailability.** A witness is "unavailable" when the witness is:

(1) Exempted by ruling of the judge on the ground of privilege from testifying concerning the subject matter of the witness' statement; or

(2) Persistent in refusing to testify despite an order of the judge to do so; or

(3) Unable to be present or testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(4) Absent from the hearing and beyond the jurisdiction of the court to compel appearance and the proponent of the witness' statement has exercised reasonable diligence but has been unable to procure the witness' attendance.

(f) **Objections to Admissibility.** Objections to receiving in evidence a deposition or part thereof, may be made as provided in civil actions.

(g) **Deposition by Agreement Not Precluded.** Nothing in this rule shall preclude the taking of a deposition, orally or upon written questions, or the use of a deposition, by agreement of the parties with the consent of the court.

(h) **Joint Defendants.** Where persons are jointly tried, the court for good cause shown may refuse to permit the use at the trial of a deposition taken at the instance of a defendant over the objection of any other defendant.

(Adopted by SCO 4 October 4, 1959; amended by SCO 157 effective February 15, 1973; by SCO 639 effective May 30, 1985; by SCO 1153 effective July 15, 1994; and by SCO 1239 effective July 15, 1996)

Note to SCO 1239: Criminal Rule 15(a) and (c) were amended by ch. 12 SLA 1995. Sections 1 and 2 of this order are adopted for the sole reason that the legislature has mandated the amendments.

Rule 16. Discovery.

(a) **Scope of Discovery.** In order to provide adequate information for informed pleas, expedite trial, minimize surprise, afford opportunity for effective cross-examination, and meet the requirements of due process, discovery prior to trial should be as full and free as possible consistent with protection of persons, effective law enforcement, and the adversary system.

(b) **Disclosure to the Accused.**

(1) *Information within Possession or Control of Prosecuting Attorney.*

(A) Except as is otherwise provided as to matters not subject to disclosure and protective orders, the prosecuting attorney shall disclose the following information within the prosecuting attorney's possession or control to defense counsel and make available for inspection and copying:

(i) The names and addresses of persons known by the government to have knowledge of relevant facts and their written or recorded statements or summaries of statements;

(ii) Any written or recorded statements and summaries of statements and the substance of any oral statements made by the accused;

(iii) Any written or recorded statements and summaries of statements and the substance of any oral statements made by a co-defendant;

(iv) Any books, papers, documents, photographs or tangible objects, which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused; and

(v) Any record of prior criminal convictions of the defendant and of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial.

(B) *Expert Witnesses.* Unless a different date is set by the court, as soon as known and no later than 45 days prior to trial, the prosecutor shall inform the defendant of the names and addresses of any expert witnesses performing work in connection with the case or whom the prosecutor is likely to call at trial. The prosecutor shall also make available for inspection and copying any reports or written statements of these experts. With respect to each expert whom the prosecution is likely to call at trial, the prosecutor shall also furnish to the defendant a curriculum vitae and a written description of the substance of the proposed testimony of the expert, the expert's opinion, and the underlying basis of that opinion. Failure to provide timely disclosure under this rule shall entitle the defendant to a continuance. If the court finds that a continuance is not an adequate remedy under the circumstances of the case, the court may impose other sanctions, including prohibiting the prosecutor from calling the expert at trial or declaring a mistrial.

(2) *Information Provided by Informant—Electronic Surveillance.* The prosecuting attorneys shall inform defense counsel:

(A) of any relevant material or information relating to the guilt or innocence of the defendant which has been provided by an informant, and

(B) of any electronic surveillance, including wiretapping, of

(i) conversations to which the accused or the accused's attorney was a party,

(ii) premises of the accused or the accused's attorney.

(3) *Information Tending to Negate Guilt or Reduce Punishment.* The prosecuting attorney shall disclose to defense counsel any material or information within the prosecuting attorney's possession or control which tends to negate the guilt of the accused as to the offense or would tend to reduce the accused's punishment therefor.

(4) *Information Within Possession or Control of Other Members of Prosecuting Attorney's Staff.* The prosecuting attorney's obligations extend to material and information in the possession or control of

(A) members of the prosecuting attorney's staff, and

(B) any others who have participated in the investigation or evaluation of the case and who either regularly report or with reference to the particular case have reported to the prosecuting attorney's office.

(5) *Availability of Information to Defense Counsel.* Whenever defense counsel designates and requests production of material or information which is not in the possession or control of the prosecuting attorney but would be discoverable if in the possession or control of the prosecuting attorney, the court shall issue suitable subpoenas or orders to cause such material to be made available to defense counsel.

(6) *Information Regarding Searches and Seizures—Statements From the Accused—Relationship of Witnesses to Prosecuting Attorney.* Except as otherwise provided the prosecuting attorney shall, upon request of defense counsel, disclose and permit inspection, testing, copying and photographing of any relevant material and information regarding:

(A) Specified searches and seizures;

(B) The acquisition of specified statements from the accused; and

(C) The relationship, if any, of specified witnesses to the prosecuting authority.

(7) *Other Information.* Upon a reasonable request showing materiality to the preparation of the defense, the court in its discretion may require disclosure to defense counsel of relevant material and information not covered by subsections (b)(1), (b)(2), (b)(3), and (b)(6).

(8) *Legal Research and Records of Prosecuting Attorney.* Disclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the prosecuting attorney or members of the prosecuting attorney's legal staff.

(9) *Restriction on Availability of Certain Material.* Notwithstanding (b)(1)(A)(iv) of this rule, the court shall deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any material prohibited under AS 11.41.455(a) or defined as "child pornography" under 18 U.S.C. 2256, if the prosecuting attorney makes the material reasonably available for inspection by the defendant and defense counsel. The material shall be considered to be made reasonably available to the defendant or defense counsel if the prosecuting attorney provides, at a law enforcement or prosecution facility, ample opportunity for inspection, viewing, and examination of the material by the defendant and the defendant's attorney. If the defendant is not represented by counsel and demonstrates a need to view the material, the court shall make arrangements for the defendant to be supervised while viewing the material. If the defendant or the defendant's attorney identifies an expert who must view the material, the court shall make arrangements for the court or the law enforcement agency that possesses it to send the material directly to the expert.

(c) **Disclosure to the Prosecuting Attorney.**

(1) *Non-Testimonial Identification Procedures—Authority.* Upon application of the prosecuting attorney, the court by order may direct any person to participate in one or more of the procedures specified in subsection (c)(2) of this rule if affidavit or testimony shows probable cause to believe that:

(A) An offense has been committed by one of several persons comprising a narrow focal group that includes the subject person;

(B) The evidence sought may be of material aid in identifying who committed the offense; and

(C) The evidence sought cannot practicably be obtained from other sources.

(2) *Non-Testimonial Identification Procedures—Scope.* An order issued under subsection (c)(1) of this rule may direct the person to do or submit to any and all of the following:

(A) Appear in a line-up;

(B) Speak words, phrases or sentences relevant to the case for identification by witnesses;

(C) Be fingerprinted;

(D) Pose for photographs not involving reenactment of a scene;

(E) Try on articles of clothing;

(F) Permit the taking of specimens of material under the person's fingernails;

(G) Permit the taking of samples of blood, hair and other materials of the person's body which involve no unreasonable intrusion thereof;

(H) Provide specimens of the person's handwriting;

(I) Submit to a reasonable physical or medical inspection of the person's body.

(3) *Right to Counsel.* When issuing an order under subsection (c) (1) of this rule, the court shall also order that the person be represented by counsel or waive the right to be represented by counsel before being required to appear in a lineup, give a specimen of handwriting, or speak for identification by witnesses to an offense.

(4) *Expert Witnesses.* Unless a different date is set by the court, no later than 30 days prior to trial, the defendant shall inform the prosecutor of the names and addresses of any expert witnesses the defendant is likely to call at trial. The defendant shall also make available for inspection and copying any reports or written statements of these experts. For each such expert witness, the defendant shall also furnish to the prosecutor a curriculum vitae and a written description of the substance of the proposed testimony of the expert, the expert's opinion, and the underlying basis of that opinion. Failure to provide timely disclosure under this rule shall entitle the prosecutor to a continuance. If the court finds that a continuance is not an adequate remedy under the circumstances of the case, the court may impose other sanctions, including prohibiting the defendant from calling the expert at trial. Information obtained by the prosecutor under this rule may be used only for cross-examination or rebuttal of defense testimony.

(5) *Notice of Defenses.* Unless a different date is set by the court, no later than 10 days prior to trial, the defendant shall inform the prosecutor of the defendant's intention to rely upon a defense of alibi, justification, duress, entrapment, or other statutory or affirmative defense. Failure to provide timely notice under this rule shall entitle the prosecutor to a continuance. If the court finds that a continuance is not an adequate remedy under the circumstances of the case, the court may impose other sanctions, including prohibiting the defendant from asserting the designated defense. The defendant shall give notice of an insanity defense or a defense of diminished capacity due to mental disease or defect in compliance with AS 12.47.

(6) *Physical Evidence.* If defense counsel or defense counsel's agent acquires physical evidence of the offense, defense counsel must immediately notify the prosecutor and must make arrangements to turn over the evidence to the

prosecutor within a reasonable time. Differences concerning what amount of time is "reasonable" shall be resolved by the court. Defense counsel must not test or substantively alter the evidence, unless defense counsel has first notified the prosecutor and given the prosecutor a reasonable opportunity to seek court action. Defense counsel must reveal all information concerning the manner in which the evidence was obtained and handled unless that information is privileged. When physical evidence is disclosed by the defense, the prosecutor cannot reveal to the jury that the evidence was obtained from the defense.

(d) **Regulation of Discovery.**

(1) *Advice to Refrain From Discussing Case.* Except as is otherwise provided as to matters not subject to disclosure and protective orders, neither counsel for the parties nor other prosecution or defense personnel shall advise persons (except the accused) having relevant material or information to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsel's investigation of the case.

(2) *Additional or Newly Discovered Information.* If, subsequent to compliance with these rules or orders issued pursuant thereto, a party discovers additional material or information which is subject to disclosure, that party shall promptly notify the other party or the other party's counsel of its existence. If the additional material or information is discovered during trial, the court shall also be notified.

(3) *Materials to Remain in Custody of Attorney.*

(A) Materials furnished to an attorney pursuant to these rules shall be used only for the purpose of conducting the case. The following materials must remain in the custody of the defense attorney, the attorney's staff, investigators, experts, and others as necessary for the preparation of the defendant's case, and shall be subject to other terms and conditions that the court may provide. The materials listed in this paragraph shall not be provided to the defendant, but the information in the materials may be shared with the defendant to the extent necessary to prepare the defense of the case:

(i) a criminal history record of a victim or witness;

(ii) a medical, psychiatric, psychological, or counseling record of a victim or witness;

(iii) an adoption record;

(iv) a record that is confidential under AS 47.12.300 or a similar law in another jurisdiction;

(v) a report of a presentence investigation of a victim or witness prepared pursuant to Criminal Rule 32.1 or a similar law in another jurisdiction;

(vi) a record of the Department of Corrections other than the defendant's own file and any other incident report relating to the crime with which the defendant is charged;

(vii) any other record that the court orders be kept in the exclusive custody of the attorney;

(viii) in a prosecution under AS 11.41.410 – 11.41.440 or 11.41.450, an audio or video interview of a victim;

(ix) in a prosecution under AS 11.41.040 – 11.41.440 or 11.41.450, photographs taken during a medical examination of a victim.

(B) An attorney shall not disclose to a defendant the residence or business address or telephone number of a victim or witness, obtained from information provided under this rule, even if the defendant is acting as co-counsel. If the address and telephone numbers of all victims and witnesses have been obliterated, materials that had contained the address or telephone number of a victim or witness may be provided to a defendant proceeding without counsel only as allowed by AS 12.61.120.

(C) Notwithstanding a defendant's status as co-counsel, materials covered by subsection (d)(3)(A) shall remain in the custody of the defendant's attorney, the attorney's staff, investigators, experts, and others as necessary for the preparation of the defendant's case, and shall be subject to other terms and conditions that the court may provide.

(D) If a defendant is proceeding without counsel, materials covered by subsection (d)(3)(A) may be provided to the defendant. If materials are provided to an unrepresented defendant under this paragraph, the court shall order that the materials remain in the defendant's exclusive custody, be used only for purposes of conducting the case, and be subject to other terms, conditions, and restrictions that the court may provide. Upon a showing of good cause, the court may impose specific terms, conditions, or restrictions concerning inspection of the materials by other persons involved in the preparation of the case, such as staff, investigators, experts, witnesses, or others. The court shall also inform the defendant and such other persons involved in the preparation of the case that violation of an order issued under this paragraph is punishable as a contempt of court and may also constitute a criminal offense.

(4) *Restriction or Deferral of Disclosure of Information.* Upon a showing of cause, the court may at any time order that specified disclosure be restricted or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled shall be disclosed in time to permit the party's counsel to make beneficial use thereof.

(5) *Material Partially Discoverable.* When some parts of certain material are discoverable under these rules, and other parts are not discoverable, as much of the material shall be disclosed as is consistent with this rule. Excision of certain material and disclosure of the balance shall be preferred to withholding of the whole. Material excised pursuant to court order shall be sealed and preserved in the records of the court, and shall be made available to the court of appeals and the supreme court in the event of an appeal.

(6) *Denial or Regulation of Disclosure— Disclosure to Court in Camera—Record of Proceedings.*

Upon request of any party, the court may permit:

(A) any showing of cause for denial or regulation of disclosure, or

(B) any portion of any showing of cause for denial or regulation of disclosure to be made to the court in camera ex parte. A record shall be made of such proceedings. If the court enters an order granting relief following such a showing, the entire record of the proceedings shall be sealed and preserved in the records of the court, to be made available to the court of appeals and the supreme court in the event of an appeal.

(7) *Confidential Filing.* A party that files with the court or offers as an exhibit materials listed in subsection (d)(3)(viii) or (d)(3)(ix) of this rule shall file the materials in a confidential envelope. In this paragraph, "confidential" has the meaning given in Rule 37.5, Alaska Rules of Administration.

(8) *Motions.*

(A) A party may file a motion to enforce discovery obligations. The motion should be captioned "Expedited Motion under Criminal Rule 16(d)(8)." The motion must include copies of the documents showing that the moving party has asked the other party to produce the materials, and that the request described the materials with sufficient specificity to put the other party on notice of the materials sought. The motion must also include copies of any response by the other party to the request for production. Finally, the motion must include an affidavit by the moving party that it has conferred, or has attempted to confer, with the other party in an effort to secure the requested disclosure without court action.

(B) Any opposition to a motion to enforce discovery obligations must be filed within 10 days of service of the motion; any reply must be filed within five days of service of the opposition. No enlargement of time will be granted without a showing of extraordinary and compelling circumstances.

(C) All motions to enforce the discovery obligations established by this rule, or by a court order under this rule, shall be decided promptly. Unless good cause exists to allow more time, any motion to enforce the government's disclosure duties under subsection (b) of this rule, or to enforce the defendant's disclosure duties under subsection (c) of this rule, must be decided by the court within 20 days after the motion becomes ripe for decision, whether or not the opposing party files an opposition. If the court fails to decide the motion within this period, any additional delay will not be excluded in computing the time for trial under Rule 45(d)(1).

(D) If the court issues an order directing the production of materials within the possession of a law enforcement agency, the prosecutor shall promptly serve that order on the law enforcement agency responsible for providing the materials.

(e) **Sanctions.**

(1) *Failure to Comply with Discovery Rule or Order.* If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court shall order such party to permit the discovery of material and information not previously disclosed or enter such other order as it deems just under the circumstances.

(2) *Willful Violations.* The court may impose appropriate sanctions on any attorney who willfully violates the disclosure duties imposed by this rule, or who willfully violates an applicable discovery order issued under this rule.

(f) **Omnibus Hearing.**

(1) *Time for Hearing—When Set.* If the defendant is charged with a felony, the court shall set a time for an omnibus hearing when a plea of not guilty is entered. The omnibus hearing shall be scheduled for a time when the briefing of pretrial motions should be complete.

The omnibus hearing may be cancelled by the court only upon the stipulation of counsel that there are no motions which require hearing and that discovery is complete. Counsel shall also provide the information outlined in section (f)(2)(D).

The court may set an omnibus hearing in a misdemeanor case.

(2) *Duties of Trial Court at Hearing.* At the omnibus hearing the court shall:

(A) ensure that discovery under this rule is complete;

(B) rule on any pending motions which are ripe for decision;

(C) schedule any necessary evidentiary hearings; and

(D) obtain case management information from the parties, including the expected length of trial, the likelihood of trial, and any anticipated scheduling difficulties.

(Adopted by SCO 4 October 4, 1959; amended by SCO 157 effective February 15, 1973; by SCO 211 effective July 15, 1975; by SCO 212 effective July 15, 1975; by SCO 329 effective January 1, 1979; by SCO 331 effective January 1, 1979; by SCO's 640 and 641 effective September 15, 1985; by SCO 1086 effective July 15, 1992; by SCO 1092 effective July 15, 1992; by SCO 1126 effective July 15, 1993; by SCO 1153 effective July 15, 1994; by SCO 1191 effective July 15, 1995; amended by SCO 1269 and 1274 effective July 15, 1997; by SCO 1444 effective October 15, 2001; by SCO 1717 effective April 15, 2011; by SCO 1806 effective nunc pro tunc July 1, 2013; by SCO 1841 effective nunc pro tunc to July 8, 2014; and by SCO 1775 effective October 15, 2019)

Note: AS 12.61.120, added by ch. 57, § 13, SLA 1991, amended Criminal Rule 16 by restricting discovery available to criminal defendants.

Note: Criminal Rule 16 was repealed and reenacted by chapter 95 SLA 1996. In **State v. Summerville,** 926 P.2d 465 (Alaska App. 1996), the Alaska Court of Appeals found that the legislature's version of the rule was unconstitutional. This

decision was affirmed by the Alaska Supreme Court in **State v. Summerville,** 948 P.2d 469 (Alaska 1997). Thus, the pre-existing version of the rule remains in effect.

Note: Chapter 43, SLA 2013 (SB 22), effective *nunc pro tunc* to July 1, 2013, amended Criminal Rule 16(b) by adding a new paragraph (9) relating to requests by defendants to copy, photograph, duplicate, or otherwise reproduce certain prohibited material. This rule change is adopted for the sole reason that the legislature has mandated the amendment.

Note: Chapter 60, sections 3-4, SLA 2014 (SB 187), *effective nunc pro tunc* to July 8, 2014, amended Criminal Rule 16(d) by adding new items (viii) and (ix) to subparagraph (3)(A), by amending subparagraph (3)(D), and by adding new paragraph (7) limiting disclosure of recordings of victim interviews or certain photographs in prosecutions under AS 11.41.410-.440 or AS 11.41.450. This rule change is adopted for the sole reason that the legislature has mandated the amendment.

Rule 17. Subpoena.

(a) **For Attendance of Witnesses—Form—Issuance.**

(1) Subpoenas shall be issued by the clerk under the seal of the court, and shall be signed and sealed but otherwise in blank. The party requesting a subpoena shall fill in the blanks before the subpoena is served.

(2) A subpoena shall

(i) state the name of the court and the title, if any, of the proceeding, and

(ii) state whether the witness is to testify on behalf of the state, a municipality, city or borough, and order any witness testifying on behalf of the state, a municipality, city or borough, to appear without the prepayment of any witness fee, and

(iii) command each person to whom the subpoena is directed to attend and give testimony at the time and place specified therein.

(3) Magistrate judges may issue subpoenas in any proceeding before them.

(b) **Defendants Unable to Pay.** A subpoena shall be issued by the clerk as provided in section (a) for a defendant financially unable to pay the fees of the witness. The determination of financial inability shall be made in accordance with the criteria provided under Rule 39 (b) of these rules, and if the defendant is represented by court appointed counsel no further showing of financial inability shall be required. Subpoenas issued under this section (b) shall contain an order to appear without the prepayment of any witness fee. The cost incurred by the process and the fees of the witness so subpoenaed, shall be paid by the public agency providing representation.

(c) **For Production of Documentary Evidence and of Objects.** A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may suppress or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may, upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

(d) **Service.**

(1) A subpoena may be served by any peace officer or any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and subject to the provisions of sections (a) and (b) of this rule, by tendering to that person the fee for one day's attendance and the mileage allowed by law or by rule.

(2) A subpoena may also be served upon a person of known residence within the state by registered or certified mail. In such case the clerk shall mail the subpoena for delivery only to the person subpoenaed and, unless not required under section (a) or (b) of this rule, shall enclose a warrant or postal money order in the amount of the fees for one day's attendance and for the mileage allowed by law or rule. The return address on the envelope and the address on the returned delivery receipt shall be that of the party requesting the subpoena or the party's attorney.

(3) Unless filing is ordered by the court on motion of a party or on its own motion, subpoenas and proofs of service thereto shall be returned to the party requesting issuance and may not be filed unless and until they are used in the proceedings.

(e) **Place of Service.** A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the State of Alaska.

(f) **For Taking Deposition—Place of Examination.**

(1) *Issuance.* An order to take a deposition authorizes the issuance by the clerk of the court or by a magistrate judge of subpoenas for the persons named or described therein.

(2) *Place.* The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the trial court within the state.

(g) **Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued.

(Adopted by SCO 4 October 4, 1959; amended by SCO 90 effective July 24, 1967; by SCO 98 effective September 16, 1968; amended by SCO 157 effective February 15, 1973; by SCO 456 effective March 15, 1981; by SCO 518 effective

October 1, 1982; by SCO 519 effective October 1, 1982; by SCO 939 effective January 15, 1989; by SCO 1153 effective July 15, 1994; and by SCO 1829 effective October 15, 2014)

Note: Ch. 75 SLA 2002 (HB 106), Section 4, adds a new section to AS 06.01 relating to the confidentiality of depositor and customer records at banking and other financial institutions. According to Section 56 of the Act, AS 06.01.028(b) has the effect of changing Civil Rule 45, Criminal Rules 17 and 37, and Alaska Bar Rule 24 by requiring certain court orders compelling disclosure of records to provide for reimbursement of a financial institution's reasonable costs of complying with the order.

Cross References

(b) **CROSS REFERENCE:** AS 12.50.050

(g) **CROSS REFERENCE:** AS 12.80.010

PART V. VENUE—PRETRIAL

Rule 18. Venue: Place of Trial.

(a) **Venue Districts.** The venue map promulgated by the supreme court establishes the district and superior court venue districts and the presumptive trial site for each district. The venue map includes a chart listing each community that appears on the map along with each community's presumptive district court trial site and presumptive superior court trial site.

(b) **Determination of Trial Location.**

(1) *Initial Assignment.* A Criminal case must be initially assigned for trial at the presumptive trial site for the district or superior court venue district, as determined by reference to the venue map and community chart described in (a) of this rule, in which the crime is alleged to have occurred.

(2) *Transfer to Approved Additional Trial Site.* As provided in (e) of this rule, the defendant may cause venue to be transferred to a trial site on the list of approved additional trial sites described in (d) of this rule.

(3) *Change of Venue.* Either party may move to change venue as provided in (g) of this rule.

(c) **Additional Trial Site Standards.** Subject to supreme court approval, the administrative director shall devise and promulgate an administrative bulletin establishing minimum standards for additional trial sites, including standards for courtroom needs and standards for transportation, housing, and feeding of all trial participants.

(d) **List of Approved Additional Trial Sites.** The administrative director shall promulgate an administrative bulletin listing approved additional trial sites for six- and twelve-person juries meeting the standards established under (c) of this rule. Changes in the list may be made as follows:

(1) A presiding judge, area court administrator, town council, or similar public representative group, or the attorney general, the public defender, or the public advocate may ask the administrative director for an investigation to determine whether a community should be added to or deleted from the list.

(2) The administrative director will distribute the list of approved additional trial sites to the attorney general, the public defender, and the public advocate.

(e) **Motion to Transfer by Right.** After assignment to the presumptive trial site, a defendant may move by right for the setting of venue in an approved additional trial site within the venue district where the crime charged is alleged to have occurred if such site is the trial site nearest the place where the crime charged is alleged to have occurred. This right is waived unless the defendant requests the transfer within ten days after the defendant enters a plea, absent good cause for an extension of this time limit.

(f) **Fair Cross-Section.** If the trial location assignment under the above subsections will not provide a petit jury which is a representative cross-section of the appropriate community, the trial court on its own motion or that of a party may change the jury selection area as provided in Administrative Rule 15(h)(3).

(g) **Change of Venue.** Any other motion for a change of venue shall be determined under the standards listed in AS 22.10.040.

(h) **Limitations of Rule.** The presumptive trial sites established by this rule do not determine the court location where a criminal case must be filed or the court location where pretrial proceedings take place.

(Adopted by SCO 4 effective October 4, 1959; amended by SCO 136 effective September 2, 1971; by SCO 157 effective February 15, 1973; by SCO 666 effective January 1, 1986; by SCO 670 effective March 15, 1986; by SCO 682 effective May 15, 1986; by SCO 1334 effective July 15, 1998; by SCO 1348 effective October 1, 1998; by SCO 1644 effective October 15, 2007; by SCO 1645 effective July 1, 2007; by SCO 1754 effective October 14, 2011; by SCO 1837 effective July 15, 2014; by SCO 1846 effective January 1, 2015; by SCO 1857 effective July 1, 2015; by SCO 1866 effective July 1, 2015; by SCO 1860 effective October 15, 2015; by SCO 1870(3) effective May 15, 2016; SCO 1916 effective January 1, 2018; and by SCO 1933(1) effective October 15, 2018)

Note: Administrative Bulletin 28 establishes the minimum standards for additional trial site locations and is available on the court system's website: [http://www. courts.alaska.gov/adbulls/ab28.pdf], in law libraries, and from the office of the court rules attorney, 820 W. 4th Ave., Anchorage, AK 99501 (907) 264-8231. Administrative Bulletin 27 lists approved additional trial site locations, and is included at the end of this rule.

Note: The boundaries of the Anchorage venue district, the Seward venue district, and the Kenai venue district were changed by SCO 1348 effective October 1, 1998. A copy of this order is available in law libraries and from the court rules attorney.

Note: The venue map promulgated by the supreme court and the community chart referenced in subsection (a) of this rule are available on the Alaska Court System website at: http://www.courts.alaska.gov/rules/index.htm#venue

Community Appearing on Venue Map	Presumptive District Court Trial Site	Presumptive Superior Court Trial Site
Adak	Unalaska	Unalaska
Afognak	Kodiak	Kodiak
Akhiok	Kodiak	Kodiak
Akiachak	Bethel	Bethel
Akiak	Bethel	Bethel
Akutan	Unalaska	Unalaska
Alakanuk	Emmonak	Bethel
Alatna	Nenana	Nenana
Alcan	Tok	Tok
Aleknagik	Dillingham	Dillingham
Allakaket	Nenana	Nenana
Ambler	Kotzebue	Kotzebue
Anaktuvuk Pass	Utqiagvik	Utqiagvik
Anchor Point	Homer	Homer
Anchorage	Anchorage	Anchorage
Anderson	Nenana	Nenana
Angoon	Angoon	Sitka
Aniak	Aniak	Bethel
Anvik	Aniak	Bethel
Arctic Village	Fort Yukon	Fairbanks
Atka	Unalaska	Unalaska
Atmautluak	Bethel	Bethel
Atqasuk	Utqiagvik	Utqiagvik
Attu	Unalaska	Unalaska
Auke Bay	Juneau	Juneau
Ayakulik	Kodiak	Kodiak
Barrow	Barrow	Barrow
Beaver	Fort Yukon	Fairbanks
Belkofski	Sand Point	Anchorage
Beluga	Kenai	Kenai
Bethel	Bethel	Bethel
Bettles	Nenana	Nenana
Big Delta	Delta Junction	Delta Junction
Big Lake	Palmer	Palmer
Bill Moores	Emmonak	Bethel
Birch Creek	Fort Yukon	Fairbanks
Boundary	Tok	Tok
Brevig Mission	Nome	Nome
Buckland	Kotzebue	Kotzebue
Candle	Kotzebue	Kotzebue
Cantwell	Nenana	Nenana
Central	Fairbanks	Fairbanks
Chalkyitsik	Fort Yukon	Fairbanks
Chase	Palmer	Palmer
Chefornak	Bethel	Bethel
Chena Hot Springs	Fairbanks	Fairbanks
Chenega	Seward	Seward
Chevak	Bethel	Bethel
Chickaloon	Palmer	Palmer
Chicken	Tok	Tok
Chignik	Naknek	Naknek

Community Appearing on Venue Map	Presumptive District Court Trial Site	Presumptive Superior Court Trial Site
Chignik Lagoon	Naknek	Naknek
Chignik Lake	Naknek	Naknek
Chiniak	Kodiak	Kodiak
Chisana	Tok	Tok
Chistochina	Glennallen	Glennallen
Chitina	Glennallen	Glennallen
Chuathbaluk	Aniak	Bethel
Chugiak	Anchorage	Anchorage
Chuloonawick	Emmonak	Bethel
Circle	Fairbanks	Fairbanks
Circle Hot Springs	Fairbanks	Fairbanks
Clam Gulch	Kenai	Kenai
Clarks Point	Dillingham	Dillingham
Coffman Cove	Prince of Wales (Klawock)	Prince of Wales (Klawock)
Cohoe	Kenai	Kenai
Cold Bay	Sand Point	Anchorage
Coldfoot	Nenana	Nenana
Cooper Landing	Seward	Seward
Copper Center	Glennallen	Glennallen
Cordova	Cordova	Cordova
Council	Nome	Nome
Craig	Prince of Wales (Klawock)	Prince of Wales (Klawock)
Crooked Creek	Aniak	Bethel
Deadhorse	Utqiagvik	Utqiagvik
Deering	Kotzebue	Kotzebue
Delta Junction	Delta Junction	Delta Junction
Dillingham	Dillingham	Dillingham
Diomede	Nome	Nome
Dot Lake	Tok	Tok
Douglas	Juneau	Juneau
Dry Creek	Delta Junction	Delta Junction
Dutch Harbor	Unalaska	Unalaska
Eagle	Tok	Tok
Eagle River	Anchorage	Anchorage
Eagle Village	Tok	Tok
Edna Bay	Prince of Wales (Klawock)	Prince of Wales (Klawock)
Eek	Bethel	Bethel
Egegik	Naknek	Naknek
Eklutna	Anchorage	Anchorage
Ekuk	Dillingham	Dillingham
Ekwok	Dillingham	Dillingham
Elfin Cove	Sitka	Sitka
Elim	Nome	Nome
Emmonak	Emmonak	Bethel
Ester	Fairbanks	Fairbanks
Evansville	Nenana	Nenana
Excursion Inlet	Hoonah	Juneau
Eyak	Cordova	Cordova
Fairbanks	Fairbanks	Fairbanks
False Pass	Sand Point	Anchorage
Ferry	Nenana	Nenana

Community Appearing on Venue Map	Presumptive District Court Trial Site	Presumptive Superior Court Trial Site
Flat	Aniak	Bethel
Fort Yukon	Fort Yukon	Fairbanks
Fox	Fairbanks	Fairbanks
Gakona	Glennallen	Glennallen
Galena	Galena	Nenana
Gambell	Nome	Nome
Georgetown	Aniak	Bethel
Girdwood	Anchorage	Anchorage
Glennallen	Glennallen	Glennallen
Golovin	Nome	Nome
Goodnews Bay	Bethel	Bethel
Grayling	Aniak	Bethel
Gulkana	Glennallen	Glennallen
Gustavus	Hoonah	Juneau
Haines	Haines	Juneau
Halibut Cove	Homer	Homer
Hamilton	Emmonak	Bethel
Happy Valley	Homer	Homer
Harding-Birch Lakes	Fairbanks	Fairbanks
Healy	Nenana	Nenana
Healy Lake	Delta Junction	Delta Junction
Hobart Bay	Petersburg	Petersburg
Hollis	Prince of Wales (Klawock)	Prince of Wales (Klawock)
Holy Cross	Aniak	Bethel
Homer	Homer	Homer
Hoonah	Hoonah	Juneau
Hooper Bay	Bethel	Bethel
Hope	Anchorage	Anchorage
Houston	Palmer	Palmer
Hughes	Nenana	Nenana
Huslia	Galena	Nenana
Hydaburg	Prince of Wales (Klawock)	Prince of Wales (Klawock)
Hyder	Ketchikan	Ketchikan
Iditarod	Aniak	Bethel
Igiugig	Naknek	Naknek
Iliamna	Naknek	Naknek
Ivanof Bay	Naknek	Naknek
Juneau	Juneau	Juneau
Kachemak	Homer	Homer
Kaguyak	Kodiak	Kodiak
Kake	Petersburg	Petersburg
Kaktovik	Utqiagvik	Utqiagvik
Kalifornsky	Kenai	Kenai
Kaltag	Galena	Nenana
Karluk	Kodiak	Kodiak
Kasaan	Prince of Wales (Klawock)	Prince of Wales (Klawock)
Kasigluk	Bethel	Bethel
Kasilof	Kenai	Kenai
Kenai	Kenai	Kenai
Kenny Lake	Glennallen	Glennallen
Ketchikan	Ketchikan	Ketchikan

Community Appearing on Venue Map	Presumptive District Court Trial Site	Presumptive Superior Court Trial Site
Kiana	Kotzebue	Kotzebue
King Cove	Sand Point	Anchorage
King Island	Nome	Nome
King Salmon	Naknek	Naknek
Kipnuk	Bethel	Bethel
Kivalina	Kotzebue	Kotzebue
Klawock	Prince of Wales (Klawock)	Prince of Wales (Klawock)
Klukwan	Haines	Juneau
Knik	Palmer	Palmer
Kobuk	Kotzebue	Kotzebue
Kodiak	Kodiak	Kodiak
Kokhanok	Naknek	Naknek
Koliganek	Dillingham	Dillingham
Kongiganak	Bethel	Bethel
Kotlik	Emmonak	Bethel
Kotzebue	Kotzebue	Kotzebue
Koyuk	Unalakleet	Nome
Koyukuk	Galena	Nenana
Kupreanof	Petersburg	Petersburg
Kwethluk	Bethel	Bethel
Kwigillingok	Bethel	Bethel
Lake Louise	Palmer	Palmer
Lake Minchumina	Aniak	Bethel
Larsen Bay	Kodiak	Kodiak
Levelock	Naknek	Naknek
Lignite	Nenana	Nenana
Lime Village	Aniak	Bethel
Livengood	Nenana	Nenana
Lower Kalskag	Aniak	Bethel
Lower Tonsina	Glennallen	Glennallen
Manley Hot Springs	Nenana	Nenana
Manokotak	Dillingham	Dillingham
Marshall	Bethel	Bethel
Marys Igloo	Nome	Nome
McCarthy	Glennallen	Glennallen
McGrath	Aniak	Bethel
McKinley Park	Nenana	Nenana
Medfra	Aniak	Bethel
Mekoryuk	Bethel	Bethel
Mendeltna	Glennallen	Glennallen
Mentasta Lake	Glennallen	Glennallen
Metlakatla	Ketchikan	Ketchikan
Meyers Chuck	Ketchikan	Ketchikan
Minto	Nenana	Nenana
Moose Creek	Fairbanks	Fairbanks
Moose Pass	Seward	Seward
Mountain Village	Bethel	Bethel
Nabesna	Glennallen	Glennallen
Naknek	Naknek	Naknek
Nanwalek	Homer	Homer
Napaimiut	Aniak	Bethel

Community Appearing on Venue Map	Presumptive District Court Trial Site	Presumptive Superior Court Trial Site
Napakiak	Bethel	Bethel
Napaskiak	Bethel	Bethel
Naukati Bay	Prince of Wales (Klawock)	Prince of Wales (Klawock)
Nelchina	Glennallen	Glennallen
Nelson Lagoon	Sand Point	Anchorage
Nenana	Nenana	Nenana
New Stuyahok	Dillingham	Dillingham
Newhalen	Naknek	Naknek
Newtok	Bethel	Bethel
Nightmute	Bethel	Bethel
Nikiski	Kenai	Kenai
Nikolaevsk	Homer	Homer
Nikolai	Aniak	Bethel
Nikolski	Unalaska	Unalaska
Ninilchik	Homer	Homer
Noatak	Kotzebue	Kotzebue
Nome	Nome	Nome
Nondalton	Naknek	Naknek
Noorvik	Kotzebue	Kotzebue
North Pole	Fairbanks	Fairbanks
Northway	Tok	Tok
Northway Junction	Tok	Tok
Nuiqsut	Utqiagvik	Utqiagvik
Nulato	Galena	Nenana
Nunam Iqua	Emmonak	Bethel
Nunapitchuk	Bethel	Bethel
Ohogamiut	Bethel	Bethel
Old Harbor	Kodiak	Kodiak
Ophir	Aniak	Bethel
Oscarville	Bethel	Bethel
Ouzinkie	Kodiak	Kodiak
Paimiut	Bethel	Bethel
Palmer	Palmer	Palmer
Pauloff Harbor	Sand Point	Anchorage
Paxson	Glennallen	Glennallen
Pedro Bay	Naknek	Naknek
Pelican	Sitka	Sitka
Perryville	Naknek	Naknek
Petersburg	Petersburg	Petersburg
Petersville	Palmer	Palmer
Pilot Point	Naknek	Naknek
Pilot Station	Bethel	Bethel
Pitkas Point	Bethel	Bethel
Platinum	Bethel	Bethel
Pleasant Valley	Fairbanks	Fairbanks
Point Baker	Petersburg	Petersburg
Point Hope	Kotzebue	Kotzebue
Point Lay	Utqiagvik	Utqiagvik
Port Alexander	Sitka	Sitka
Port Alsworth	Naknek	Naknek
Port Clarence	Nome	Nome

Community Appearing on Venue Map	Presumptive District Court Trial Site	Presumptive Superior Court Trial Site
Port Graham	Homer	Homer
Port Heiden	Naknek	Naknek
Port Lions	Kodiak	Kodiak
Port Moller	Sand Point	Anchorage
Port Protection	Petersburg	Petersburg
Portage Creek	Dillingham	Dillingham
Primrose	Seward	Seward
Prudhoe Bay	Utqiagvik	Utqiagvik
Quinhagak	Bethel	Bethel
Rampart	Nenana	Nenana
Red Devil	Aniak	Bethel
Red Dog Mine	Kotzebue	Kotzebue
Ruby	Galena	Nenana
Russian Mission	Bethel	Bethel
Saint George	Saint Paul	Anchorage
Saint Marys	Bethel	Bethel
Saint Michael	Unalakleet	Nome
Saint Paul	Saint Paul	Anchorage
Salamatof	Kenai	Kenai
Salcha	Fairbanks	Fairbanks
Sand Point	Sand Point	Anchorage
Savoonga	Nome	Nome
Saxman	Ketchikan	Ketchikan
Scammon Bay	Bethel	Bethel
Selawik	Kotzebue	Kotzebue
Seldovia	Homer	Homer
Seward	Seward	Seward
Shageluk	Aniak	Bethel
Shaktoolik	Unalakleet	Nome
Shemya Station	Unalaska	Unalaska
Shishmaref	Nome	Nome
Shungnak	Kotzebue	Kotzebue
Sitka	Sitka	Sitka
Skagway	Skagway	Juneau
Skwentna	Palmer	Palmer
Slana	Glennallen	Glennallen
Sleetmute	Aniak	Bethel
Soldotna	Kenai	Kenai
Solomon	Nome	Nome
South Naknek	Naknek	Naknek
Stebbins	Unalakleet	Nome
Sterling	Kenai	Kenai
Stevens Village	Fort Yukon	Fairbanks
Stony River	Aniak	Bethel
Summit Lake	Glennallen	Glennallen
Susitna	Palmer	Palmer
Sutton	Palmer	Palmer
Takotna	Aniak	Bethel
Talkeetna	Palmer	Palmer
Tanacross	Tok	Tok
Tanana	Nenana	Nenana

Community Appearing on Venue Map	Presumptive District Court Trial Site	Presumptive Superior Court Trial Site
Tatitlek	Valdez	Valdez
Tazlina	Glennallen	Glennallen
Telida	Aniak	Bethel
Teller	Nome	Nome
Tenakee Springs	Hoonah	Juneau
Tetlin	Tok	Tok
Tetlin Junction	Tok	Tok
Thorne Bay	Prince of Wales (Klawock)	Prince of Wales (Klawock)
Tin City	Nome	Nome
Togiak	Dillingham	Dillingham
Tok	Tok	Tok
Toksook Bay	Bethel	Bethel
Tonsina	Glennallen	Glennallen
Tuluksak	Bethel	Bethel
Tuntutuliak	Bethel	Bethel
Tununak	Bethel	Bethel
Twin Hills	Dillingham	Dillingham
Two Rivers	Fairbanks	Fairbanks
Tyonek	Kenai	Kenai
Uganik	Kodiak	Kodiak
Ugashik	Naknek	Naknek
Umkumiut	Bethel	Bethel
Unalakleet	Unalakleet	Nome
Unalaska	Unalaska	Unalaska
Unga	Sand Point	Anchorage
Upper Kalskag	Aniak	Bethel
Utqiagvik	Utqiagvik	Utqiagvik
Uyak	Kodiak	Kodiak
Valdez	Valdez	Valdez
Venetie	Fort Yukon	Fairbanks
Wainwright	Utqiagvik	Utqiagvik
Wales	Nome	Nome
Wasilla	Palmer	Palmer
Waterfall	Prince of Wales (Klawock)	Prince of Wales (Klawock)
Whale Pass	Prince of Wales (Klawock)	Prince of Wales (Klawock)
White Mountain	Nome	Nome
Whittier	Anchorage	Anchorage
Willow	Palmer	Palmer
Willow Creek	Glennallen	Glennallen
Wiseman	Nenana	Nenana
Womens Bay	Kodiak	Kodiak
Woody Island	Kodiak	Kodiak
Wrangell	Wrangell	Wrangell
Yakutat	Yakutat	Juneau

Note: Utqiagvik was formerly known as Barrow.

ALASKA COURT SYSTEM
OFFICE OF THE ADMINISTRATIVE DIRECTOR
ADMINISTRATIVE BULLETIN NO. 27
(AMENDED EFFECTIVE October 15, 2018)

TO: ALL HOLDERS OF ADMINISTRATIVE BULLETIN SETS

All Justices
All Judges
Area Court Administrators
Clerk of the Appellate Courts
Rural Court Training Assistants
All Clerks of Court
All Magistrates
Senior Staff
Court Analysts
Central Services Supervisor
Judicial Services
APD Warrants
Law Libraries at Anchorage, Bethel, Dillingham, Fairbanks, Homer, Juneau, Kenai, Ketchikan, Kodiak, Kotzebue, Nome, Palmer, Petersburg, Sitka, Utqiagvik, Valdez & Wrangell

SUBJECT: List of Approved Additional Trial Site Locations

The following sites are approved additional trial site locations under Criminal Rule 18(d):

	Add'l Trial Sites for Six-Person Juries	Add'l Trial Sites for Twelve-Person Juries
First District		
Angoon		X
Haines		X
Kake	X	
Second District		
Pt. Hope	X	
Unalakleet		X
Third District		
St. Paul		X
Sand Point		X
Fourth District		
Nenana		X

Date: August 7, 2018
Effective: October 15, 2018

/s/
Christine E. Johnson
Administrative Director

This bulletin applies to motions filed under Criminal Rule 18(e) on or after January 1, 2015.

Original order in effect since July 23, 1986; amended August 17, 1987, effective January 15, 1988; amended January 19, 1988, effective July 15, 1988; amended June 6, 1988, effective January 15, 1989; amended October 18, 1988, effective January 15, 1989; amended December 13, 1993, effective July 15, 1997; amended October 15, 2002, effective October 15, 2002; amended February 19, 2004, effective April 15, 2004; amended November 8, 2004, effective November 8, 2004; amended August 17, 2005, effective October 15, 2005; amended March 8, 2007, effective March 8, 2007; amended June 29, 2007, effective July 1, 2007; amended July 25, 2008, effective October 15, 2008; amended April 2, 2009, effective April 15, 2009; amended April 15, 2010, effective May 1, 2010; amended July 28, 2014, effective October 15, 2014; amended January 5, 2015, effective January 1, 2015; amended August 7, 2018, effective October 15, 2018.

cc: Attorney General
Public Defender
Public Advocate
Alaska Bar Association

Rule 19. Change of Venue—Application to Court.

All applications for change of place of trial in the cases provided by AS 22.10.040 or AS 22.15.080 shall be made by motion, supported by affidavit, upon five days' notice to the other party, except that in misdemeanor cases the request may be made orally on the record. In the event that a change of place of trial shall be ordered, the clerk of the court in which the case is pending shall transmit to the clerk of the court to which the proceeding is transferred all papers in the proceeding, or duplicates thereof, and the prosecution shall continue in that court.

(Adopted by SCO 4 October 4, 1959; amended by SCO 49 effective January 1, 1963; by SCO 56 effective November 1, 1963; and by SCO 1799 effective October 15, 2013)

Rule 20. Temporary Transfer of Case File.

(a) A defendant may request a temporary transfer of a case pending against the defendant to another court location in the state if (1) the defendant is arrested in a court location other than that in which the action is pending or (2) the defendant has been notified that a charge is pending against the defendant in a court location other than that nearest to where the defendant is residing.

(b) A defendant requesting a temporary transfer of a case shall state in writing or in open court that the defendant wishes to be arraigned and enter a plea in the court location where the defendant was arrested or nearest to where the defendant resides. Transfer of a case is contingent upon approval by the prosecuting attorney for the court location in which the action is pending. Approval may be given in writing, in open court, or by telephonic authorization to the clerk of the court who shall note the prosecuting attorney's approval in the file.

(c) Upon notification of the request and approval by the prosecuting attorney, the clerk of the court in which the action is pending shall transmit the papers in the action or certified copies thereof to the clerk of court for the court location requested by the defendant.

(d) If a defendant enters a plea of guilty or nolo contendere, the defendant may be sentenced in the court in which the defendant enters the plea. If a defendant enters a plea of not guilty, the court in which the defendant enters the plea shall at the time of the plea set the case for trial in the originating court.

(e) After the plea has been entered, the court to which the action is transferred shall return all papers to the originating court.

(Adopted by SCO 4 October 4, 1959; amended by SCO 520 effective October 1, 1982; and by SCO 642 effective May 30, 1985)

Rule 21. Time of Motion to Transfer.

A motion to transfer under these rules may be made at or before arraignment or at such other time as the court or these rules may prescribe.

(Adopted by SCO 4 October 4, 1959)

Rule 22. Pretrial Procedure.

(a) At any time after the return of the indictment or the filing of the information the court upon motion of any party or upon its own motion may invite the attorneys to appear before it for a conference in open court, at which the defendant shall have the right to be present, to consider:

(1) The simplification of the issues;

(2) The possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;

(3) The number of expert witnesses or character witnesses or other witnesses who are to give testimony of a cumulative nature;

(4) Such other matters as may aid in the disposition of the proceeding.

(b) The court shall make an order reciting the agreements made by the parties as to any of the matters considered, which shall be signed by the court and the attorneys for the parties, and when entered shall control the subsequent course of the proceedings, unless modified at the trial to prevent manifest injustice.

(c) This rule shall not be invoked in the case of any defendant who is not represented by counsel.

(Adopted by SCO 4 October 4, 1959; amended by SCO 90 effective July 24, 1967)

PART VI. TRIAL

Rule 23. Trial by Jury or by the Court.

(a) **Trial by Jury*.** Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial. In felony cases, the waiver must be in writing with the approval of the court and the consent of the state. In misdemeanor cases, the waiver may be in writing or made on the record in open court.

(b) **Number of Jurors.** In felony cases, juries shall be of 12 persons. In misdemeanor cases, juries shall be of six persons. But at any time before verdict, the parties may stipulate in writing with the approval of the court that the jury shall consist of fewer persons.

(c) **Trial Without a Jury.** In a case tried without a jury the court shall make a general finding and shall, in addition, on request, find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

(Adopted by SCO 4 October 4, 1959; amended by SCO 98 effective September 16, 1968; and by SCO 1799 effective October 15, 2013)

*See Chapter 119 SLA 1972 effective September 10, 1972.

Rule 24. Jurors.

(a) **Examination.** The court shall require the jury to be selected in a prompt manner. The court may permit the defendant or the defendant's attorney and the prosecuting attorney to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event the court shall permit the defendant or the defendant's attorney and the prosecuting attorney to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions by the parties or their attorneys as it deems proper. The court may also require the parties to question the panel as a whole rather than individually and impose reasonable time limits on the examination of prospective jurors.

(b) **Alternate Jurors.**

(1) *Generally.* A court may impanel alternate jurors using one of the procedures set out in subparagraph (b)(2) below. If alternate jurors are called,

(A) they shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities and privileges as the regular jurors; and

(B) each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impaneled, and two peremptory challenges if three or four alternate jurors are to be impaneled.

(2) *Procedures.*

(A) The court may direct that not more than four jurors in addition to the regular panel be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. The additional peremptory challenges allowed by section (b)(1)(B) may be used against an alternate jury only, and the other peremptory challenges allowed by these rules may not be used against an alternate juror.

(B) The court may direct that one or two jurors be called and impaneled in addition to the number of jurors required by law to comprise the jury. The court may excuse jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. If more than the required number are left on the jury when the jury is ready to retire, the clerk in open court shall select at random the names of a sufficient number of jurors to reduce the jury to the number required by law. The jurors selected for elimination shall be discharged after the jury retires to consider its verdict.

(c) **Challenges for Cause.** After the examination of prospective jurors is completed and before any juror is sworn, the parties may challenge any juror for cause. A juror challenged for cause may be directed to answer every question pertinent to the inquiry. Every challenge for cause shall be determined by the court. The following are grounds for challenges for cause:

(1) That the person is not qualified by law to be a juror.

(2) That the person is biased for or against a party or attorney.

(3) That the person shows a state of mind which will prevent the person from rendering a just verdict, or has formed a positive opinion on the facts of the case or as to what the outcome should be, and cannot disregard such opinion and try the issue impartially.

(4) That the person has opinions or conscientious scruples which would improperly influence the person's verdict.

(5) That the person has been subpoenaed as a witness in the case.

(6) That the person has already sat upon a trial of the same issue.

(7) That the person has served as a petit juror in a civil case based on the same transaction.

(8) That the person was called as a juror and excused either for cause or peremptorily on a previous trial of the same action, or in another action by the same parties for the same cause of action.

(9) That the person is related within the fourth degree (civil law) of consanguinity or affinity to one of the parties or attorneys.

(10) That the person is the guardian, ward, landlord, tenant, employer, employee, partner, client, principal, agent, debtor, creditor, or a member of the family of the defendant, of the person alleged to be injured by the crime charged in the indictment, complaint, or information, of the person on whose complaint the prosecution was instituted, or of one of the attorneys.

(11) That the person within the previous two years:

(i) has been a party adverse to the challenging party or attorney in a civil action; or

(ii) has complained against or been accused by the challenging party or attorney in a criminal prosecution.

(12) That the person has a financial interest other than that of a taxpayer or a permanent fund dividend recipient in the outcome of the case.

(13) That the person was a member of the grand jury returning an indictment in the cause.

(14) That the person is employed by an agency, department, division, commission, or other unit of the State of Alaska, including a municipal corporation, which is directly involved in the case to be tried.

(d) **Peremptory Challenges.** A party who waives peremptory challenge as to the jurors in the box does not thereby lose the challenge but may exercise it as to new jurors who may be called. A juror peremptorily challenged is excused without cause. If the offense is punishable by imprisonment for more than one year, each side is entitled to 10 peremptory challenges. If the offense charged is punishable by imprisonment for not more than one year, or by a fine or both, each side is entitled to 3 peremptory challenges. If there is more than one defendant, the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly.

(e) **Procedure for Using Challenges.** The court has discretion to set procedures for the exercise of challenges and for the replacement of challenged jurors except that the entire trial panel will be asked general questions concerning the for cause challenges listed in Criminal Rule 24(c)(5)-(14) before proceeding to other questioning.

(f) **Oath of Jurors.** The jury shall be sworn by the clerk substantially as follows:

"Do each of you solemnly swear or affirm that you will well and truly try the issues in the matter now before the court solely on the evidence introduced and in accordance with the instructions of the court?"

(Adopted by SCO 4 October 4, 1959; amended by SCO 49 effective January 1, 1963; amended by SCO 276 effective June 30, 1977; and by SCO 428 effective September 1, 1980; by SCO 807 effective August 1, 1987; by SCO 969 effective July 15, 1989; by SCO 1013 effective January 15, 1990; by SCO 1095 effective January 15, 1993; by SCO 1153 effective July 15, 1994; by SCO 1204 effective July 15, 1995; by SCO 1448 effective October 15, 2001; and by SCO 1593 effective April 15, 2006)

Note to SCO 1204: The provision granting ten peremptory challenges to each side was added by ch. 117 § 1 SLA 1994. Section 6 of this order is adopted for the sole reason that the legislature has mandated the amendment.

Rule 25. Judge—Disqualification or Disability.

(a) **Before Trial.** Where a judge of the superior court is disqualified or for any other reason is unable to sit in the trial or hearing of any pending matter, the presiding judge or the chief justice of the supreme court shall designate another judge of the judicial district in which the matter is pending, or a judge temporarily assigned thereto, to hear the matter.

(b) **During Trial.** If a judge holding superior court be prevented during a trial from continuing to preside therein, the presiding judge or the chief justice of the supreme court shall designate another judge of the superior court to sit in such court to complete such trial, as if such other judge had been present and presiding from the commencement of such trial, provided, however, that from the beginning of the taking of testimony at such trial a stenographic or electronic record of such trial shall have been made so that the judge so continuing may become familiar with the previous proceedings at such trial.

(c) **After Verdict.** If by reason of absence from the district, death, sickness or other disability, the judge before whom the action has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge regularly sitting in or assigned to the court may perform those duties; but if the other judge is satisfied that a judge who did not preside at the trial cannot perform those duties or that it is appropriate for any other reason, that judge may grant a new trial.

(d) **Change of Judge as a Matter of Right.** In all courts of the state, a judge may be peremptorily challenged as follows:

(1) *Entitlement.* In any criminal case in superior or district court, the prosecution and the defense shall each be entitled as a matter of right to one change of judge. When multiple defendants are unable to agree upon the judge to hear the case, the trial judge may, in the interest of justice, give them more than one change as a matter of right; the prosecutor shall be entitled to the same number of changes as all the defendants combined.

(2) *Procedure.* A party may exercise the party's right to a change of judge by filing a "Notice of Change of Judge" signed by counsel, if any, stating the name of the judge to be changed. The notice shall neither specify grounds nor be accompanied by an affidavit. The notice of change of judge is timely if filed within five days after notice that the case has been assigned to a specific judge. If a party has moved to disqualify a judge for cause within the time permitted for filing a notice of change of judge, such time is tolled for all parties and, if the motion to disqualify for cause is denied, a new five-day period runs from notice of the denial of the motion.

(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.

(4) *Timeliness.* Failure to file a timely request precludes a change of judge under this rule as a matter of right.

(5) *Waiver.* A party loses the right under this rule to change a judge when the party, after reasonable opportunity to consult with counsel, agrees to the assignment of the case to a judge or knowing that the judge has been permanently assigned to the case, participates before the judge in an omnibus hearing, any subsequent pretrial hearing, a hearing under Rule 11, or the commencement of trial. No provision of this rule shall bar a stipulation as to the judge before whom a plea of guilty or of nolo contendere shall be taken under Rule 11.

(Adopted by SCO 4 October 4, 1959; amended by SCO 185 effective July 1, 1974; by SCO 292 effective February 21,

1978; by SCO 832 effective August 1, 1987; by SCO 875 effective July 15, 1988; by SCO 1011 effective January 15, 1990; by SCO 1070 effective July 15, 1991; by SCO 1153 effective July 15, 1994 and by SCO 1698 effective October 15, 2009)

Rule 26.1. Exhibits.

(a) **Mark for Identification.** All exhibits shall be marked for identification at the time of trial or hearing unless the judge orders pre-marking of the exhibits.

(b) **Procedure.** Exhibits shall be marked for identification in the manner prescribed by the administrative director in the bulletin required by paragraph (h) of this rule. All exhibits marked for identification shall be listed on an exhibit list provided by the court. The form of the exhibit list shall be prescribed by the administrative director.

(c) **Admission.** Exhibits properly marked for identification may be admitted into evidence upon the motion of any party or upon the court's own motion. After an identified exhibit is admitted by the court, the clerk shall mark the exhibit "admitted" in a manner prescribed by the administrative director. When an exhibit is admitted into evidence, the fact of its admission shall be noted immediately on the exhibit list.

(d) **Custody of Exhibits.** At the time an exhibit is offered into evidence, the exhibit shall be placed in and remain in the clerk's custody until released as provided in paragraph (g) of this rule or as set forth in the administrative bulletin required by paragraph (h) of this rule. Exhibits which have not been offered into evidence shall not be placed in the custody of the clerk unless otherwise ordered by the court.

(e) **Final Check.** Prior to submission of the case to the jury or to the court sitting without a jury, the court shall require counsel and those parties not represented by counsel to (1) examine all intended, identified, offered, or admitted exhibits and the in-court clerk's exhibit list, (2) confirm to the court that the list accurately reflects the status of the exhibits, and (3) confirm that any modifications to the exhibits ordered by the court have been made. Upon proper motion or the court's own motion, the court may order additional exhibits marked for identification and/or admitted into evidence. At the time of the final check, identified exhibits which have not been offered for admission but which the court has previously ordered placed in the clerk's custody shall be returned to the appropriate party, unless otherwise ordered by the court.

(f) **Submission to the Jury.** Unless otherwise ordered by the court, all exhibits admitted into evidence shall be given to the jury for deliberation, except the following exhibits will not be given to the jury without a specific court order:

(1) live ammunition;

(2) firearms;

(3) drugs and alcoholic beverages;

(4) perishable, flammable or hazardous materials; and

(5) money, jewelry or other valuable items.

The court may allow a photograph of an exhibit to be submitted to the jury in place of the physical exhibit.

(g) **Return of Some Exhibits After Hearing or Trial.** At the conclusion of a hearing or trial, the court shall inquire whether counsel stipulate to the return of any exhibits to counsel for safekeeping pending appeal and to the substitution of photographs for any of the physical (i.e., non-documentary) exhibits. Whether or not counsel stipulate, the court may also order counsel to take custody of the following exhibits, store said exhibits in a safe location and maintain the chain of custody pending appeal:

(1) live ammunition;

(2) firearms;

(3) drugs and alcoholic beverages;

(4) perishable, flammable or hazardous materials;

(5) money, jewelry or other valuable items; and

(6) items which are unwieldy due to bulk and/or weight.

Whenever exhibits are returned to counsel for safekeeping pending appeal, the court may require counsel to submit an affidavit setting forth the specific measures taken to ensure safekeeping of the exhibits.

(h) **Administrative Bulletin.** The administrative director shall establish standards and procedures by appropriate bulletin consistent with these rules governing the marking, handling, storage, safekeeping, and disposal of all exhibits coming into the court's custody. Unless otherwise ordered by the court, such standards and procedures are controlling.

(Added by SCO 599 effective September 1, 1984; amended by SCO 949 effective January 15, 1989)

Informational Note: Administrative Bulletin No. 9 governing the standards and procedures concerning exhibits is included in the Rules of Court following Civil Rule 43.1.

Rule 27. Proceedings Upon Trial—Management of Juries.

(a) **Order of Proceedings.** After a jury is impanelled and sworn, the trial shall proceed in the following order:

(1) The prosecuting attorney shall state the case of the prosecution, and may briefly state the evidence by which the prosecuting attorney expects to sustain it.

(2) (i) The defendant, or the defendant's counsel, may then state the defense, and may briefly state the evidence the defendant expects to offer in support of it.

(ii) If no statement of the defendant's case is made after the statement of the prosecution's case, then after the state has produced its evidence and presented its case in chief, the defendant, or the defendant's counsel, if the defendant intends

to produce evidence, shall state the defense, and may briefly state the evidence the defendant expects to offer in support of it.

(3) The state shall first produce its evidence, and the defendant may then produce the defendant's evidence. The state will then be confined to rebutting evidence unless the court, for good reason and in furtherance of justice, permits it to offer evidence in chief.

(4) Unless the case be submitted without argument, counsel for the state shall commence, the defendant or the defendant's counsel shall follow and counsel for the state shall conclude the arguments to the jury. Unless good cause is shown, the state shall present in its concluding argument no theory of law or fact which was not presented in one or both of the prior arguments. The court may, in its discretion, limit the time of such arguments.

(5) At the conclusion of the arguments the court shall charge the jury. Either party may offer requested instructions; objections shall be heard and considered by the court in accordance with Rule 30.

(b) **View of Premises by Jury.**

(1) The court may, on application of a party or on its own motion, order the jury in a body to view the property which is the subject of the litigation or the place where a material fact occurred. The court may order the applying party to pay the expenses connected with fulfilling the order.

(2) An officer of the court shall accompany the jury at such times and shall ensure that no one speaks to the jury on any subject connected with the trial while the jury makes its inspection.

(c) **Admonition to Juror Upon Separation From Jury.**

(1) If any juror is permitted to separate from the jury during the trial, the court shall admonish the juror that it is the juror's duty

(i) not to converse with any person, including other jurors, on any subject connected with the trial, and

(ii) not to form or express any opinion thereon until the case is finally submitted to the jury.

(2) If any juror is permitted to separate from the jury after the case is submitted to the jury, the court shall admonish the juror that it is the juror's duty

(i) to discuss the case only with other jurors in the jury room, and

(ii) not to converse with any other person on any subject connected with the trial.

(d) **Juror Unable to Continue.** If, prior to the time the jury retires to consider its verdict, a juror is unable to perform or is disqualified from performing the juror duty, the court may order the juror to be discharged. If an alternate juror has not been impanelled as provided in the rules,

(1) the trial may proceed with the other jurors with the consent of the parties, or

(2) another juror may be sworn and the trial may begin anew, or

(3) the jury may be discharged and a new jury then or afterwards formed.

(e) **Selection of Foreperson—Deliberations of Jury—Communications.**

(1) When the jury has retired to consider their verdict, they shall elect one of their number foreperson. The foreperson shall preside over their deliberations, sign the verdict unanimously agreed upon, and speak for them on the return of their verdict in open court.

(2) No persons other than the jurors and any interpreter necessary to assist a juror who is hearing or speech impaired shall be present while the jury is deliberating or voting. The jury shall be and remain under the charge of an officer of the court until they agree upon their verdict or are discharged by the court; except that the court may permit the jurors to adjourn their deliberations and return to their homes for reasonable periods of rest. Such periods of adjournment for rest shall be ordered only after hearing from all parties outside the presence of the jury; however, a request for overnight sequestration shall be made by the parties before the jury is sworn unless good cause is shown for a later request. The admonition set forth in section (c) shall be given before any adjournment for rest, and the court shall specifically state that no deliberations are to take place unless all jurors are present in the jury room.

(3) Unless otherwise ordered by the court, the officer of the court having charge of the jury shall keep the jurors together, and separate from other persons. The officer shall not suffer any communication to be made to the jury nor shall the officer make any communication except to ask the jury if they have agreed upon their verdict. The officer shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon. The officer shall be sworn to act according to the provisions of this section (e).

(Adopted by SCO 4 October 4, 1959; amended by SCO 49 effective January 1, 1963; amended by SCO 157 effective February 15, 1973; by Supreme Court Order 735 effective December 15, 1986; by SCO 1153 effective July 15, 1994; and by SCO 1439 effective October 15, 2001)

Note: Chapter 65, section 3, SLA 2005 (HB 54) enacted new AS 12.45.015 relating to the introduction of the victim and the defendant to the jury. According to section 7 of the Act, section 3 of the Act has the effect of amending Criminal Rule 27 by changing the order of proceedings of a trial before a jury.

Rule 27.1. Defendant's Right to Testify.

(a) **Advice of Right.** Prior to the prosecutor's opening statement, the court shall advise the defendant on the record outside the presence of the jury that it is the defendant's right to choose whether to testify or remain silent.

(b) **Inquiry of Nontestifying Defendant.** Before the defense rests, the defense shall notify the court outside the presence of the jury that the defense intends to rest. If the defendant has not testified, the court shall ask the defendant to confirm that the decision not to testify is voluntary. This inquiry must be directed to the defendant personally and must be made on the record outside the presence of the jury.

(Adopted by SCO 1206 effective July 15, 1995; amended by SCO 1222 effective August 8, 1995)

Rule 28. Expert Witnesses.

The court may order the defendant or the state or both to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. A witness so appointed shall be informed of the witness' duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness' findings, if any, and may thereafter be called to testify by the court or by any party. The witness shall be subject to cross-examination by each party. The court may, unless otherwise provided for by rule, determine the reasonable compensation of such witness and direct its payment out of such funds as may be provided by law. The parties also may call expert witnesses of their own selection.

(Adopted by SCO 4 October 4, 1959; amended by SCO 98 effective September 16, 1968; and by SCO 1153 effective July 15, 1994)

Rule 29. Motion for Acquittal.

(a) **Motions for Judgment of Acquittal.** Motions for directed verdict shall not be used and motions for judgment of acquittal shall be used in their place. The court, on motion of a defendant or on its own motion, shall enter judgment of acquittal of one or more offenses charged in the indictment or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the state's case is not granted, the defendant may offer evidence without having reserved the right.

(b) **Reservation of Decision on Motion —Renewal of Motion.** If a motion for judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict. If the motion is denied and the case is submitted to the jury, the motion may be renewed within 5 days after the jury is discharged and may include in the alternative a motion for a new trial. If a verdict of guilty is returned the court may on motion set aside the verdict and order a new trial or enter judgment of acquittal. If no verdict is returned the court may order a new trial or enter judgment of acquittal.

(Adopted by SCO 4 October 4, 1959; amended by SCO 554 effective April 4, 1983)

Rule 30. Instructions.

(a) **Requested Instructions—Objections.** At the close of the evidence or at such earlier time as the court reasonably directs, any party may file written requests that the court give the jury specific instructions. Such requests must be furnished to adverse parties. The court shall inform counsel of the final form of jury instructions prior to their arguments to the jury. Following the close of the evidence, before or after the arguments of counsel, the court shall instruct the jury. Additionally, the court may give the jury such instructions as it deems necessary at any stage of the trial. The instructions must be reduced to writing and read to the jury and must be taken to the jury room by the jury. No party may assign as error any portion of the charge or omission therefrom unless the party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objections. Opportunity must be given to make the objection out of the hearing of the jury by excusing the jury or hearing objections in chambers.

(b) **Instructions to Be Given.** The court shall instruct the jury on all matters of law which it considers necessary for the jury's information in giving their verdict.

(Adopted by SCO 4 October 4, 1959; amended by SCO 49 effective January 1, 1963; by SCO 79 effective February 1, 1966; by SCO 222 effective December 15, 1975; and by SCO 923 effective January 15, 1989)

Rule 31. Verdict.

(a) **Return.** The verdict shall be unanimous. It shall be returned by the jury to the judge in open court.

(b) **Several Defendants.** If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(c) **Conviction of Lesser Offense.** The defendant may be found guilty of an offense necessarily included in the offense charged, or of an attempt to commit either the offense charged or the offense necessarily included therein if the attempt is an offense. When it appears that the defendant has committed a crime, and there is reasonable ground of doubt in which of two or more degrees the defendant is guilty, the defendant can be convicted of the lowest of those degrees only.

(d) **Poll of Jury.** When the verdict is returned and before it is recorded the jury shall be polled at the request of any party or upon the court's own motion. If, upon the poll, there is not

unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

(e) **Special Verdicts—Insanity.** Where a defendant interposes the defense of insanity and evidence thereof is given at the trial, the jury, if it finds the defendant not guilty on that ground, shall declare that fact in their verdict.

(f) **Sealed Verdict.** The court may permit the foreman of the jury to date, sign and seal in an envelope a verdict reached after the usual business hours. The jury may then separate, but all must be in the jury box to deliver the verdict when the court next convenes or as instructed by the court.

When the court authorizes a sealed verdict, it shall admonish the jurors not to make any disclosure concerning it nor speak with other persons concerning the case until the verdict has been returned and the jury discharged.

(Adopted by SCO 4 October 4, 1959; amended by SCO 49 effective January 1, 1963; amended by SCO 316 effective September 1, 1978; by SCO 427 effective August 1, 1980; by SCO 1114 effective January 15, 1993; and by SCO 1153 effective July 15, 1994)

PART VII. JUDGMENT

Rule 32. Sentence and Judgment.

(a) **Sentence.** Sentence shall be imposed without unreasonable delay. Sentencing in felony cases shall follow the procedures established in this rule and Rules 32.1 through 32.6. Sentencing in misdemeanor cases shall follow the procedures established in this rule and Rules 32.2, 32.3, 32.5, and 32.6. When imposing sentence, the judge or magistrate judge shall explain on the record the reasons for the sentence.

(b) **Other Counts.** At sentencing, the prosecuting attorney must announce the disposition of all counts brought under the same case number that are not addressed in the judgment or in a written notice of dismissal or deferred prosecution. The court will notify the Department of Public Safety of any counts dismissed on the record.

(c) **Judgment.**

(1) *Conviction.* A judgment of conviction must, for each count, set forth the offense, including the statute or regulation violated, the defendant's plea, the verdicts or findings, and the sentence imposed. The judge or magistrate judge must sign the judgment.

(A) *Incarceration.* When the sentence includes a term of incarceration, the clerk promptly shall deliver a copy of the judgment to a peace officer or correctional facility. If the defendant does not appear at the correctional facility at the time specified, the peace officer or a representative of the correctional facility promptly shall notify the court by sworn statement on the record or by affidavit.

(B) *Restitution.* When the sentence includes a requirement that the defendant pay restitution, the judge shall order restitution as described in Rule 32.6. The judgment for restitution is enforceable in the same manner as a judgment in a civil action. If the defendant is placed on probation, the judgment of conviction shall include the payment of restitution as a condition of probation.

(C) *Conviction of a Corporation.* If a corporation is convicted of any criminal offense, the judge shall enter judgment against the corporation and the judgment shall be enforced in the same manner as a judgment in a civil action, or as otherwise provided by law.

(2) *Discharge.* If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly.

(d) **Judgment for Sex Offenses or Child Kidnapping.** When a defendant is convicted of a sex offense defined in AS 12.63.100 or child kidnapping as defined in AS 12.63.100, the written judgment must state the requirements of AS 12.63.010 and the period of registration required under AS 12.63 if the required period can be determined by the court.

(e) **Judgment for Crimes Involving Domestic Violence.** In a case in which the defendant is convicted of an offense listed in AS 18.66.990(3) and the prosecution claims at sentencing that the offense is a crime involving domestic violence, the written judgment must set forth whether the offense is a crime involving domestic violence as defined in AS 18.66.990(3) and (5). A factual and legal determination supporting this finding must be made on the record.

(f) **Judgment for Crime Against a Person.** In a case in which the defendant is convicted of a crime against a person as defined in AS 44.41.035(j), the written judgment must set out the requirements of AS 12.55.015(i).

(g) **Information To Be Included in Judgment.** If provided by the prosecuting authority in the charging document, the judgment must include the following information:

(1) the defendant's full name, including middle name or initial;

(2) the defendant's date of birth;

(3) the defendant's Alaska Public Safety Information Network (APSIN) identification number;

(4) the defendant's driver's license number or state identification number, including the issuing state and whether the license is a commercial driver's license;

(5) the arrest tracking number (ATN) on the Criminal Case Intake and Disposition (CCID) form for each offense being addressed in the judgment;

(6) the three-digit charge tracking number assigned on the CCID form for each offense being addressed in the judgment;

(7) the statute, regulation, or ordinance, as identified in the Uniform Offense Citation Table,** corresponding to each

offense being addressed in the judgment. Regulations not listed in the Uniform Offense Citation Table must be cited by the regulation number;

(8) if a motor vehicle offense is charged, whether the offense occurred in a traffic safety corridor or a highway work zone as provided in AS 28.90.030; and

(9) if a motor vehicle offense is charged involving the use of a commercial motor vehicle as defined in AS 28.90.990, whether the commercial vehicle weighs more than 26,000 lbs, is designed to transport more than 15 passengers, or is used in the transportation of hazardous materials.

**The Uniform Offense Citation table was developed by the Department of Public Safety. Changes to the table must be approved by the Department of Law or the appropriate municipal prosecuting authority. It is available at: http://www.dps.alaska.gov/statewide/uoct/.

(Adopted by SCO 4 October 4, 1959; amended by SCO 157 effective February 15, 1973; by Amendment No. 5 to SCO 157 effective July 1, 1974; by SCO 330 effective January 1, 1979; by SCO 418 effective August 1, 1980; by SCO 436 effective October 21, 1980; by SCO 437 effective October 21, 1980; by SCO 550 effective February 1, 1983; by SCO 554 effective April 4, 1983; by SCO 603 effective September 14, 1984; by SCO 976 effective January 15, 1990; by SCO 979 effective August 28, 1989; by SCO 1028 effective July 15, 1990; by SCO 1049 effective January 15, 1991; by SCO 1092 effective July 15, 1992; repealed and reenacted by SCO 1136 effective July 15, 1993; amended by SCO 1204 effective July 15, 1995; by SCO 1289 effective January 15, 1998; by SCO 1341 effective September 10, 1998; by SCO 1343 effective January 1, 1999; by SCO 1464 effective March 5, 2002; by SCO 1614 effective October 15, 2006; by SCO 1798 effective October 15, 2013; by SCO 1803 effective October 15, 2013; by SCO 1829 effective October 15, 2014 and by SCO 1886 effective nunc pro tunc July 12, 2016)

Note to SCO 1204: The requirement that a judgment for conviction of a sex offense must set out the requirements of AS 12.63.010 was added by ch. 41 § 3 SLA 1994. Section 7 of this order is adopted for the sole reason that the legislature has mandated the amendments.

Note to SCO 1341: Paragraph (e) of Criminal Rule 32 was added by § 11 ch. 95 SLA 1998. Section 3 of this order is adopted for the sole reason that the legislature has mandated the amendment.

Note to SCO 1886: Chapter 36, SLA 2016 (SB 91) enacted a number of changes relating to criminal procedure. According to section 180(b) of the Act, AS 12.55.055(h), enacted by section 76 of the Act, has the effect of changing Criminal Rule 32, effective July 12, 2016, by directing the court to include a provision in the judgment that community work hours that are not completed shall be converted to a fine as provided in AS 12.55.055(h).

Cross References

(a) **CROSS REFERENCE:** AS 12.55.010

(b) **CROSS REFERENCE:** Administrative Bulletin No. 17.

Rule 32.1. Presentence Procedure for Felony Sentencings.

(a) **Scheduling & Preliminary Filings.** At the time a defendant's guilt in a felony case is established by verdict or plea,

(1) the judge shall establish the date for a sentencing hearing and the date for a separate presentencing hearing, if appropriate. If the judge elects to conduct all of the proceedings at a single hearing, all the procedures that govern presentencing and sentencing hearings shall apply at the single hearing;

(2) unless the court has accepted the parties' negotiated sentencing agreement and has decided to proceed without a presentence report pursuant to Criminal Rule 11(e)(1), the judge shall direct the Department of Corrections to conduct a presentence investigation and prepare a report in all cases where the defendant has been convicted of an unclassified felony or a class A felony, or in any other case if either party requests a presentence report or the judge concludes that there is good cause to have one;

(3) the judge shall direct the parties to file the following preliminary pleadings within ten days, unless a different schedule is ordered by the court:

(A) *Defendant's Sentencing Status.* If the defendant's sentencing is governed in whole or part by presumptive sentencing, the state shall file a notice explaining the defendant's status as a first, second, or third felony offender for purposes of presumptive sentencing, as well as any other factor that triggers a specific presumptive range. If the defendant is to be sentenced for an unclassified felony under AS 12.55.125(a) or (b), or if the defendant is subject to the mandatory sentenceing provisions of AS 12.55.125(l), the state shall specify the applicable mandatory minimum term of imprisonment. If the defendant is to be sentenced for two or more offenses, the state shall specify the amount of consecutive imprisonment, if any, required by AS 12.55.127; and

(B) *Defendant's Financial Statement.* In cases where restitution may be ordered, the defendant shall submit a financial statement to the probation office on a form designated by the Administrative Director.

(b) **Presentence Investigation and Report.**

(1) *Contents and Filing.* If the court directs the Department of Corrections to prepare a presentence report, the report shall be filed with the court and served on counsel at least 30 days before the sentencing hearing, or 30 days before the presentencing hearing, if one is scheduled. The report shall contain all of the defendant's prior criminal convictions and findings of delinquency and any other information about the defendant's characteristics, financial condition, and the circumstances affecting the defendant's behavior that may be helpful in fashioning the defendant's sentence, a victim impact statement, and any other information required by the judge. If

the crime involved a victim, the court may not accept a presentence report that does not include a victim's impact statement, unless the presentence report explains the reason why the victim or the victim's representative could not be interviewed. The presentence report shall comply with the Victims' Rights Act, AS 12.61.100 — 12.61.150 and AS 12.55.022.

(2) *Restitution Information.* In cases where the court may order the defendant to pay restitution, the presentence report must include:

(A) defendant's financial statement completed under subparagraph (a)(3)(B) of this rule; and

(B) information concerning the identity of any victims or other persons seeking restitution and, if known, whether any victim or other person expressly declines restitution, the nature and amount of any damages together with any supporting documentation, a restitution amount recommendation, and the names of any co-defendants and their case numbers.

(3) *Disclosure.* Unless the judge finds that providing specific portions of the report to the defendant would prove detrimental to the rehabilitation of the defendant or the safety of the public, the defense attorney may give a full copy of the report to the defendant. Unless otherwise ordered, or except as specifically allowed by other provisions of law, further disclosure of the report shall be limited to agents of the state's attorney or the defendant's attorney, any reviewing courts, and the agencies having charge of the defendant's rehabilitation.

(4) *Plea Agreements.*

(A) If the parties request preparation of a presentence report to aid them in reaching a plea agreement, the judge may order the department to prepare such a report prior to the time stated in this rule. If a report is prepared prior to entry of a verdict or plea of guilty or no contest, the report shall be submitted only to the parties and not to the judge.

(B) Notwithstanding subparagraph (b)(4)(A), the judge may use the presentence report to determine whether to accept a plea agreement under Criminal Rule 11.

(5) *Service.* The parties must serve the Department of Corrections with all filings relating to sentencing, and the court must distribute all orders related to sentencing to the department.

(c) **Notice of Aggravating Factors, Extraordinary Circumstances, and Restitution.** Within seven days after service of the presentence report on the parties, or, if no presentence report is ordered, at least 30 days before the sentencing hearing:

(1) The state shall list the aggravating factors and describe the nature of any extraordinary circumstances on which the state intends to rely at sentencing. This notice shall include a written summary of the evidence that the state will rely on to establish each aggravating factor or extraordinary circumstance.

(2) The state shall give notice if it will seek restitution from the defendant in an amount different from the recommendation in the presentence report. The notice shall specify the amount of restitution sought and shall set forth the facts establishing the basis for this amount, and shall include information concerning the identity of any victims or other persons seeking restitution and, if known, whether any victim or other person expressly declines restitution, the nature and amount of any damages together with any supporting documentation, and the names of any co-defendants and their case numbers.

(3) The state shall give notice of any evidence on which it intends to rely at sentencing that is not contained in the presentence report. If the state intends to present any witness, the notice shall contain a brief summary of the witness's anticipated testimony. The notice need not include any information to be presented by a victim's oral or written statement.

(4) Notices under this rule shall be served by delivery to parties in the same community as the party making service, and by facsimile transmission ("fax") to parties in outlying communities. When service is made by fax, a paper copy of the notices shall also be mailed to the intended recipient.

(d) **Notice of Mitigating Factors, Extraordinary Circumstances, and Responses to State's Notices.** Within seven days after service of the notices required by paragraph (c):

(1) The defendant shall file a notice responding to each notice filed by the state under paragraphs (a)(3)(A) and (c)(1). The notice shall indicate whether the defendant concedes or disputes each felony conviction, aggravating factor and extraordinary circumstance and, if so, shall include a description of the basis for the opposition.

(2) The defendant shall list the mitigating factors and describe the nature of any extraordinary circumstances on which the defense intends to rely at sentencing. This notice shall include a written summary of the evidence that the defendant will rely on to establish each mitigating factor or extraordinary circumstance.

(3) If the defendant objects to any recommendation for restitution included in the presentence report or in a notice filed by the state under paragraph (c)(2), the defendant shall file a notice disputing the legal basis for restitution, the factual basis for restitution, or the amount sought. The notice shall set out the specific grounds for contesting the restitution or provide information that the victim or other person entitled to the restitution expressly declines restitution.

(4) The defendant shall give notice of any evidence on which the defendant intends to rely at sentencing that is not contained in the presentence report. If the defendant intends to present any witness, the notice shall contain a brief summary of the witness's anticipated testimony. The notice need not include any information to be presented in the defendant's allocution.

(5) The defendant shall give notice of any objection to any information contained in the presentence report or to any other material the judge or the state has identified as a source of information to be relied upon at sentencing. The notice shall state the basis for the defendant's objection. If the defendant objects to information as inaccurate, the notice shall include any information upon which the defendant intends to rely to refute the objected-to information.

(6) Notices under this rule shall be served by delivery to parties in the same community as the party making service, and by fax to parties in outlying communities. When service is made by fax, a paper copy of the notices shall also be mailed to the intended recipient.

(e) **Disputing Mitigating Factors, Extraordinary Circumstances, and Objections to Restitution.** Within seven days after service of the notices required by paragraph (d):

(1) The state shall file a notice responding to each notice filed by the defendant under paragraph (d)(2). The notice shall indicate whether the state concedes or disputes each mitigating factor and extraordinary circumstance, and shall include a description of the basis for the opposition.

(2) The state shall file a notice responding to each notice filed by the defendant under paragraph (d)(3). The notice shall indicate whether the state disagrees with the contention of the defendant concerning restitution and shall include a brief summary of the basis for its position.

(3) Notices under this rule shall be served by delivery to parties in the same community as the party making service, and by fax to parties in outlying communities. When service is made by fax, a paper copy of the notices shall also be mailed to the intended recipient.

(f) **Adjudicating Disputed Factual and Legal Issues.** The court shall give the parties the opportunity to present evidence and argument on the disputed factual and legal issues related to sentencing at the sentencing hearing or at any presentencing hearing or other supplemental evidentiary hearings that the court may order.

(1) The court shall enter findings regarding whether the defendant's sentence is governed by presumptive sentencing, the number of the defendant's prior felonies as defined in AS 12.55.145, and the existence of any other factor that triggers a specific presumptive term.

(2) The court shall enter findings regarding the aggravating factors, mitigating factors, and extraordinary circumstances raised by the parties. However, no finding is necessary if the court affirmatively determines that resolution of a disputed factor or extraordinary circumstance is immaterial to the imposition of a just sentence.

(3) If the sentencing judge believes that the parties have overlooked a prior felony conviction or any other factor triggering a specific presumptive term, or have overlooked an applicable aggravating or mitigating factor or extraordinary circumstance, the judge shall notify the parties of the court's belief. The judge shall inform the parties of the specific facts which the judge believes establish the prior felony or presumptive sentencing factor, and the judge must allow the parties an opportunity to respond to the judge's information.

(4) The court shall resolve any factual disputes related to restitution.

(5) The court shall enter findings regarding any disputed assertion in the presentence report. Any assertion that has not been proved shall be deleted from the report; any assertion that has been proved only in part shall be modified in the report. Alternatively, if the court determines that the disputed assertion is not relevant to its sentencing decision so that resolution of the dispute is not warranted, the court shall delete the assertion from the report without making any finding. After the court has made the necessary deletions and modifications, the court's corrected copy shall be labeled the "approved version" of the presentence report. A copy of the approved version must be delivered to the Department of Corrections within seven days after sentencing.

(g) **Restitution Procedures When There Is No Presentence Investigation.**

(1) In cases where the court may order the defendant to pay restitution but no presentence investigation report is prepared, the prosecuting authority must file a notice concerning restitution at least ten days before the sentencing hearing, unless otherwise ordered by the court. The notice shall include information concerning the identity of any victims or other persons seeking restitution and, if known, whether any victim or other person expressly declines restitution, the nature and amount of any damages together with any supporting documentation, a restitution amount recommendation, and the names of any co-defendants and their case numbers.

(2) Unless otherwise ordered by the court, the defendant shall file any objections to the information submitted under paragraph (g)(1), or provide information that the victim or other person expressly declines restitution, at least five days before the sentencing hearing, together with defendant's financial statement on a form designated by the Administrative Director.

(Added by SCO 157 effective February 15, 1973; amended by SCO 218 effective January 15, 1976; by SCO 536 effective October 1, 1982; by SCO 643 effective September 15, 1985; repealed and reenacted by SCO 1136 effective July 15, 1993; amended by SCO 1269 effective July 15, 1997; by SCO 1464 effective March 5, 2002; by SCO 1554 effective April 15, 2006; by SCO 1701 effective October 15, 2009; by SCO 1753 effective October 14, 2011; by SCO 1787 effective July 1, 2012; by SCO 1806 effective nunc pro tunc July 1, 2013; and by SCO 1886 effective nunc pro tunc July 12, 2016)

Note to SCO 1269: In 1996, the legislature amended Criminal Rule 32.1 to eliminate presentence investigations for certain defendants convicted of joyriding (§§ 9 & 10 ch. 71 SLA 1996) or felony DWI or refusal (§§ 20 & 21 ch. 143 SLA 1996). Section 15 of this order is adopted for the sole reason that the legislature has mandated the amendments.

Note: Chapter 70 SLA 2012 (SB 210) added new subsections to AS 12.55.125 and AS 12.55.155 relating to sentencing procedures, effective July 1, 2012. According to section 16 of the Act, AS 12.55.125(p), enacted by section 12, and AS 12.55.155(i), enacted by section 13, have the effect of amending Alaska Rule of Criminal Procedure 32.1, by amending procedures for sentencing persons convicted of certain crimes.

Note: Chapter 43, SLA 2013 (SB 22), effective *nunc pro tunc* to July 1, 2013, amended Criminal Rule 32.1(b)(1) relating to victim's impact statements. This rule change is adopted for the sole reason that the legislature has mandated the amendment.

Note to SCO 1886: Chapter 36, SLA 2016 (SB 91) enacted a number of changes relating to criminal procedure. According to section 180(d) of the Act, AS 12.55.135(p), enacted by section 93 of the Act, has the effect of changing Criminal Rule 32.1, effective July 12, 2016, regarding the procedure for notice and proof of aggravating factors sought to be considered at the sentencing of a defendant convicted of a class A misdemeanor.

Rule 32.2. Sentencing Hearing.

(a) **Consideration of Victim's Statement.** If a victim as defined in AS 12.55.185 prepares and submits a written statement, gives sworn testimony or makes an unsworn oral presentation under AS 12.55.023, the court shall take the content of the statement, testimony, or presentation into consideration when preparing those elements of the sentencing report required by AS 12.55.025 that relate to the effect of the offense on the victim, and when considering the need for restitution under AS 12.55.045. The court shall also take the content of the victim's impact statement in the presentence report into consideration in preparing the sentencing report required under AS 12.55.025. The court also may take the content of the statement, testimony, the victim's impact statement, or presentation into consideration for any other appropriate purpose.

(b) **Defendant's Allocution.** Before imposing sentence the court shall afford the defendant an opportunity to make a statement in the defendant's own behalf and to present any information in mitigation of punishment.

(c) **The Sentence.**

(1) At the sentencing hearing, the judge shall state clearly the precise terms of the sentence, the reasons for selecting the particular sentence, and the purposes the sentence is intended to serve.

(2) If the defendant is sentenced to a term of imprisonment for a felony offense, to a term of imprisonment exceeding 90 days for a misdemeanor offense, or to a term of imprisonment for a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted in conformity with AS 04.21.010, the judge shall identify

(A) the approximate term of imprisonment the defendant must serve if the defendant is eligible for and does not forfeit good conduct deductions under AS 33.20.010; and

(B) if applicable, the approximate minimum term of imprisonment the defendant must serve before becoming eligible for release on discretionary parole.

These approximate terms of imprisonment are not part of the sentence imposed and do not form a basis for review or appeal of the sentence imposed.

(3) The court shall order that the defendant be fingerprinted at the conclusion of the sentencing hearing.

(d) **Transcript of Sentencing Proceeding.** A transcript or electronic recording of any sentencing proceeding at which the defendant is committed to serve a term of incarceration in excess of six months on one or more charges shall be prepared and furnished to the Department of Law, the defendant, the Department of Corrections, the State Board of Parole, if the defendant will be eligible for parole, and to the Alcohol Beverage Control Board if the defendant was convicted of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted under AS 04.21.010.

(Added by SCO 1136 effective July 15, 1993; amended by SCO 1288 effective nunc pro tunc to August 13, 1997; by SCO 1464 effective March 5, 2002; by SCO 1555 effective October 15, 2004; and by SCO 1806 effective nunc pro tunc July 1, 2013)

Note: Chapter 43, SLA 2013 (SB 22), effective *nunc pro tunc* to July 1, 2013, amended Criminal Rule 32.2(a) relating to consideration of crime victim's impact statements. The changes to Criminal Rule 32.2(a) are adopted for the sole reason that the legislature has mandated the amendments.

Rule 32.3. Judgments and Orders.

(a) **Effective Dates of Orders and Judgments.** Orders and judgments become effective the date they are entered.

(1) *Oral Orders*. The date of entry of an oral order is the date the order is put on the official electronic record by the judge unless otherwise specified by the judge. At the time the judge announces an oral order, the judge also shall announce on the record whether the order shall be reduced to writing. If the oral order is reduced to writing, the effective date shall be included in the written order.

(2) *Written Orders Not Preceded by Oral Orders*. The date of entry of a written order not preceded by an oral order is the date the written order is signed unless otherwise specified in the order.

(3) *Judgments*. The date of entry of a criminal judgment is the date the judgment is put on the official electronic record by the judge unless otherwise specified by the judge. All judgments shall be reduced to writing and the effective date shall be included in the written judgment.

(b) **Commencement of Time for Appeal, Review and Reconsideration.** The time within which a notice of appeal

may be filed and reconsideration or review of orders and judgments may be requested begins running on the date of notice as defined below.

(c) **Date of Notice.**

(1) *Oral Orders.*

(i) As to the parties present when an oral order is announced, the date of notice is the date the judge announces the order on the official electronic record, unless at that time the judge announces that the order will be reduced to writing in which case the date of notice is the date shown in the clerk's certificate of distribution on the written order.

(ii) As to parties not present at the announcement of an oral order the date of notice is the date shown in the clerk's certificate of distribution of notice of the order. If, however, at the time the judge announces the oral order the judge announces that the order will be reduced to writing, the date of notice is the date shown in the clerk's certificate of distribution on the written order.

(2) *Written Orders.* The date of notice of a written order is the date shown in the clerk's certificate of distribution on the written order.

(3) *Judgments.* All judgments must be reduced to writing. The date of notice of a judgment is the date shown in the clerk's certificate of distribution on the written judgment.

(4) *Other Service Requirements.* These notice provisions apply to the notice of orders and judgments under Rule 44(c) and do not affect the service requirements of any other rule of criminal procedure.

(d) **Clerk's Certificate of Distribution.** Every written notice of an oral order and every written order and judgment shall include a clerk's certificate of distribution showing the date copies of the notice, order or judgment were distributed, to whom they were distributed, and the name or initials of the court employee who distributed them.

(Added by SCO 554 effective April 4, 1983; amended by SCO 905 effective January 15, 1989; by SCO 1153 effective July 15, 1994; and by SCO 1464 effective March 5, 2002)

Cross References

CROSS REFERENCE: App. R. 204

Rule 32.4. Sentencing Referrals to Three-Judge Panel.

(a) **Referral to Panel.** If the trial judge finds that extraordinary circumstances exist under AS 12.55.165, the case shall be transferred forthwith to a three-judge sentencing panel of the superior court. All pertinent files, records and transcripts shall be transmitted to the sentencing panel by the clerk of the court within 30 days of the date of the order transferring the case.

(b) **Appointment of Panel.** Three judges of the superior court shall be appointed by the chief justice to be the regular members of the sentencing panel. Two other judges of the superior court shall be appointed by the chief justice as first and second alternate members of the sentencing panel. At least one of the three regular members and one of the two alternate members of the sentencing panel shall reside outside of Anchorage. The term of appointment of the regular and alternate members of the sentencing panel shall be two years, except that the first three regular members appointed shall serve staggered terms of one, two, and three years. The chief justice may appoint additional alternate members of the sentencing panel to serve on a case-by-case basis in the event of the disability or disqualification of more than two judges.

(c) **Repository of Documents.** The chief justice shall appoint one of the three regular members to be administrative head of the sentencing panel and his or her office shall serve as the administrative repository for all papers and documents pertaining to cases submitted to the sentencing panel.

(d) **Challenge of Panel Member.** Both the prosecuting attorney and the defendant may exercise in a timely fashion a challenge for cause, or a peremptory challenge if not previously exercised, to one judge on the sentencing panel in accordance with AS 22.20.022 and Criminal Rule 25(d)(1). In the event that a judge on the sentencing panel is the same judge who made the finding under paragraph (a) of this rule, that judge shall be automatically disqualified.

(e) **Time for Decision.** Within 60 days from the date that the case was transmitted to the sentencing panel, the sentencing panel shall either sentence the defendant or remand the case to the judge who referred the case to the sentencing panel. The sentencing panel shall provide a written statement of its findings and conclusions in support of any order remanding a case to the referring judge.

(f) **Hearing.** If the sentencing panel elects to take testimony or sentence the defendant under AS 12.55.175(b) or (c), both the prosecution and the defendant shall have the right to be present in court during the proceedings. The defendant shall have the right to address the sentencing panel personally before sentence is imposed. The proceedings shall be held in a location best suited to the convenience of the parties and the court as determined by the sentencing panel.

(g) **Further Sentencing Proceedings.** If the sentencing panel imposes sentence on the defendant, proceedings relating to sentence modification under Criminal Rule 35(a) shall be assigned to the sentencing panel sitting at the time such action is ready for decision. All other post-sentencing proceedings shall be assigned to the judge who referred the matter to the sentencing panel for consideration. The referring judge may impose any sentence which the sentencing panel would be empowered to impose, except that the referring judge may not reduce a sentence imposed by the sentencing panel.

(h) **Right to Bail.** The right to bail of a convicted defendant is neither conferred nor enlarged by this rule.

(Added by SCO 1136 effective July 15, 1993)

Rule 32.5. Appeal From Conviction or Sentence—Notification of Right to Appeal.

(a) A person convicted of a crime after trial shall be advised by the court:

(1) that the person has the right to appeal from the judgment of conviction within 30 days from the date shown in the clerk's certificate of distribution on the judgment appealed from by filing a notice of appeal with the clerk of the appellate courts; and

(2) that if the defendant wants counsel and is unable to pay for the services of an attorney, the court will appoint an attorney to represent the defendant on the appeal.

(b) In addition, at the time of imposition of any sentence of imprisonment, the court shall advise the defendant as required by Appellate Rule 215(b).

(c) The court shall further advise the defendant's attorney that, if an appeal or petition is to be taken, the attorney may not withdraw from the case except as provided by Appellate Rule 517.1.

(Added by SCO 1136 effective July 15, 1993; amended by SCO 1184 effective July 15, 1995; by SCO 1226 effective January 22, 1996; by SCO 1829 effective October 15, 2014; and by SCO 1868 effective April 15, 2016)

Rule 32.6. Judgment for Restitution

(a) **Definition.** When a sentence includes a requirement that the defendant pay restitution, the judge shall either enter a separate judgment for restitution or shall include the order of restitution as a separate section of the criminal judgment. For the purpose of these rules, either of these constitutes a "judgment for restitution."

(b) **Content.** The judgment for restitution must:

(1) Identify each victim or other person entitled to restitution and the amount of restitution owed to each.

(2) State the date restitution is due or, if the court schedules installment payments, the amount and due date of each payment. If no due date is stated, the restitution amount is due immediately.

(3) State whether payment will be made through the clerk of court or otherwise. The restitution payment will be made through the clerk of court unless (A) the court orders restitution to be made in a form other than payment of a specific dollar amount or (B) the court orders payment to be made directly to the victim or through another entity.

(4) Identify by name and case number any defendants who are jointly and severally liable for the restitution owed to each victim or other person.

(5) State whether post-judgment interest is owed on the judgment and, if so, when it begins to accrue.

(c) **Entering the Judgment for Restitution.**

(1) *At Sentencing.* If the amount of restitution and the names of the victims are known at the time of sentencing, the court shall enter the judgment for restitution at the time of sentencing.

(2) *After Sentencing.* If the amount of restitution and the names of the victims or other persons seeking restitution are not known at the time of sentencing, the prosecutor shall file and serve within 90 days after sentencing a proposed judgment for restitution on a form designated by the Administrative Director, and a notice that includes information concerning the identity of any victims or other persons seeking restitution, whether any victim or other person expressly declines restitution, the nature and amount of any damages together with any supporting documentation, a restitution amount recommendation, and the names of any co-defendants and their case numbers. Within 30 days after receipt of the proposed judgment for restitution, the defense shall file any objection to the proposed judgment and a statement of grounds for the objection. If ordered, the defense shall also file a financial statement on a form designated by the Administrative Director under AS 12.55.045(j). If the defendant does not file an objection, the court may enter the judgment for restitution without further proceedings. If the defendant files an objection and either party requests a hearing, the court shall schedule a hearing.

(3) *Victim Information.* In addition to the requirements of (c)(1) and (2) above, the prosecutor shall submit an *ex parte* restitution victim information statement on a form provided by the Administrative Director, which includes information concerning the identity and addresses of the victims. The restitution victim information statement shall be filed within 30 days after entry of the restitution judgment under (c)(1) above or at the time the prosecutor submits a proposed judgment to the court under (c)(2) above. The restitution victim information statement is not a permanent record and will not be retained in the case file. It must not be served on the defendant or disclosed to anyone other than court personnel for purposes of collecting restitution.

(d) **Hearing Regarding Payment Schedule.** A defendant who is unable to pay restitution because of financial circumstances may request a hearing to ask the court to modify the restitution payment schedule. If the court holds a hearing and the defendant proves by a preponderance of the evidence that the defendant is unable through good faith efforts to satisfy the payment schedule in the judgment for restitution, the court may modify the payment schedule, but may not reduce the amount of restitution.

(e) **Execution.** Civil execution to enforce the judgment may issue if restitution is ordered to be paid by a specified date and defendant fails to make full payment by that date. If restitution is ordered to be paid in specified installments and defendant fails to make one or more installment payments, civil execution to collect the entire remaining balance may issue. The automatic stays on enforcement provided in Civil Rule 62(a) and District Court Civil Rule 24(a) do not apply to the enforcement of restitution judgments.

(f) **Victim's Options for Collection.** The collections unit established within the court system will execute on the defendant's permanent fund dividend as needed to collect the

restitution judgment. A victim who wants to pursue collection more broadly under Civil Rule 69, including the use of general writs of execution or writs of execution for garnishment of earnings, may elect to proceed without the collections unit's assistance. Notice of this election shall be provided on a form designated by the Administrative Director.

(g) **Priority of Payments.** Unless the court finds good cause to order a different priority, payments received from or on behalf of a defendant will be allocated as follows:

(1) If a defendant makes a voluntary payment and designates how or to what criminal or civil judgments the payment should be applied, the payment will be applied as designated by the defendant.

(2) Payments received as the result of execution on the defendant's permanent fund dividend will be applied to judgments according to the priorities stated in AS 43.23.065.

(3) If a defendant makes a voluntary payment but does not designate how the payment is to be applied or if a payment is received as a result of execution by the collections unit established within the court system or a comparable unit of a municipality, the payment will be applied using the following rules:

(A) Judgments for restitution will be paid in full before any amounts collected from the defendant will be applied to criminal or civil judgments owed to the state or a municipality.

(B) If restitution is owed to the state or a municipality, amounts collected from the defendant will be applied first to judgments for restitution owed to victims other than the state or a municipality.

(C) When restitution is ordered to be paid by a defendant to victims in the same criminal case, amounts collected from the defendant will be allocated among the victims based on the percentage of the amount of restitution owed to each victim to the total amount of restitution owed by the defendant to all of the victims; except that if a payment is less than $100, the payment may be paid to a single victim if such payments are paid to all victims on an alternating basis.

(D) When restitution is ordered to be paid by a defendant to victims in different criminal cases, amounts collected from the defendant will be applied to the judgment that is first in time.

(4) If a payment is received as a result of execution by a victim, the payment will be applied to the judgment for restitution owed to that victim.

(h) **Financial Statement.**

(1) At any time after sentencing, the probation officer or prosecuting authority may request that the defendant be ordered to provide a financial statement pursuant to AS 12.55.045(k).

(2) If the defendant fails to submit a completed financial statement as ordered, the probation officer or prosecuting authority may notify the court by affidavit. Upon receipt of an affidavit under this paragraph, the court shall schedule a hearing for the defendant to show cause why the defendant should not be held in contempt for failure to comply with the order to submit the financial statement.

(i) **Suspended Imposition of Sentence and Suspended Entry of Judgment.** The judgment for restitution remains civilly enforceable

(1) after the expiration of the period of probation or the set-aside of conviction in a case where imposition of sentence is suspended; and

(2) after the expiration of the period of probation or the dismissal of the proceedings under AS 12.55.078(d) in a case where the court suspended entry of judgment.

(Adopted by SCO 1464 effective March 5, 2002; amended by SCO 1482 effective October 15, 2002; by SCO 1554 effective April 15, 2006; by SCO 1907 effective April 5, 2017; and by SCO 1913 effective *nunc pro tunc* June 20, 2017)

Note: Information for victims about collecting on judgments for restitution is provided on the court system's website at www.courts.alaska.gov/trialcourts/restitution.htm.

Rule 33. New Trial.

(a) **Grounds.** The court may grant a new trial to a defendant if required in the interest of justice.

(b) **Subsequent Proceedings.** If trial was by the court without a jury, the court may vacate the judgment if entered, take additional testimony and enter a new judgment.

(c) **Time for Motion.** A motion for a new trial based on the ground of newly discovered evidence may be made only before or within 180 days after final judgment, but if an appeal is pending the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within 5 days after verdict or finding of guilt, or within such further time as the court may fix during the 5-day period.

(Adopted by SCO 4 October 4, 1959; amended by SCO 554 effective April 4, 1983; and SCO 1242 effective July 15, 1996)

Note to SCO 1242: Criminal Rule 33 was amended by ch. 79 § 28 SLA 1995. Section 3 of this order is adopted for the sole reason that the legislature has mandated the amendment.

Rule 34. Arrest of Judgment.

(a) **Grounds.** A motion in arrest of judgment following a plea or verdict of guilty may be founded on one or more of the following grounds, and not otherwise:

(1) That the grand jury by which the indictment was found had no legal authority to inquire into the crime charged, or that the court was without jurisdiction of the offense charged.

(2) That the facts stated in the indictment or information do not constitute a crime.

(b) **Time for Making Motion.** The motion shall be made within 5 days after verdict or finding of guilt, or within such further time as the court may fix during the 5-day period.

(c) **Effect of Order Arresting Judgment.** The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation the defendant was in before the indictment was found.

(d) **Recommitting Defendant or Admission to Bail.** If from the evidence given on the trial, there is reasonable ground to believe the defendant guilty, and a new indictment or information can be framed upon which the defendant may be convicted, the court shall order the defendant to be recommitted to custody or admitted to bail, to answer the new indictment or information, if one be found or filed. If the evidence shows the defendant to be guilty of another crime than that charged in the indictment or information, the defendant must in like manner be committed or held thereon, and in neither case is the verdict a bar to another action for the same crime.

(e) **Discharge of Defendant.** If no evidence appears sufficient to charge the defendant with any crime, the defendant must, if in custody, be discharged, or, if the defendant has given bail or deposited money in lieu thereof, the bail is exonerated or the money must be refunded to the defendant, and in such case the arrest of judgment operates as an acquittal of the charge upon which the indictment or information was founded.

(Adopted by SCO 4 October 4, 1959; amended by SCO 49 effective January 1, 1963; and by SCO 1153 effective July 15, 1994)

Rule 35. Reduction, Correction, or Suspension of Sentence.

(a) **Correction of Sentence.** The court may correct an illegal sentence at any time.

(b) **Modification or Reduction of Sentence.** The court

(1) may modify or reduce a sentence within 180 days of the distribution of the written judgment upon a motion made in the original criminal case;

(2) may not entertain a second or successive motion for similar relief brought under this paragraph on behalf of the same defendant;

(3) may not reduce or modify a sentence so as to impose a term of imprisonment that is less than the minimum required by law;

(4) may not reduce a sentence imposed in accordance with a plea agreement between the defendant and the prosecuting attorney that provided for imposition of a specific sentence or a sentence equal to or less than a specified maximum; and

(5) may not reduce a sentence below the minimum specified in a plea agreement between the defendant and the prosecuting attorney.

(c) **Victim's Rights.** The victim may comment on motions made under this rule as follows:

(1) When an individual convicted of a crime against a person or arson in the first degree files a motion to modify or reduce a sentence, the court shall, if feasible, send a copy of the motion to the Department of Corrections sufficiently in advance of any scheduled hearing or briefing deadline to enable the department to notify the victim, as directed by AS 12.55.088(e).

(2) The court shall provide copies of the victim's comments to the prosecuting attorney and to the person filing the motion to reduce or modify a sentence, or the person's attorney.

(3) The court shall consider the comments of the victim when relevant, and any response offered by the prosecuting attorney or the person filing the motion, in deciding whether to reduce or modify a sentence.

(4) If more than one person who qualifies as a victim under paragraph (d)(2) of this rule requests the opportunity to exercise rights under this paragraph, the court shall allow the person designated under AS 12.55.172 to exercise those rights, or if a person has not been designated under AS 12.55.172, the court shall designate one person for purposes of exercising rights under this paragraph.

(d) **Definitions.** In this rule,

(1) "crime against a person" has the meaning given in AS 33.30.901; and

(2) "victim" has the meaning given in AS 12.55.185.

(e) **Appointed Counsel.** An indigent defendant not already represented by counsel may request the court to appoint counsel for purposes of filing a motion under this rule. If the defendant is represented by appointed counsel, counsel may file with the court and serve on the prosecuting attorney a certificate that counsel

(1) does not have a conflict of interest;

(2) has completed a review of the facts and law related to sentence;

(3) has consulted with the applicant and, if appropriate, with trial and appellate counsel; and

(4) has determined that a motion under this subsection would not warrant relief by the court.

(f) **Withdrawal of Appointed Counsel and Dismissal.** If appointed counsel has filed a certificate under (e) of this rule, and it appears to the court that the applicant is not entitled to relief, the court shall indicate its intention to permit counsel to withdraw and, if appropriate, to dismiss the motion. The applicant and the prosecuting attorney shall be given an

opportunity to reply to the proposed withdrawal or dismissal. If the applicant files a response and the court finds that a motion under this rule would not warrant relief, the court shall permit counsel to withdraw and, if appropriate, dismiss the motion. If the court finds that a motion under this rule may warrant relief, the court may direct that the proceedings continue or take other appropriate action.

(g) **Relaxing the Time Period for Request.** A court may not relax by more than 10 days the time period in which a request to modify or reduce a sentence under (b) of this rule must be filed.

(h) Notwithstanding the limitations in subsection (b) of this rule, the court may modify or reduce a sentence under AS 28.35.028.

(Adopted by SCO 4 October 4, 1959; amended by SCO 30 effective February 1, 1961; amended by SCO 49 effective January 1, 1963; by SCO 98 effective September 16, 1968; by SCO 319 effective August 16, 1978; by SCO 426 effective August 1, 1980; by SCO 477 effective August 17, 1981; by SCO 554 effective April 4, 1983; and by SCO 644 effective September 15, 1985; by SCO 822 effective August 1, 1987; by SCO 974 effective January 15, 1990; SCO 979 effective August 28, 1989; by SCO 1240 effective July 15, 1996; by SCO 1341 effective September 10, 1998; by SCO 1661 effective April 15, 2008; and by SCO 1620 effective nunc pro tunc to June 9, 2006)

Note: Paragraphs (c) and (d) of Criminal Rule 35 were added by ch. 59, § 28, SLA 1989.

Note: Ch. 79 § 25 SLA 1992, effective September 14, 1992, has the effect of amending Criminal Rule 35(b)(2). This legislation added AS 12.55.125(j) which allows a defendant sentenced to a mandatory 99-year term of imprisonment under AS 12.55.125(a) to apply for a modification or reduction of sentence after serving one-half of the mandatory term without consideration of good time earned under AS 33.20.010.

Note to SCO 1240: Ch. 79 §§ 29-31 SLA 1995, effective July 1, 1995, repealed and reenacted paragraphs (a) and (b) of Criminal Rule 35 and added paragraphs (e) and (f). Sections 1, 2, and 5 of this supreme court order are adopted for the sole reason that the legislature has mandated the amendments.

Sec. 42 of ch. 79 SLA 1995 includes the following statement regarding the applicability of the changes to Criminal Rule 35: "Notwithstanding Rule 35, Alaska Rules of Criminal Procedure, as amended in secs. 29–31 of this Act, the trial court, under Rule 35(b), as amended by the Act, may reduce the sentence of a defendant sentenced before the effective date of this section if the defendant took an appeal and the sentence reduction occurs within 120 days of the day that jurisdiction is returned to the trial court under Rule 507(b), Alaska Rules of Appellate Procedure, unless the defendant petitions the United States Supreme Court for certiorari, in which case the 120 days commences on the day that the Supreme Court denies relief."

Ch. 7 § 6 SLA 1996, effective June 27, 1996, has the effect of amending Criminal Rule 35(b) as revised by the legislature in 1995. Ch. 7 § 6 SLA 1996 amends AS 12.55.125(j) to allow a defendant sentenced to a mandatory 99-year term of imprisonment under AS 12.55.125(a) to apply once for a modification or reduction of sentence after serving one-half of the mandatory term without consideration of good time earned under AS 33.20.010. It also amends AS 12.55.125(j) to allow a defendant sentenced to a definite term of imprisonment under AS 12.55.125(l) to apply once for a modification or reduction of sentence after serving the greater of one-half the definite term or 30 years.

Note to SCO 1341: Paragraph (g) of Criminal Rule 35 was added by § 12 ch. 95 SLA 1998. Section 5 of this order is adopted for the sole reason that the legislature has mandated the amendment.

Note: Ch. 64 SLA 2001, adds a new section to the uncodified laws of the State of Alaska concerning therapeutic courts for alcohol- and drug-addicted offenders. According to §4 of the Act, §1(h) of the Act has the effect of amending Criminal Rule 35 by allowing a court to consider and reduce a criminal sentence outside of the time periods currently provided in the rule.

Note: Chapter 56 SLA 2006 (HB 441) enacted changes relating to criminal sentencing and court-ordered treatment programs for certain offenses. According to section 8 of the Act, AS 28.35.028(b), added by section 3 of the Act, has the effect of amending Criminal Rule 35 by allowing a court to consider and reduce a criminal sentence outside of the time periods currently provided by that rule.

Cross References

(b) **CROSS REFERENCE:** AS 12.75.010

(c) **CROSS REFERENCE:** AS 12.55.080; AS 12.55.090

Rule 35.1. Post-Conviction Procedure.

(a) **Scope.** A person who has been convicted of or sentenced for a crime may institute a proceeding for post-conviction relief under AS 12.72.010–12.72.040 if the person claims:

(1) that the conviction or the sentence was in violation of the constitution of the United States or the constitution or laws of Alaska;

(2) that the court was without jurisdiction to impose sentence;

(3) that a prior conviction has been set aside and the prior conviction was used as a statutorily required enhancement of the sentence imposed;

(4) that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

(5) that the applicant's sentence has expired, that the applicant's probation, parole or conditional release has been unlawfully revoked, or that the applicant is otherwise unlawfully held in custody or other restraint;

(6) that the conviction or sentence is otherwise subject to collateral attack upon any ground or alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding, or remedy;

(7) that

(A) there has been a significant change in law, whether substantive or procedural, applied in the process leading to the applicant's conviction or sentence;

(B) the change in law was not reasonably foreseeable by a judge or a competent attorney;

(C) it is appropriate to retroactively apply the change in law because the change in law requires observance of procedures without which the likelihood of an accurate and fair conviction is seriously diminished; and

(D) the failure to retroactively apply the change in law would result in a fundamental miscarriage of justice, which is established by demonstrating that, had the change in law been in effect at the time of the applicant's trial, a reasonable trier of fact would have a reasonable doubt as to the guilt of the applicant;

(8) that the applicant should be allowed to withdraw a plea of guilty or nolo contendere in order to correct manifest injustice as set out in Criminal Rule 11(h); or

(9) that the applicant was not afforded effective assistance of counsel at trial or on direct appeal.

(b) **Not a Substitute for Remedies in Trial Court—Replaces All Other Remedies for Challenging the Validity of a Sentence.** This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or direct review of the sentence or conviction. It is intended to provide a standard procedure for accomplishing the objectives of all of the constitutional, statutory or common law writs.

(c) **Commencement of Proceedings—Filing—Service.** A proceeding is commenced by filing an application with the clerk at the court location where the underlying conviction is filed. Application forms will be furnished by the clerk of court. An application must be filed within the time limitations set out in AS 12.72.020 or AS 12.72.025. The clerk shall open a new file for the application, promptly bring it to the attention of the court and give a copy to the prosecuting attorney.

(d) **Application—Contents.** The application shall (1) identify the proceedings in which the applicant was convicted, (2) state the date shown in the clerk's certificate of distribution on the judgment complained of, (3) state the sentence complained of and the date of sentencing, (4) specifically set forth the grounds upon which the application is based, and (5) clearly state the relief desired. If the application challenges a Department of Corrections or Board of Parole decision, the application shall (1) identify the specific nature of the proceedings or challenged decision, (2) state the date of the proceedings or decision, (3) specifically set forth the facts and legal grounds upon which the application is based, and (4) clearly state the relief desired. Facts within the personal knowledge of the applicant shall be set out separately from other allegations of facts and shall be under oath. Affidavits, records, or other evidence supporting its allegations shall be attached to the application or the application shall recite why they are not attached. The application shall identify all previous proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from the conviction or sentence including any previous applications for post-conviction relief. Argument, citations and discussion of authorities are unnecessary. Applications which are incomplete shall be returned to the applicant for completion.

(e) **Indigent Applicant.**

(1) If the applicant is indigent, filing fees shall be paid under the provisions of AS 09.19 and counsel shall be appointed consistent with AS 18.85.100 to assist the applicant.

(2) Within 60 days of an attorney's appointment on behalf of an indigent applicant, the attorney shall file with the court and serve on the prosecuting attorney

(A) a statement that the litigation will proceed on the claims alleged in the application filed by the applicant; or

(B) an amended application for post-conviction relief; or

(C) a certificate that the attorney

(i) does not have a conflict of interest;

(ii) has reviewed the facts of the underlying proceeding or action challenged in the application, and the pertinent law;

(iii) has consulted with the applicant and, if appropriate, with trial counsel; and

(iv) has determined that the claims presented in the application have no arguable merit and that the applicant has no other colorable claims for post-conviction relief.

(3) The certificate described in subparagraph (e)(2)(C) shall include a full description of

(A) the claims the attorney has considered;

(B) the materials the attorney has reviewed;

(C) the investigations the attorney has conducted; and

(D) the reasons why the attorney has concluded that all of the applicant's potential claims have no arguable merit.

(f) **Pleadings and Judgment on Pleadings.**

(1) The state shall file an answer or a motion within 45 days of service of an original, amended, or supplemental application filed by counsel or by an applicant who elects to proceed without counsel, or of a notice of intent to proceed on the original application under (e)(2)(A) of this rule. The applicant shall have 30 days to file an opposition, and the state shall have 15 days to file a reply. The motion, opposition, and reply may be supported by affidavit. At any time prior to entry of judgment the court may grant leave to withdraw the

application. The court may make appropriate orders for amendment of the application or any pleading or motion, for pleading over, for filing further pleadings or motions, or for extending the time of the filing of any pleading. In considering a pro se application the court shall consider substance and disregard defects of form, but a pro se applicant will be held to the same burden of proof and persuasion as an applicant proceeding with counsel. If the application is not accompanied by the record of the proceedings challenged therein, the respondent may file with its answer the record or portions thereof that are material to the questions raised in the application.

(2) If appointed counsel has filed a certificate under (e)(2)(C) of this rule, and it appears to the court that the applicant is not entitled to relief, the court shall indicate to the parties its intention to permit counsel to withdraw and dismiss the application and its reasons for so doing. The applicant and the prosecuting attorney shall be given an opportunity to reply to the proposed withdrawal and dismissal. If the applicant files a response and the court finds that the application does not present a colorable claim, or if the applicant does not file a response, the court shall permit counsel to withdraw and order the application dismissed. If the court finds that the application presents a colorable claim, the court may grant leave to file an amended application or direct that the proceedings otherwise continue.

(3) The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

(g) **Hearing—Evidence—Order.** The application shall be heard in the court in which the underlying criminal case was heard. The application may be heard before any judge of that court, but if the sentencing judge is available, the case shall be initially assigned to that judge. An electronic recording of the proceeding shall be made. All rules and statutes applicable in civil proceedings, including pretrial and discovery procedures are available to the parties except that Alaska Rule of Civil Procedure Rule 26(a)(1)-(4) does not apply to post-conviction relief proceedings. The court may receive proof by affidavits, depositions, oral testimony, or other evidence. Unless otherwise required by statute or constitution, the applicant bears the burden of proving all factual assertions by clear and convincing evidence. The court may order the applicant brought before it for the hearing or allow the applicant to participate telephonically or by video conferencing. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. The order made by the court is a final judgment.

(h) **Expedited Consideration.** An applicant may move for expedited consideration of the application for post-conviction relief. The motion must comply with Civil Rule 77(g).

(Added by SCO 822 effective August 1, 1987; amended by SCO 1153 effective July 15, 1994; by SCO 1186 effective July 15, 1995; by SCO 1242 effective July 15, 1996; by SCO 1273 effective July 15, 1997; by SCO 1303 effective January 15, 1998; by SCO 1625 effective April 16, 2007; by SCO 1668 effective April 15, 2008; by SCO 1670 effective July 1, 2008; by SCO 1733 effective July 1, 2010; and by SCO 1838 effective October 15, 2014)

Note to SCO 1242: Criminal Rule 35.1 was amended by ch. 79 §§ 32-39 SLA 1995. Sections 4 through 10 of this order are adopted for the sole reason that the legislature has mandated the amendments.

Note (effective nunc pro tunc to July 1, 2008): Chapter 75 SLA 2008 (SB 265), effective July 1, 2008, enacted extensive changes to various criminal statutes. According to section 42 of the Act, AS 12.72.020(a) and (b) as amended by sections 26 and 27, and the provisions of AS 12.72.020(d), as added by section 28, have effect of amending Criminal Rule 35.1 by restricting the authority of a court to hear certain applications, claims, or proceedings for post-conviction relief and by prescribing a procedure for a court to determine if an application, claim, or proceeding may be considered.

Note: Note: Chapter 20 SLA 2010 (SB 110), effective July 1, 2010, enacted changes relating to post-conviction relief procedures. According to section 14 of the Act, AS 12.73, added by section 6 of the Act, has the effect of amending Alaska Rule of Criminal Procedure 35.1.

Rule 35.2. Discharge and Set-Aside of Conviction.

(a) Where the court has suspended imposition of sentence, the defendant has completed the probationary term without imposition of sentence and no petition to revoke probation is pending, the court shall discharge the defendant from probation. At the time discharge is entered, which shall occur 30 days after defendant's probationary term has expired, or at such later time as the court for cause may direct, the court shall consider whether the conviction should be set-aside. If the court determines that the conviction should be set-aside, it shall issue a certificate to that effect to the defendant. If the court determines that the conviction should not be set-aside, it shall set forth with specificity its reasons for that decision.

(b) The court shall notify the state at least 20 days prior to the expiration of defendant's probationary term that the court will consider whether to discharge the defendant from probation and to set aside the defendant's conviction. In the event any party opposes discharge or set-aside of the conviction, that party shall file a motion with appropriate support not less than 20 days prior to the time discharge is to be entered pursuant to paragraph (a). The defendant must be served with a copy of any such motion and have an opportunity to respond. A copy of the motion also must be mailed to defendant's last attorney of record. Any party, or the court on its own motion, may set the matter for hearing.

(c) In the event that no party has filed a motion opposing set-aside of the conviction, the court may refuse to set-aside the conviction only after affording the defendant notice and an opportunity to be heard. Notice must be served on the defendant and a copy mailed to defendant's last attorney of record.

(Added by SCO 901 effective January 15, 1989)

Rule 36. Clerical Mistakes.

Clerical mistakes in judgments, orders or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the court at any time and after such notice, if any, as the court orders. For purposes of this rule, the record includes electronic information maintained about the case.

(Adopted by SCO 4 October 4, 1959; amended by SCO 1622 effective October 15, 2006)

PART VIII. SPECIAL PROCEEDINGS

Rule 37. Search and Seizure.

(a) **Search Warrant Issuance and Contents.**

(1) A search warrant authorized by law shall issue only on affidavit sworn to before a judge or magistrate judge or any person authorized to take oaths under the law of the state, or sworn testimony taken on the record and establishing the grounds for issuing the warrant.

(2) If the judge or magistrate judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, the judge or magistrate judge shall issue a warrant identifying the property and naming or describing the person or place to be searched.

(3) The warrant shall be directed to a peace officer of the state authorized to enforce or assist in enforcing any law thereof; and

(A) shall state the ground or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof; and

(B) shall command the officer to search the person or place named for the property specified within a reasonable period not to exceed 30 days of the issuance of the warrant; and

(C) shall direct that it be served between 7:00 a.m. and 10:00 p.m., unless the issuing authority by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at other than this time; and

(D) shall designate the court, judge, or magistrate judge to whom it shall be returned.

(b) **Execution and Return with Inventory.** The warrant shall be executed and returned within 30 days after its date of issuance. However, upon sworn application made before the expiration of the initial 30 day period or any subsequent extension, the court may for good cause extend the execution period for a reasonable time not to exceed 30 days. Good cause includes protecting the confidentiality of an ongoing investigation and protecting a person working with law enforcement authorities on an investigation. The officer taking property under the warrant

(1) shall give to the person from whom or from whose premises the property was taken a copy of the warrant, a copy of the supporting affidavits, and receipt for the property taken, or

(2) shall leave the copies and the receipt at the place from which the property was taken.

The return shall be made promptly and shall be accompanied by a written inventory of any property taken as a result of the search pursuant to or in conjunction with the warrant. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be signed by the officer under the penalty of perjury pursuant to AS 09.63.020 or sworn to in front of a judge or magistrate judge, or a notary public. The judge, magistrate judge, or the court to which the return is made shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(c) **Motion for Return of Property and to Suppress Evidence.** A person aggrieved by an unlawful search and seizure may move the court in the judicial district in which the property was seized or the court in which the property may be used for the return of the property and to suppress for use as evidence anything so obtained on the ground that the property was illegally seized.

(d) **In Camera Hearing.** A person who challenges the validity of a search and seizure predicated on information gained from an informant used either in

(1) support of an application for a warrant, or

(2) as the basis of a search without warrant may move the court for disclosure of the identity of the informant pursuant to Rule 16. In the event the court determines that disclosure of the identity of the informant is not required under Rule 16, the court shall conduct an in camera recorded hearing in which it shall investigate and take evidence so as to determine whether or not a search based on the informant's information was justified. Following the in camera hearing, the court shall grant or deny the motion to suppress on the record, and shall make written findings concerning the validity of the search based on the informer's information. The written findings, together with the record of the hearing, shall be sealed, and if the validity of the search is upheld the sealed testimony and findings shall, on appeal of a conviction in which evidence of the search was admitted, be transmitted to

the court of appeals and the supreme court for automatic review of the motion to suppress.

(e) **Access to Warrant Information.**

(1) *When Records Are Sealed.* The record of proceedings under this rule and all documents related to those proceedings, including search warrants, affidavits, receipts and inventories, must be kept sealed until

(A) the warrant is identified in a charting document or in a notice filed by the prosecutor under paragraph (2),

(B) the record is ordered unsealed by the court, or

(C) four years have elapsed since the issuance of the warrant. The court may order prior release of these documents for good cause shown.

(2) *When Records are Public.* After the warrant is identified in a charging document or in a notice filed by the prosecutor, the record of proceedings and all related documents shall be open to public inspection unless the court, for good cause shown, orders that the documents remain sealed for a further period. The initial charging document in all prosecutions must be accompanied by a listing of the numbers of all warrants issued in relation to the case unless the court waives this requirement for good cause shown. The prosecutor shall file notice of subsequent warrants issued in relation to the case once executed.

(3) *When Records Are Confidential.* If four years have elapsed since the issuance of the warrant and no charges related to the warrant have been filed, the record of proceedings and all related documents shall be unsealed and shall thereafter be deemed "confidential" as defined in the Administrative Rules and Bulletins. For good cause shown, the court may delay the unsealing.

(4) *Protection of Victim and Witness Information.* The court will provide access to the record of proceedings and related documents to defense counsel upon request. In accordance with AS 12.61.120(a), defense counsel shall not disclose the address and telephone number of a victim or witness to the defendant. If the defendant is proceeding without counsel and requests access to the records, the court shall protect the address and telephone number of a victim or witness as provided in AS 12.61.120(b).

(Adopted by SCO 4 October 4, 1959; amended by SCO 49 effective January 1, 1963: by Chapter 17 SLA 1969 effective June 25, 1969; by SCO 157 effective February 15, 1973; by SCO 505 effective April 16, 1982; by SCO 645 effective September 15, 1985; by SCO 784 effective March 15, 1987; by SCO 882 effective July 15, 1988; by SCO 968 effective July 15, 1989; by SCO 1149 effective July 15, 1994; by SCO 1153 effective July 15, 1994; by SCO 1389 effective April 15, 2000; by SCO 1553 effective October 15, 2004; by SCO 1626 effective April 16, 2007; by SCO 1670 effective July 1, 2008; by SCO 1710 effective May 14, 2009; by SCO 1829 effective October 15, 2014; by SCO 1836 effective October 15, 2014; and by SCO 1900 effective April 15, 2017)

Note: The Administrative Bulletin defining "confidential" and "sealed" is Administrative Bulletin No. 48, Standard 6. The definitions are also set out in Administrative Rule 37.5(c)(4) and (5). Administrative Bulletin 53, Section IV, discusses how information made confidential by the Victims' Rights Act is protected after the search warrants are no longer confidential under this rule.

Note: Ch. 75 SLA 2002 (HB 106), Section 4, adds a new section to AS 06.01 relating to the confidentiality of depositor and customer records at banking and other financial institutions. According to Section 56 of the Act, AS 06.01.028(b) has the effect of changing Civil Rule 45, Criminal Rules 17 and 37, and Alaska Bar Rule 24 by requiring certain court orders compelling disclosure of records to provide for reimbursement of a financial institution's reasonable costs of complying with the order.

Notes (effective nunc pro tunc to July 1, 2008): Chapter 75, section 41, SLA 2008 (SB 265), effective July 1, 2008, amended Criminal Rule 37(b) relating to the execution of search warrants, as reflected in section 1 of this Order. The changes to Criminal Rule 37(b) are adopted for the sole reason that the legislature has mandated the amendments.

Editor's Note: Section 43, Chapter 143, Session Laws of Alaska 1982, provides that "AS 12.35.015, added by sec. 18 of this Act [Chapter 143, Session Laws of Alaska 1982], has the effect of changing Rule 37, Rules of Criminal Procedure, by allowing search warrants to be issued upon sworn oral testimony communicated by telephone or other appropriate means."

Cross References

(a) **CROSS REFERENCE:** AS 12.35.010; AS 12.35.020

(b) **CROSS REFERENCE:** AS 12.36

PART IX. GENERAL PROVISIONS

Rule 38. Presence of the Defendant.

Rule 38. Presence of the Defendant.

(a) **Presence Required.** A defendant charged with a felony offense shall be present at a felony first appearance, an arraignment, any hearing where evidence will be presented, a change of plea hearing, at every stage of trial, including the impaneling of the jury and return of the verdict, at a sentencing hearing, and at a hearing on an adjudication or disposition for a petition to revoke probation.

(1) The defendant shall be physically present for every hearing at which evidence will be presented and all stages of the trial including the impaneling of the jury and return of the verdict; but

(2) Unless Rule 38.2 applies, the defendant may elect to be present by telephone or by videoconference at any other proceeding, subject to the approval of the court.

(b) **Presence Not Required.** A defendant need not be present in the following situations:

(1) In felony prosecutions, the court may, with the written consent of the defendant, permit the absence of the defendant for all hearings not listed in subsection (a) of this rule;

(2) In prosecutions for minor offenses or misdemeanors, the court may, with the written consent of the defendant, conduct all hearings, including arraignment, plea, trial, and imposition of sentence, in the defendant's absence. A defendant's consent to allow the entry of a guilty or no contest plea, trial, or sentencing to proceed in the defendant's absence must be approved by the court in advance of the proceeding;

(3) An organization as defined in AS 11.81.900(b) may appear by counsel for all purposes; and

(4) The defendant's presence is not required at a hearing on reduction of sentence under Rule 35(a).

(c) **Continued Presence Not Required.** A trial may continue without the presence of a defendant if the defendant is voluntarily absent after the start of the trial or the defendant has engaged in conduct during the trial justifying exclusion from the courtroom.

(d) **Hearing Notice.** The court shall provide a notice to a defendant of the date, time, and place of a scheduled hearing at which the defendant is required to appear, in a form and manner established by the court.

(e) **Hearing Reminder.** In addition to the notice required under (d) of this rule, the court shall provide a reminder notification to a defendant who is not in custody and to the Department of Corrections at least 48 hours prior to a scheduled hearing at which the defendant is required to appear regarding the date, time, and place of the scheduled hearing and the potential consequences of failure to appear, in a form and manner established by the court.

(f) **Effect of Hearing Reminder.** If a defendant received actual notice of a hearing, whether oral or written and whether to the defendant's attorney or to the defendant personally, then failure to receive a hearing reminder under subsection (e) of this rule is not a defense to the defendant's failure to appear at the hearing.

(Adopted by SCO 4 October 4, 1959; amended by SCO 157 effective February 15, 1973; by SCO 1153 effective July 15, 1994; rescinded and readopted by SCO 1914 effective October 16, 2017; amended by SCO 1939 effective January 1, 2019; by SCO 1941 effective January 1, 2019 and by SCO 1951 nunc pro tunc July 9, 2019)

Note: Chapter 36, SLA 2016 (SB 91) enacted a number of changes relating to criminal procedure. Section 178 of the Act added a new subsection (d) requiring the court to notify the defendant of the hearing date, time, and place for a required appearance. Section 178 of the Act requires the court to also send a reminder notice for that hearing, at least 48 hours in advance, to a defendant not in custody and to the Department of Corrections and include the potential consequences of failure to appear. This rule change is adopted for the sole reason that the legislature has mandated the amendment.

Rule 38.1. Telephonic Participation in Criminal Cases.

(a) In any proceeding at which the defendant's presence is required under Criminal Rule 38(a), as modified by Rule 38.2, the defendant may waive the right to be present and request to participate by telephone. The defendant's waiver of the right to be physically present may be obtained orally on the record or in writing. If Rule 5(g)(2) applies, no waiver from the defendant is required. The court may allow telephonic participation of one or more parties, counsel or the judge at any proceeding in its discretion. The court may allow telephonic participation of witnesses at bail hearings, omnibus hearings, probation revocation hearings or at trial with the consent of the prosecution and the defendant. The court may allow telephonic participation of witnesses at other hearings in its discretion.

(b) The provisions of AS 12.35.015 shall govern the issuance of search warrants by telephone.

(c) The provisions of Criminal Rule 6(u) govern telephonic participation in grand jury proceedings.

(Amended by SCO 622 effective June 15, 1985; by SCO 897 effective July 15, 1988; by SCO 960 effective July 15, 1989; by SCO 1115 effective January 15, 1993; by SCO 1161 effective July 15, 1994; and by SCO 1883 effective July 1, 2016)

Rule 38.2. Videoconference Appearance by Defendant.

(a) The Administrative Director of the Alaska Court System, after consultation with the presiding judge, Public Defender Agency, Attorney General's Office, Department of Public Safety, and Department of Corrections, may approve systems allowing judges to provide for the appearance by a defendant at certain criminal proceedings by way of contemporaneous two-way videoconference equipment in lieu of the physical presence of the defendant in the courtroom. Any approved system must provide for a procedure by which the defendant may confer with the defendant's attorney in private.

(b) In those court locations in which an approved system is in place, in-custody defendants shall appear by way of contemporaneous two-way videoconference for arraignment, pleas, and non-evidentiary bail reviews in traffic and misdemeanor cases; and initial appearance hearings, non-evidentiary bail reviews, and not guilty plea arraignments in felony cases, unless otherwise ordered for cause stated by the presiding judge. With the defendant's consent, sentencings may be done by way of contemporaneous two-way videoconference in traffic and misdemeanor cases. Notwithstanding Criminal Rule 38(a)(2), the court may order a defendant to appear by contemporaneous two-way videoconference at any other hearings.

In any particular case, the trial court may order that the defendant be transported to court for court proceedings if the

trial judge finds that the defendant's rights would be prejudiced by use of the system.

(c) Facsimile telecopy orders issued in proceedings conducted under this rule are acceptable as originals for the purposes of release or detention by correctional officers.

(d) Nothing in this rule diminishes any other existing right of a criminal defendant.

(Added by SCO 719 effective August 1, 1986; amended by SCO 863 effective July 15, 1988; and by SCO 1951 nunc pro tunc July 9, 2019)

Note: Chapter 4, FSSLA 2019 (HB 49) enacted a number of changes relating to criminal procedure. Sections 136 and 137 of the Act amended paragraphs (a) and (b) to replace "television" with "contemporaneous two-way videoconference." Section 137 also added a provision that the court may order the defendant to appear by contemporaneous two-way videoconference at any other hearing. This rule change is adopted for the sole reason that the legislature has mandated the amendment.

Rule 38.3. Video Conference Testimony.

(a) **In General.** In every trial, the testimony of witnesses shall be taken in open court, unless otherwise provided by statute or rule.

(b) **Testimony by Video Conference.** The parties may agree to take testimony from a witness by contemporaneous two-way video conference presented in open court. Absent the parties' agreement, the court may, at the court's discretion, authorize the contemporaneous two-way conference testimony at trial of a witness only if

(1) the requesting party establishes that testimony by two-way video conference is necessary to further an important public policy;

(2) the requesting party establishes that the witness is unavailable; and

(3) the testimony given is under oath and subject to cross-examination.

(c) **Procedures for Taking Video Conference Testimony.** If the trial court authorizes video conference testimony under (b) of this rule, it shall determine the procedures for taking the contemporaneous two-way video conference testimony. The parties, the court, the trier of fact, and the public must be able to see and hear the witness; and the witness must see and hear the courtroom proceedings, including the defendant, as if the witness were sitting in the courtroom's witness stand. The video conference technician shall be the only person in the presence of the witness unless the court, at the court's discretion, determines that another person may be present. Any person present with the witness must be identified.

(d) **Definitions.**

(1) *Contemporaneous Two-Way Video Conference.* Contemporaneous two-way video conference means a conference among people at different places by means of transmitted audio and video signals. It includes all communication technologies that allow two or more places to interact by two-way video and audio transmissions simultaneously.

(2) *Unavailable.* In this rule, a witness is unavailable if

(A) by clear and convincing evidence the court finds under Rule 804(a)(4) or (5), Alaska Rules of Evidence, or Rule 15(e)(4), Alaska Rule of Criminal Procedure, that the witness is unavailable;

(B) by clear and convincing evidence the court finds that under the circumstances the witness is unavailable; or

(C) the parties agree that the witness is unavailable.

(Added by SCO 1789 effective July 1, 2012)

Note: Chapter 1, section 26, TSSLA 2012 (HB 359), effective July 1, 2012, added Criminal Rule 38.3 relating to testimony by video conference, as reflected in section 1 of this Order. Criminal Rule 38.3 is adopted for the sole reason that the legislature has mandated the new rule.

Rule 39. Appointment of Counsel.

(a) **Informing Defendant of Right to Counsel.** The court shall advise a defendant who appears without counsel for arraignment, change of plea, or trial of the right to be represented by counsel, and ask if the defendant desires the aid of counsel. The court shall not allow a defendant to proceed without an attorney unless the defendant understands the benefits of counsel and knowingly waives the right to counsel.

(b) **Appointment of Counsel for Persons Financially Unable to Employ Counsel.**

(1) If a defendant desires the aid of counsel but claims a financial inability to employ counsel, the court or its designee shall determine whether the defendant is eligible for court-appointed counsel under Criminal Rule 39.1.

(2) Before the court appoints counsel for an indigent defendant at public expense, the court shall advise the defendant that the defendant will be ordered to repay the prosecuting authority for the cost of appointed counsel, in accordance with paragraph (d) of this rule, if the defendant is convicted of an offense. The court may enter such orders as appear reasonably necessary to prevent the defendant from dissipating assets to avoid payment of this cost.

(3) If the court or its designee determines that a defendant is eligible for court-appointed counsel under Criminal Rule 39.1, the court shall appoint counsel pursuant to Administrative Rule 12 and notify counsel of the appointment.

(4) In the absence of a request by a defendant otherwise entitled to appointment of counsel, the court shall appoint counsel unless the court finds that the defendant understands

the benefits of counsel and knowingly waives the right to counsel.

(5) If the trial court denies a defendant's request for appointed counsel, the defendant may request review of this decision by the presiding judge of the judicial district by filing a motion with the trial court within three days after the date of notice, as defined in Criminal Rule 32.3(c), of the denial. The trial court shall forward the motion, relevant materials from the court file, and an electronic recording of any relevant proceedings to the presiding judge. The presiding judge or his or her designee shall issue a decision within three days of receipt of these materials.

(c) ***Costs of Appointed Counsel.***

(1) *Entry of Judgment.*

(A) At the time of sentencing, revocation of probation, denial of a motion to withdraw plea, and denial of an application brought under Criminal Rule 35.1, the court shall inquire whether there is good cause why the court should not enter judgment for the cost of appointed counsel in the amount set out in subsection (d) of this rule. If no one asserts good cause to reduce the amount called for in subsection (d), the court shall enter judgment against the defendant in that amount. If it is alleged that there is good cause to reduce the normal amount, the court may either decide the issue at that time and enter judgment accordingly or schedule another hearing to consider the issue.

(B) If the court finds that the actual cost of appointed counsel is less than the amount of payment called for in subsection (d), the court shall not enter judgment in an amount greater than the actual cost of counsel.

(C) The judgment must be in writing. A copy of the judgment must be served on the defendant. The judgment bears interest at the rate specified in AS 09.30.070(a) from the date judgment is entered. The court shall order the defendant to apply for permanent fund dividends every year in which the defendant qualifies for the dividend until the judgment is paid in full.

(2) *Collection.*

(A) The judgment has the same force and effect as a judgment in a civil action in favor of the prosecuting authority and is subject to execution.

(B) All proceedings to enforce the judgment shall be in accordance with the statutes and court rules applicable to civil judgments. The judgment is not enforceable by contempt. Payment of the judgment may not be made a condition of a defendant's probation. Default or failure to pay the judgment may not affect or reduce the rendering of services on appeal or any other phase of a defendant's case in any way. A defendant does not have a right to be represented by appointed counsel in connection with proceedings under paragraph 39(c) or any proceedings to collect the judgment.

(C) Upon showing of financial hardship, the court shall allow a defendant subject to a judgment under this rule to make payments under a repayment schedule. A defendant may petition the court at any time for remission, reduction or deferral of the unpaid portion of the judgment. The court may remit or reduce the balance owing on the judgment or change the method of payment if the payment would impose manifest hardship on the defendant or the defendant's immediate family.

(D) Notwithstanding section 39(c)(2)(B), a defendant may be held in contempt for failing to comply with an order under this rule to apply for a permanent fund dividend.

(3) *Appeal.*

(A) If the defendant appeals the conviction, enforcement of the judgment may be stayed by the trial court or the appellate court upon such terms as the court deems proper.

(B) If the defendant's conviction is reversed, the clerk shall vacate the judgment and order the prosecuting authority to repay all sums paid in satisfaction of the judgment, plus interest at the rate specified in AS 09.30.070(a).

(d) **Schedule of Costs.** Except for good cause shown as provided in paragraph (c)(1), the following schedules govern the assessment of costs of appointed counsel under subsection (c). If a defendant is convicted of more than one offense in a single dispositive court proceeding, costs shall be based on the most serious offense of which the defendant is convicted. If a defendant is otherwise convicted of more than one offense, costs shall be separately assessed for each conviction. For good cause shown, the court may waive the schedule of costs and assess fees up to the actual cost of appointed counsel, including actual expenses.

Misdemeanors

Trial	$500.00
Change of plea	200.00
Post-conviction relief or contested probation revocation proceedings in the trial court	250.00

Felonies

	Class B & C	**Class A and Unclassified (Except Murder)**	**Murder in the 1st and 2nd Degrees**
Trial	$1,500.00	$2,500.00	$5,000.00
Change of plea after substantive motion work and hearing and before trial commences	1,000.00	1,500.00	2,500.00
Change of plea post-indictment but prior to substantive motion work and hearing	500.00	1,000.00	2,000.00

Change of plea prior to indictment	250.00	500.00	750.00
Post-conviction relief or probation revocation proceeding in trial court	250.00	500.00	750.00

(e) **Review of Defendant's Financial Condition.**

(1) The court may review a defendant's financial status at any time after appointment of counsel to determine (A) whether the defendant continues to be eligible for court-appointed counsel under Criminal Rule 39.1; or (B) whether the defendant was eligible for court-appointed counsel when the appointment was made.

(2) If the court determines that a defendant is no longer eligible for court-appointed counsel under Criminal Rule 39.1, the court may

(A) terminate the appointment; or

(B) continue the appointment and, at the conclusion of the criminal proceedings against the defendant in the trial court, enter judgment against the defendant for the actual cost of appointed counsel, including actual expenses, from the date of the change in the defendant's financial status through the conclusion of the trial court proceedings.

(3) If the court determines that a defendant was not eligible for court-appointed counsel when the appointment was made, the court may

(A) terminate the appointment and enter judgment against the defendant for the actual costs of appointed counsel, including actual expenses, from the date of appointment through the date of termination; or

(B) continue the appointment and, at the conclusion of the criminal proceedings against the defendant in the trial court, enter judgment against the defendant for the actual cost of appointed counsel from the date of the appointment through the conclusion of the trial court proceedings.

(4) A defendant may request review of the court's decision to terminate the appointment according to the procedure set out in subparagraph 39(b)(5).

(5) Judgment may be entered against a defendant under this paragraph regardless of whether the defendant is convicted of an offense.

(Adopted by SCO 4 October 4, 1959; amended by SCO 90 effective July 24, 1967: by SCO 157 effective February 15, 1973; by Amendment No. 4 to SCO 157 dated March 12, 1973; by SCO 187 effective July 2, 1974; by SCO 328 effective January 1, 1979; by SCO 448 effective November 24 1980; by SCO 677 effective June 15, 1986; and by SCO 888 effective July 15, 1988; rescinded and re-promulgated by SCO 1088 effective July 1, 1992; amended by SCO 1139 effective July 1, 1993; by SCO 1145 effective October 1, 1993; by SCO 1351 effective May 15, 1999; by SCO 1555 effective October 15, 2004; and by SCO 1566 effective May 15, 2005)

Dissent to SCO 1088:

RABINOWITZ, Chief Justice, with whom COMPTON, Justice, joins, dissenting:

I am not persuaded that either existing Criminal Rule 39, or Appellate Rule 209, requires amendment. I think it can be safely predicted that these amendments will have a chilling effect on an indigent defendant's obtaining the services of appointed counsel as well as on an indigent defendant's decision whether or not to seek review or to appeal.

Rule 39.1. Determining Eligibility for Court-Appointed Counsel.

(a) **Scope of Application.** This rule specifies the procedure courts shall follow to assess whether a defendant is eligible for court-appointed counsel in a criminal case.

(b) **Eligibility for Appointment.**[1]

(1) *Standard.* A defendant is eligible for court-appointed counsel if the court finds that the total financial resources available to the defendant are not sufficient to pay allowable household expenses and the likely cost of private representation through trial.

(2) *Exception.* The court may determine that a defendant is ineligible for court-appointed counsel under AS 18.85.170(4) if the defendant has disposed of assets in order to qualify for appointed counsel.

(c) **Financial Resources Defined.**

(1) *Resources to be Considered.* In assessing the defendant's ability to pay the likely cost of private representation through trial, the court shall consider all resources available to the defendant, including all sources of expected income, cash, the value of assets readily convertible to cash, and credit or borrowing ability.

(2) *Parents' Resources.* If the defendant is a minor or an adult who cannot live independently, the court shall consider the resources of both the defendant and the defendant's parents, unless the parents were victims of the alleged offense or the court finds other good cause to treat their resources as being unavailable to the defendant.

(3) *Income.* Parents' Resources. Income includes all categories of income listed in Section II, Parts A and B of the Commentary to Civil Rule 90.3, including permanent fund dividends.

(4) *Cash.* Cash includes cash on hand and accounts in financial institutions. All savings should be considered, except where the use of the savings would deprive the defendant or the defendant's family of food, clothing, shelter, or necessary medical care.

(5) *Assets.* The court shall consider the value of all assets that are readily convertible to cash, other than health aids,

clothing, and ordinary household furnishings. With the following exceptions, in valuing an asset, the court shall consider either the amount the defendant would realize if the asset were sold or the amount the defendant could borrow using the asset as collateral, whichever is greater.

(A) The court shall consider the loan value of tools and equipment essential to employment or to subsistence activity. Tools and equipment are essential only if the defendant could not earn a living or provide basic necessities without them. If the defendant cannot borrow against these assets while continuing to have use of them, the court shall disregard their value in calculating the defendant's available resources.

(B) In valuing the defendant's principal residence, the court shall consider the entire loan value or the amount of the sale value that exceeds the homestead exemption allowed under the Alaska Exemptions Act.[2] If the defendant cannot borrow against the residence and would realize less than the homestead exemption amount if the residence were sold, the court shall disregard the value of the residence in calculating the defendant's available resources.

(C) In assessing the loan value of essential tools and equipment and the principal residence, the court shall consider only the amount the defendant can realistically afford to repay.

(6) *Credit.* Available credit includes amounts available on credit cards and amounts that can be borrowed against life insurance policies or from pension or savings plans. In assessing available credit, the court shall consider only the amount the defendant can realistically afford to repay.

(d) **Likely Cost of Private Representation.**

(1) For purposes of this rule, the following amounts represent the likely cost of private representation through trial:

	Estimated Total Cost of Representation
Misdemeanor	$ 2,000
C Felony	5,000
B Felony	7,500
A or Unclassified Felony	20,000

(2) The court may adjust these amounts under the following circumstances:

(A) If the court finds that the scheduled amount differs from the amount charged by local attorneys, the court may use the amount charged locally.

(B) If the court finds that no local attorneys are available to handle the case, the court may adjust the scheduled amount to include the additional fees and travel costs that an out-of-town attorney would charge.

(C) If the court finds that the case has special characteristics that are likely to increase the cost of private representation, such as the need for expert witnesses, special investigations, or expensive tests, the court may adjust the scheduled amount to include this additional expense.

(3) In assessing a defendant's ability to pay the likely cost of private representation, the court should assume that at least 50 percent of the likely fee must be paid immediately and that the total fee must be paid within four months.

(e) **Determining Eligibility.** The court or its designee shall determine whether a defendant is eligible for court-appointed counsel by placing the defendant under oath and asking about the defendant's financial status, or by requiring the defendant to complete a signed sworn financial statement, subject to penalties for perjury. A defendant who requests appointed counsel must execute a general waiver authorizing the release of financial information to the court as required by AS 18.85.120.

(f) **Presumptive Eligibility.** The court may appoint counsel without further inquiry if:

(1) the defendant currently receives public assistance benefits through a state or federal program for indigent persons, such as Aid to Families with Dependent Children, the Alaska Temporary Assistance Program, Adult Public Assistance, General Relief, Food Stamps, Medicaid, or Supplemental Security Income (SSI);

(2) counsel was appointed for the defendant within the past twelve months based on an examination of the defendant's financial circumstances, and the defendant's financial condition has not significantly improved; or

(3) the gross annual income available to the defendant is less than the adjusted federal poverty guidelines amount for the defendant's household size, and other financial resources (cash, assets, and credit) available to the defendant are worth less than 50 percent of the amount shown in (d)(1) (the likely cost of private representation through trial).

(g) **Other Eligibility.** If the court does not find that the defendant is presumptively eligible under paragraph (f), the court shall conduct an inquiry sufficient to determine whether the defendant is eligible for court-appointed counsel under the standard stated in paragraph (b). The court may make this determination based on the information then available to the court or, when appropriate, may

(1) require the defendant to submit a completed financial resources affidavit with supporting documentation of income;

(2) require the defendant to submit information or documentation concerning particular assets or expenses;

(3) require the defendant to appear at a representation hearing or a pretrial services interview; or

(4) require the defendant to make reasonable efforts to retain private counsel and to report these efforts to the court orally or in writing.

(h) **Allowable Household Expenses.**

(1) *Allowable Expenses.* The following household expenses are allowable to the extent they are reasonable:

(A) housing;

(B) utilities;

(C) food;

(D) health care;

(E) child care;

(F) insurance;

(G) transportation (for one vehicle for each person whose income is considered);

(H) minimum loan and credit card payments; and

(I) mandatory child support and other court-imposed obligations; and

(J) other expenses that the court deems essential.

(2) *Alternative to Calculating Actual Expenses*. As an alternative to calculating actual household expenses, the court may assume that these expenses are approximately equal to the adjusted federal poverty guidelines amount for the defendant's household size.

(3) *Expenses Paid by Other Persons*. The expenses described in (h)(1) and (h)(2) are allowable only to the extent they are paid (or were supposed to be paid) by the defendant. If another person, such as a spouse, relative, or roommate, pays some or all of the household expenses, the court shall disregard the portion of the expenses paid by that person. If the defendant is married, the court should assume, absent a showing of good cause, that each spouse pays an amount proportionate to that spouse's relative income.

(i) **Adjusted Federal Poverty Guidelines.** The "adjusted federal poverty guidelines amount" is the federal poverty guidelines amount for Alaska increased by the geographic cost-of-living adjustment established in AS 39.27.020 for the court location nearest the defendant's residence.

(j) **Responsibilities of Administrative Director.** The administrative director shall

(1) publish annually an administrative bulletin specifying the adjusted federal poverty guidelines amount for each court location;[3] and

(2) periodically review the efficacy of the appointment procedure established by this rule.

(Adopted by SCO 1351 effective May 15, 1999; and amended by SCO 1788 effective June 19, 2012.)

Editor's notes.

Notes

[1] AS 18.85.170(4) defines "indigent person" for purposes of public defender appointments as "a person who, at the time need is determined, does not have sufficient assets, credit, or other means to provide for payment of an attorney and all other necessary expenses of representation without depriving the party or the party's dependents of food, clothing, or shelter and who has not disposed of any assets since the commission of the offense with the intent or for the purpose of establishing eligibility for assistance under this chapter."

[2] For the current homestead exemption amount, **See** 8 AAC 95.030. This Department of Labor regulation, rather than AS 09.38.010, establishes the amount of the homestead exemption. **See** AS 09.38.115.

[3] **See** Admin. Bulletin 65

Note (effective nunc pro tunc to June 19, 2012): Chapter 72, section 6, SLA 2012 (SB 135), effective June 19, 2012, amended Criminal Rule 39.1(e) relating to the appointment of counsel for persons accused of crimes, as reflected in section 2 of this Order. The changes to Criminal Rule 39.1(e) are adopted for the sole reason that the legislature has mandated the amendments.

Rule 40. Time.

(a) **Computation.** Except as otherwise specifically provided in these rules, in computing any period of time, the day of the act or event from which the designated period of time begins to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When a period of time prescribed or allowed is less than seven days, not counting any period for mailing added under subsection (d) of this rule, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

(b) **Enlargement.** When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion:

(1) With or without motion or notice, order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or

(2) Upon motion permit the act to be done after the expiration of the specified period if the failure to act was the result of excusable neglect; but the court may not enlarge the period for taking any action under Rules 33, 34 and 35 except as otherwise provided in those rules, or the period for taking an appeal.

(c) **Unaffected by Expiration of Term.** The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the expiration of a term of court. The expiration of a term of court in no way affects the power of a court to do any act in a criminal proceeding.

(d) **Additional Time After Service or Distribution by Mail.** Whenever a party has the right or is required to act within a prescribed period after the service or distribution of a document, and the document is served or distributed by mail,

three calendar days shall be added to the prescribed period. However, no additional time shall be added if a court order specifies a particular calendar date by which an act must occur.

(Adopted by SCO 4 October 4, 1959; amended by SCO 157 effective February 15, 1973; by SCO 273 effective June 15, 1977; by SCO 661 effective March 15, 1986; by SCO 1007 effective January 15, 1990; by SCO 1126 effective July 15, 1993; by SCO 1639 effective October 15, 2007; by SCO 1694 effective October 15, 2009; and by SCO 1875 effective July 1, 2016)

Note: Ch. 77 SLA 2002 (HB157), Section 2, adds new Chapter 26 to Title 6 of the Alaska Statutes, concerning providers of fiduciary services. According to Section 9 of the Act, AS 06.26.760(b)(2) has the effect of amending Criminal Rule 40 by postponing the deadlines set in the Alaska Rules of Criminal Procedure for the filing of documents by a trust company in a criminal action when the Department of Community and Economic Development has taken possession of the trust company.

Note: SCO 1875 amends Civil Rule 6(a), Criminal Rule 40(a), and Appellate Rule 502(a) on a temporary basis as follows:

> Any filing that is due on a day that the court is closed for either a full day or a partial day will be considered timely filed if it is filed by close of business on the next regular business day.

Court closures will be announced on the Alaska Court System website at http://courts.alaska.gov/.

Rule 41. Bail.

(a) **Admission to Bail.** The defendant in a criminal proceeding is entitled to be admitted to bail pursuant to AS 12.30.006–12.30.080.

(b) **Types of Bonds.** The court may require:

(1) the execution of an unsecured appearance bond or an unsecured performance bond in an amount specified, under the criteria set forth in AS 12.30.011;

(2) the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash, of a sum not to exceed 10 percent of the amount of the bond;

(3) the execution of a bail bond with sufficient solvent sureties or the deposit of cash; or

(4) the execution of a performance bond in a specified amount and the deposit in the registry of the court of cash.

(c) **Separate Bonds.**

(1) If a performance bond is required, it must be enforced separately from any appearance or bail bond. Appearance in court may not be a condition of a performance bond. A Court may not order that an appearance bond be concurrent with an appearance bond in a pending case unless the surety who posted the first appearance bond approves.

(2) The court may not change a performance or appearance bail requirement without agreement by the surety, unless

(A) the surety waives the requirement for agreement in advance and in writing; or

(B) the court, in writing, finds that the change in the condition of bail poses no increase in risk of loss to the surety and the court sets out in writing the reason for finding that there is no increase in the risk of loss to the surety.

(d) **Misdemeanor Bail Schedule.**

(1) The presiding judge of each judicial district may adopt, under Administrative Rule 46, a misdemeanor bail schedule for use in each community within that district. Before adopting a schedule for a community, the presiding judge shall consult with the judicial officers in that community who regularly set bail in misdemeanor cases.

(2) Any order adopting a misdemeanor bail schedule must provide that the arresting police agency may apply to a judicial officer for a different bail. The order must also provide that a judicial officer must be contacted at the defendant's request if the defendant is immediately unable to post the scheduled amount in any case in which circumstances exist indicating that protection of the public and the defendant's appearance at subsequent proceedings can be reasonably assured by one of the following:

(A) release on personal recognizance;

(B) release on other appropriate conditions;

(C) the execution of an unsecured appearance bond in an amount equal to or less than the scheduled bail amount, and the deposit in cash or other security of not more than 10 percent of the amount of the bond; or

(D) the execution of a bail bond in an amount less than the scheduled bail amount, secured by cash or other solvent sureties; or

(E) the execution of a performance bond.

(3) A misdemeanor bail schedule may not be set for crimes involving domestic violence as defined in AS 18.66.990 or for the crime of stalking under AS 11.41.270.

(e) **Other Bail Schedules.** No bail schedule shall be established for felonies.

(f) **Prosecuting Attorney—Appearance and Notice.** The prosecuting attorney may appear and be heard in all proceedings relating to bail. The judge or magistrate judge may require that notice of such proceedings be given the prosecuting attorney.

(g) **Surrender of Defendant.** At any time before forfeiture of the undertaking or the cash deposit in lieu thereof, the sureties on the undertaking or the owner of the deposit may surrender the defendant to the custody of a peace officer or the defendant may surrender personally to the officer. There shall

be delivered to the officer at the time of surrender a certified copy of the undertaking or a certificate as to the cash deposit executed by the clerk of court. The peace officer shall thereupon detain the defendant in custody as upon a commitment and acknowledge the surrender by a written certificate.

(h) **Appearance and Bail Bonds.**

(1) *Judgment of Forfeiture.* If the person released on bail on the giving or pledging of security fails to appear before a court or a judicial officer as required, the judge or magistrate judge before whom the person released was to appear shall forfeit the security. The clerk may sign the judgment of forfeiture if directed to do so on the record in the particular proceeding by the judge. However, the judgment of forfeiture may not be enforced until a hearing is held pursuant to subparagraph (h)(3) or, if no hearing is requested, until 30 days after the date of notice of the judgment of forfeiture. Nothing in this subparagraph shall interfere with the issuance of a summons or bench warrant for a person who fails to appear as required before a court or judicial officer.

(2) *Notice of Forfeiture.* The clerk shall send notice of the judgment of forfeiture to the defendant, defendant's attorney and the person giving or pledging the security at their last known addresses. The notice must state that a hearing will be held on the forfeiture if timely requested pursuant to subparagraph (h)(3).

(3) *Hearing.* If requested by the defendant or person giving or pledging the security within 30 days of the date of notice of the forfeiture, the court shall hold a hearing to determine whether the defendant's failure to appear was willful. The state, the defendant, the defense attorney, and the person giving or pledging the security have the right to be heard at this hearing. The court shall set aside the judgment of forfeiture if it is proven by a preponderance of the evidence that the failure to appear was not willful. The court may set aside the judgment of forfeiture if the court concludes that justice does not require the enforcement of the judgment. An appeal may be taken from the judgment of forfeiture in the manner of other appeals.

(4) *Remission.* Within one year after entry of judgment of forfeiture, a person who has given or pledged security may apply to the court for a remission, either in whole or in part, based on the return of the defendant with the assistance of the person who gave or pledged security or upon such other extraordinary circumstances as justice requires. The conditions of remission may include payment of expenses incurred for enforcement of the forfeiture and for securing the return of the defendant to custody.

(5) *Exoneration.* When the condition of the bond has been satisfied or the forfeiture thereof has been remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.

(6) *Enforcement.* Execution shall issue on judgments of forfeiture in the same manner as on other judgments for the payment of money.

(i) **Performance Bonds.**

(1) *Exoneration.* When the defendant has met all of the conditions of the bond, the court shall exonerate the bond and release any security to the person giving or pledging the security.

(2) *Petition for Forfeiture.* At any time prior to exoneration, the prosecuting attorney may file a petition for forfeiture with the court alleging that the defendant violated one or more of the conditions of the performance bond. The petition shall set forth the allegations and shall be supported by an affidavit. The prosecuting attorney shall serve copies of the petition and affidavit on the defendant, defendant's attorney, and the person giving or pledging the security at their last known addresses.

(3) *Notice of Intent to Contest.* The defendant or any person giving or pledging the security shall have 30 days from the date of the petition for forfeiture in which to file a written notice of an intent to contest the forfeiture. The notice shall be served on the prosecuting attorney. If the notice is filed by the defendant, it shall also be served on any person giving or pledging the security. If the notice is filed by a person giving or pledging security, it shall also be served on the defendant and the defendant's attorney. If no notice is filed, the court shall deem the allegations admitted and shall forfeit the security.

(4) *Hearing.* If the defendant or the person giving or pledging the security gives notice that the forfeiture is contested, the court shall schedule a hearing within 45 days of the filing of the notice. However, if the defendant has been charged with the offense of violation of a condition of release under state or municipal law, or has been charged with a new criminal offense, the court shall not hold a hearing on the petition for forfeiture until the criminal charges are resolved.

(5) *Disposition.* The prosecuting attorney has the burden of proving by a preponderance of the evidence that the defendant violated a condition of the performance bond knowingly or with reckless disregard for the fact that the conduct violated the condition. If the court finds that the defendant violated a condition of the performance bond, then the court may forfeit all or part of the security. If the defendant is found guilty or enters a plea of guilty to the crime of violation of a condition of release under state or municipal law, or to a new criminal offense, the court shall consider the finding or plea conclusive evidence that the defendant violated these conditions of the performance bond. An appeal may be taken from the judgment of forfeiture in the manner of other appeals.

(6) *No Effect on Bail.* Nothing in this rule is intended to affect procedures regarding bail release or remand.

(Adopted by SCO 4 October 4, 1959; amended by SCO 79 effective February 1, 1966; by SCO 90 effective July 24, 1967; amended by SCO 157 effective February 15, 1973; by SCO

821 effective August 1, 1987; by SCO 864 effective July 15, 1988; by SCO 1153 effective July 15, 1994; by SCO 1267 effective July 15, 1997; by SCO 1419 effective February 8, 2001; by SCO 1732 effective nunc pro tunc to July 1, 2010; and by SCO 1829 effective October 15, 2014; by SCO 1913 effective January 1, 2018; by SCO 1935 nunc pro tunc January 1, 2018; and by SCO 1939 nunc pro tunc June 15, 2018.)

Note: Chapter 19, sections 25, 26, and 27, SLA 2010 (HB 324), effective July 1, 2010, amended Criminal Rule 41(a), (b), and (c) relating to release before trial, before sentence, and pending appeal, as reflected in section 1 of this Order. The changes to Criminal Rule 41 are adopted for the sole reason that the legislature has mandated the amendments.

Note: Chapter 36, SLA 2016 (SB 91) enacted a number of changes relating to criminal procedure. According to section 180(a) of the Act, AS 12.30.011, as repealed and reenacted by section 59 of the Act, has the effect of changing Criminal Rule 41, effective January 1, 2018, by changing and establishing release conditions for certain defendants, providing for recommendations by pretrial services officers of release conditions based on a pretrial risk assessment score, providing that a court shall order the release of a person under certain circumstances, and providing new procedures for use of appearance, surety, and performance bonds.

According to section 180(e) of the Act, AS 33.07, enacted by section 117 of the Act, has the effect of changing Criminal Rule 41, effective January 1, 2018, by establishing pretrial services officers and procedures and duties for pretrial services officers as officers of the superior and district courts, for the purposes of performing risk assessments and making pretrial recommendations to the court regarding a person's pretrial release and bail conditions.

Note: Chapter 22, SLA 2018 (HB 312) enacted a number of changes to criminal laws, including laws affecting bail. According to section 29 of the Act, AS 12.30.011, as amended by sections 11 - 15 of the Act, have the effect of changing Criminal Rule 41, effective June 15, 2018, by changing the conditions of release for certain defendants.

Rule 42. Motions.

(a) **Generally.** An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally.

(b) **Supporting Evidence—Memorandum—Order.** There shall be served and filed with the motion:

(1) legible copies of all photographs and other documentary evidence which the moving party intends to submit in support of the motion;

(2) a brief, complete written statement of the reasons in support of the motion, which shall include a memorandum of the legal points and authorities upon which the moving party will rely and a detailed statement of material facts which can be proved by the party; and

(3) an appropriate order for the court's signature in the event that the motion is granted.

(c) **Response.** Each party responding to the motion shall either:

(1) serve and file a written statement that the party does not oppose the motion; or

(2) serve and file a brief but complete written statement of its reasons for opposing the motion, which shall include (A) an answering memorandum of legal points and authorities, (B) a detailed statement of the material facts disputed by the responding party, as well as any additional material facts that can be provided by the party, (C) legible copies of all photographs and other documentary evidence upon which the party intends to rely, and (D) an appropriate order for the court's signature in the event that the motion is denied.

Unless a different time is specified by these rules or is ordered by the court, responses to motions shall be filed within 10 days after service of the motion.

(d) **Reply.** Reply and supplemental materials and memoranda, if any, may be served and filed by the moving party within five days of the date of service of the opposition to the motion.

(e) **Evidentiary Hearing.**

(1) If either party desires that an evidentiary hearing be held, that party shall request an evidentiary hearing on or before the date a reply is due. The party shall submit a proposed order with the request.

(2) The request for evidentiary hearing shall set forth an estimate of time needed for all parties to submit evidence.

(3) If material issues of fact are not presented in the pleadings, the court need not hold an evidentiary hearing. The amount of time to be allowed for evidentiary hearing shall be set by the court.

(4) Where appropriate, the court shall make factual findings in accordance with Rule 12(d).

(f) **Oral Argument.**

(1) If either party desires oral argument on the motion, that party shall request a hearing on or before the date a reply was due. The party shall submit a proposed order with the request.

(2) The request for hearing shall set forth an estimate of time needed of argument.

(3) Oral argument shall be held only in the discretion of the court. The amount of time to be allowed for oral argument shall be set by the court. If an evidentiary hearing is held, oral argument will be heard at the close of the evidence, unless otherwise ordered by the court.

(g) **Combined Request and Motion.** A party may combine a request for evidentiary hearing or a request for oral argument with the principal motion. The language "Request

for Oral Argument" or "Request for Evidentiary Hearing" must appear in the title of the document.

(h) **Ruling.** The court shall rule promptly on all motions. If no opposition or statement of non-opposition has been filed, the court may determine whether the moving party has made a prima facie showing of entitlement to the relief requested without further notice to the parties. If a prima facie showing is made, the court may grant the motion. If the court denies a motion to which no opposition has been filed, the court must set forth the reasons for the denial with specificity.

(i) **Expedited Consideration.** A party may move for expedited consideration of its principal motion by filing a second motion requesting relief in less time than would normally be required for the court to issue a decision.

(1) The motion must be captioned "Motion for Expedited Consideration" and must have an appropriate order on the issue of expedited consideration attached.

(2) The motion for expedited relief must comply with other provisions of this rule.

(3) The motion for expedited consideration must include an affidavit or other evidence showing the facts which justify expedited consideration, and the date before which a decision on the principal motion is needed.

(4) The motion for expedited consideration must include proof of service; and, if the motion requests a decision before the usual time for response to the motion, must include a certificate of counsel indicating when and how the opposing party was notified of the motion, or, if the opposing party was not notified, what efforts were made to notify the opposing party and why it was not practical to notify the opposing party in a manner and at a time that a response could be made.

(5) The court may not grant the motion for expedited consideration prior to allowing the opposing party a reasonable opportunity to respond, either in person, by telephone or in writing, absent compelling reasons for a prompt decision and a showing that reasonable efforts were made to notify the opposing party of the motion for expedited consideration in time to allow a reasonable opportunity to respond.

(6) The court may not grant the principal motion prior to allowing the opposing party a reasonable opportunity to respond, either in person, by telephone or in writing, unless it clearly appears from the specific facts in the motion papers or court records that immediate and irreparable injury, loss or damage would result to the moving party before any reasonable opportunity to respond could be given.

(j) **Stipulations.** Stipulations between counsel may be submitted in support of motions, but are not binding on the court unless otherwise specifically provided by rule.

(k) **Reconsideration.** A motion to reconsider the ruling must be made within ten days after the date of notice of the ruling as defined in Criminal Rule 32.3(c). In no event shall a motion to reconsider a ruling be made more than ten days after the date of notice of the final judgment in the case.

(1) A party may move the court to reconsider a ruling previously decided if, in reaching its decision,

(A) the court has overlooked, misapplied or failed to consider a statute, decision, or principle directly controlling; or

(B) the court has overlooked or misconceived some material fact or proposition of law; or

(C) the court has overlooked or misconceived a material question in the case; or

(D) the law applied in the ruling has been subsequently changed by court decision or statute.

(2) The motion for reconsideration shall specifically state which of the grounds for reconsideration specified in the prior subparagraph exist, and shall specifically designate that portion of the ruling, the memorandum, or the record, or that particular authority, which the movant wishes the court to consider. The motion for reconsideration and supporting memorandum shall not exceed five pages.

(3) No response shall be made to a motion for reconsideration unless requested by the court, but a motion for reconsideration will ordinarily not be granted in the absence of such a request.

(4) If the motion for reconsideration has not been ruled upon by the court within 30 days from the date of the filing of the motion, or within 30 days of the date of filing of a response requested by the court, whichever is later, the motion shall be taken as denied.

(5) The court, on its own motion, may reconsider a ruling at any time not later than 10 days from the date of notice of the final judgment in the case.

(*l*) **Citation of Supplemental Authorities.** When pertinent authorities come to the attention of a party after the party's memorandum has been filed, or after oral argument but before decision, the party may promptly advise the court, by letter, with a copy to adversary counsel, setting forth the citations. There must be a reference either to the page of the memorandum or to a point argued orally to which the citations pertain, but the letter may not contain argument or explanations. Any response must be made promptly and must be similarly limited.

(m) **No Effect on Substantive Law.** Nothing in this rule should be construed as allocating the burden of pleading or production to any party.

(n) **Variations on Time Periods.** The court may vary any of the time periods established in this rule for good cause shown.

(Adopted by SCO 4, October 4, 1959; repealed and reenacted by SCO 1126 effective July 15, 1993; and amended by SCO 1576 effective December 15, 2005)

Rule 43. Dismissal and Deferred Prosecution.

(a) **By Prosecuting Attorney.**

(1) The prosecuting attorney may file a dismissal of an indictment, information or complaint and the prosecution shall thereupon terminate. Such a dismissal shall not be filed during the trial without the consent of the defendant.

(2) If the dismissal by the prosecuting attorney is the result of a plea agreement in another case, the prosecutor must include that information and the associated case number(s) in the dismissal filing. The court system will use this information to identify the cases subject to AS 22.35.030.

(b) **By Court.**

(1) If there is unnecessary delay in presenting the charge to a grand jury or in filing an information against a defendant who has been held to answer to the superior court, or if there is unnecessary delay in bringing a defendant to trial pursuant to Criminal Rule 45, the court shall dismiss the indictment, information or complaint.

(2) If the court suspends entry of judgment under AS 12.55.078 and the court finds that the person on probation has successfully completed probation, the court shall discharge the person and dismiss the case in accordance with AS 12.55.078(d).

(c) **In Furtherance of Justice.** The court may, either on its own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action, after indictment or waiver of indictment, to be dismissed. The reasons for the dismissal shall be set forth in the order.

(d) **Identity Error in Charging Document.** If the prosecution initiates or concurs with the dismissal of charges against a defendant because the named defendant was not the person whom the prosecution intended to charge with the offense, the court shall enter a written order of dismissal clearly stating that this is the reason for the dismissal.

(e) **Discharge from Custody—Exoneration of Bail.** Except as provided in AS 12.30.035, when dismissal is ordered pursuant to this rule the defendant shall be discharged from custody, or if admitted to bail, the bail exonerated, or money deposited in lieu thereof refunded to the depositors.

(f) **Information To Be Included in Notice or Order of Dismissal.** A notice or order of dismissal must include the following information:

(1) the defendant's full name, including middle name or initial, if known;

(2) the defendant's date of birth, if known;

(3) the defendant's Alaska Public Safety Information Network (APSIN) identification number;

(4) the defendant's driver's license number or state identification number, if known, including the issuing state and whether the license is a commercial driver's license;

(5) the arrest tracking number (ATN) on the Criminal Case Intake and Disposition (CCID) form for each offense being addressed;

(6) the three-digit charge tracking number assigned on the CCID form for each offense being addressed; and

(7) the statute, regulation, or ordinance, as identified in the Uniform Offense Citation Table,** corresponding to each offense being addressed. Regulations not listed in the Uniform Offense Citation Table must be cited by the regulation number; and

(8) the specific rule subsection or paragraph under which the charged offense is dismissed.

(g) **Information To Be Included in Notice of Deferred Prosecution.** A notice of deferred prosecution must include the defendant and offense information required by subsection (f) of this rule.

**The Uniform Offense Citation table was developed by the Department of Public Safety. Changes to the table must be approved by the Department of Law or the appropriate municipal prosecuting authority. It is available at http://www.dps.alaska.gov/statewide/uoct/.

(Adopted by SCO 4 October 4, 1959; amended by SCO 49 effective January 1, 1963; amended by SCO 157 effective February 15, 1973; by SCO 1153 effective July 15, 1994; by SCO 1293 effective January 15, 1998; by SCO 1614 effective October 15, 2006; by SCO 1648 effective October 15, 2007; by SCO 1738 effective October 15, 2010; by SCO 1886 effective nunc pro tunc July 12, 2016; and by SCO 1887 effective August 1, 2016)

Note to SCO 1886: Chapter 36, SLA 2016 (SB 91) enacted a number of changes relating to criminal procedure. According to section 180(c) of the Act, AS 12.55.078, enacted by section 77 of the Act, has the effect of changing Criminal Rule 43, effective July 12, 2016, by creating an alternate procedure (suspended entry of judgment) for when the court may dismiss charges.

Cross References

(a) **CROSS REFERENCE:** AS 12.20.020; AS 12.20.050

Rule 43.1. Clerk's Authority.

Unless otherwise ordered by the court, the clerk is authorized to quash or recall warrants, summonses, and orders to show cause where it is uncontroverted or clearly proven that:

(a) The defendant has paid the fine or restitution for which the warrant, summons, or order to show cause was issued;

(b) The defendant has posted the bail listed on the warrant; or

(c) The charging document for which the warrant, summons, or order to show cause was issued has been dismissed or withdrawn.

(Adopted by SCO 1079 effective January 15, 1992)

Rule 44. Service and Filing of Papers.

(a) **Service—When Required.** Written motions other than those which are heard ex parte, written notices, and similar papers shall be served upon the adverse parties.

(b) **Service—How Made.** Whenever under these rules or by an order of the court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions.

(c) **Distribution of Orders and Judgments.** The clerk shall distribute to each party affected a copy of every order or judgment entered in the manner provided in civil actions. Every order and judgment shall include a clerk's certificate of distribution as defined in Criminal Rule 32.3(d).

(d) **Filing.** Papers required to be served shall be filed with the clerk at the court location where the case is filed unless otherwise directed by the court. Papers shall be filed in the manner provided in the Alaska Rules of Civil Procedure.

(e) **Proof of Service.** Proof of service of all papers required by law or these rules to be served shall be filed in the clerk's office promptly and in any event before action is to be taken therein by the court or the parties. The proof shall show the day and manner of service, and may be written acknowledgment of service, by certificate of an attorney, an authorized agent of the attorney, or a pro se defendant, by return of any peace officer, or by affidavit of any other person who served the papers.

(f) **Form.** Pleadings and other filings shall contain a certificate indicating whether the document contains information which is confidential under AS 12.61.100 through 12.61.150. The administrative director shall specify the form and content of the certificate and may exempt types of documents from the certificate requirement. In other respects, the form of pleadings and other filings shall be as provided in Alaska Rules of Civil Procedure 76.

(g) **Filings in Microfilmed Cases.** If a motion, petition or request is filed in a case that has been microfilmed and destroyed pursuant to the Records Retention Schedule, the attorney or party must attach (1) a copy of any relevant orders, judgments and other documents necessary for the court's ruling, and (2) either proof of notice pursuant to Civil Rule 5(g) or an affidavit that Rule 5(g) is not applicable. If such documents are not attached, the clerk will notify counsel that such documents must be submitted before the court will consider the motion, petition or request.

(Adopted by SCO 4 October 4, 1959; amended by SCO 471 effective June 1, 1981; by SCO 554 effective April 4, 1983; by SCO 685 effective May 1, 1986; by SCO 694 effective September 15, 1986; by SCO 1081 effective nunc pro tunc September 17, 1991; by SCO 1121 effective July 15, 1993; by SCO 1153 effective July 15, 1994; and by SCO 1862 effective January 1, 2016)

Note: The form of the certificate required by Criminal Rule 44(f) is specified in Administrative Bulletin 53. The certificate may be included in the document being filed or attached as a separate page. Parties may use Criminal Form CR-101 to satisfy the certificate requirement. It is available in clerk's offices.

Rule 45. Speedy Trial.

(a) **Priorities in Scheduling Criminal Cases.** The court shall provide for placing criminal proceedings upon appropriate calendars. Preference shall be given to criminal proceedings and the trial of defendants in custody shall be given preference over other criminal cases. The court shall consider the circumstances of the victim, particularly a victim of advanced age or extreme youth, in setting the trial date. 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.

(b) **Speedy Trial Time Limits.** A defendant charged with a felony, a misdemeanor, or a violation shall be tried within 120 days from the time set forth in paragraph (c) of this rule.

(c) **When Time Commences to Run.**

(1) *Generally.* Except as provided in subparagraphs (2) through (5), the time for trial shall begin running, without demand by the defendant, from the date the charging document is served upon the defendant.

(2) *Refiling of Original Charge.* If a charge is dismissed by the prosecution, the refiling of the charge shall not extend the time. If the charge is dismissed upon motion of the defendant, the time for trial shall begin running from the date of service of the second charge.

(3) *New Charges.* The Rule 45 commencement date for a new charge arising out of the same criminal episode shall be the same as the commencement date for the original charge, unless the evidence on which the new charge is based was not available to the prosecution on the commencement date for the original charge. When the new charge is based on new evidence and the prosecution has acted with due diligence in investigating and bringing the new charge, the Rule 45 commencement date for the original charge shall be the same as the commencement date for the new charge.

(4) *Mistrial, New Trial or Remand.* If the defendant is to be tried again following a mistrial, an order for a new trial, or an appeal or collateral attack, the time for trial shall run from the date of mistrial, order granting a new trial, or remand.

(5) *Withdrawal of Plea, or Notice That Defendant No Longer Intends to Enter a Plea of Guilty or Nolo Contendere.* When a defendant withdraws a plea of guilty or nolo

contendere, the time for trial shall run from the date of the order permitting the withdrawal. When a defendant who previously informed the court of an intention to plead guilty or nolo contendere notifies the court that the defendant now intends to proceed to trial, the time for trial shall run from the date of that notification.

(6) *Minor Offenses*. In cases involving minor offenses as defined in Minor Offense Rule 2, the defendant must be tried within 120 days from the date the defendant's request for trial is received by the court or the municipality, whichever occurs first.

(d) **Excluded Periods.** The following periods shall be excluded in computing the time for trial:

(1) The period of delay resulting from other proceedings concerning the defendant, including but not limited to motions to dismiss or suppress, examinations and hearings on competency, the period during which the defendant is incompetent to stand trial, interlocutory appeals, and trial of other charges. Except as provided by Rule 16(d)(8)(C) for defense discovery motions, no pretrial motion shall be held under advisement for more than 30 days and any time longer than 30 days shall not be considered as an excluded period.

(2) The period of delay resulting from an adjournment or continuance granted at the timely request or with the consent of the defendant and the defendant's counsel. The court shall grant such a continuance only if it is satisfied that the postponement is in the interest of justice, taking into account the public interest in the prompt disposition of criminal offenses, and after consideration of the interests of the crime victim, if known, as provided in (h) of this rule. A defendant without counsel shall not be deemed to have consented to a continuance unless the defendant has been advised by the court of the right to a speedy trial under this rule and of the effect of consent.

(3) The period of delay resulting from a continuance granted at the timely request of the prosecution, if:

(A) The continuance is granted because of the unavailability of evidence material to the state's case, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date; or

(B) The continuance is granted to allow the prosecuting attorney in a felony case additional time to prepare the state's case and additional time is justified because of the exceptional complexity of the particular case.

(4) The period of delay resulting from the absence or unavailability of the defendant. A defendant should be considered absent whenever the defendant's whereabouts are unknown and in addition the defendant is attempting to avoid apprehension or prosecution or the defendant's whereabouts cannot be determined by due diligence. A defendant should be considered unavailable whenever the defendant's whereabouts are known but the defendant's presence for trial cannot be obtained or the defendant resists being returned to the state for trial.

(5) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases, the defendant shall be granted a severance in order that the defendant may be tried within the time limits applicable to the defendant.

(6) The period of delay resulting from detention of the defendant in another jurisdiction provided the prosecuting attorney has been diligent and has made reasonable efforts to obtain the presence of the defendant for trial. When the prosecution is unable to obtain the presence of the defendant in detention, and seeks to exclude the period of detention, the prosecution shall cause a detainer to be filed with the official having custody of the defendant and request the official to advise the defendant of the detainer and to inform the defendant of the defendant's rights under this rule.

(7) Other periods of delay for good cause.

(e) **Rulings on Motions to Dismiss or Continue.** In the event the court decides any motion brought pursuant to this rule, either to continue the time for trial or to dismiss the case, the reasons underlying the decision of the court shall be set forth in full on the record.

(f) **Waiver.** Failure of a defendant represented by counsel to move for dismissal of the charges under these rules prior to plea of guilty or trial shall constitute waiver of the defendant's rights under this rule.

(g) **Absolute Discharge.** If a defendant is not brought to trial before the running of the time for trial, as extended by excluded periods, the court upon motion of the defendant shall dismiss the charge with prejudice. Such discharge bars prosecution for the offense charged and for any other lesser included offense within the offense charged.

(h) **Victim's Interest in Ruling on Motion to Continue.** Before ruling on a motion for a continuance in a case involving a victim, as defined in AS 12.55.185, the court shall consider the victim's position, if known, on the motion to continue and the effect of a continuance on the victim.

(Adopted by SCO 4 October 4, 1959; amended by SCO 131 effective September 1, 1971; by SCO 151 on March 9, 1972, nunc pro tunc as of September 1, 1971; by SCO 227 effective January 1, 1976; by SCO 240 effective February 4, 1976; by SCO 427 effective August 1, 1980; by SCO 486 effective November 16, 1981; by SCO 746 effective December 15, 1986; by SCO 932 effective January 15, 1989; by SCO 1127 effective July 15, 1993; by SCO 1153 effective July 15, 1994; by SCO 1291 effective January 15, 1998; by SCO 1383 effective April 15, 2000; by SCO 1422 effective April 15, 2001; by SCO 1788 effective June 19, 2012; by SCO 1787 effective July 1, 2012; and by SCO 1775 effective October 15, 2019)

Note (effective nunc pro tunc to June 19, 2012): Chapter 72, section 7, SLA 2012 (SB 135), effective June 19, 2012,

amended Criminal Rule 45(d)(2) relating to the rights of crime victims, as reflected in section 4 of this Order. The changes to Criminal Rule 45(d)(2) are adopted for the sole reason that the legislature has mandated the amendments.

Note (effective nunc pro tunc to June 19, 2012): Chapter 72, section 8, SLA 2012 (SB 135), effective June 19, 2012, amended Criminal Rule 45 relating to the rights of crime victims, as reflected in section 6 of this Order. The changes to Criminal Rule 45(h) are adopted for the sole reason that the legislature has mandated the amendments.

Note: Chapter 71, section 47, SLA 2012 (SB 86), effective July 1, 2012, amended Criminal Rule 45(a) relating to the protection of vulnerable adults, as reflected in section 4 of this Order. The changes to Criminal Rule 45(a) are adopted for the sole reason that the legislature has mandated the amendments.

Rule 46. Exceptions Unnecessary.

Exceptions to rulings or orders of the court are unnecessary. It is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him.

(Adopted by SCO 4 October 4, 1959; amended by SCO 1153 effective July 15, 1994)

Rule 47. Harmless Error and Plain Error.

(a) **Harmless Error.** Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) **Plain Error.** Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

(Adopted by SCO 4 October 4, 1959)

Rule 48. Regulation of Conduct in the Court Room.

The taking of photographs in the court room during the progress of judicial proceedings, or radio or television broadcasting of judicial proceedings from the court room, shall not be permitted by the court except in accordance with applicable provisions of the Administrative Rule 50.

(Adopted by SCO 4 October 4, 1959; amended by SCO 322 effective September 15, 1978; and by SCO 1158 effective July 15, 1994)

Rule 49. Records.

(a) The clerks of court shall keep such records in criminal proceedings as may be prescribed by rule or order of the supreme court or by the administrative director with the approval of the chief justice.

(b) Psychiatric and psychological reports ordered by the court under AS 12.47 are confidential as defined in Administrative Rule 37.5.

(Adopted by SCO 4 October 4, 1959; amended by SCO 1297 effective January 15, 1998; and by SCO 1928 effective October 15, 2018)

Rule 50. Attorneys.

(a) **Appearance by Counsel—Withdrawal.** In all criminal actions, counsel retained to represent the accused shall, immediately after being retained, file with the clerk a formal written appearance. The Rules of Civil Procedure relating to the withdrawal of an attorney for a party shall apply to attorneys retained to represent an accused in a criminal action. If review is sought of a final judgment in a criminal case or a final order resolving a post-conviction relief action, counsel will not be permitted to withdraw unless a different attorney has entered the case or until the notice of appeal or petition and the initial documents required to be filed under Appellate Rule 204(b), Appellate Rule 215(c), or Appellate Rule 403(h) have been accepted for filing by the clerk of the appellate courts as provided in Appellate Rule 517.1(f)(1)(A), or unless the appellate court otherwise allows.

(b) **Civil Rules to Apply.** All other provisions of the Rules of Civil Procedure relating to attorneys, regarding examining witnesses, counsel as a witness, non-resident attorneys, and disbarment and discipline, shall apply to practice in criminal actions in the courts of the state.

(c) **Penalties.** After giving the attorney reasonable notice and an opportunity to be heard, the court may impose against any attorney a fine not to exceed $500.00 for failure to comply with these rules or any other rules of court.

(Adopted by SCO 4 October 4, 1959; amended by SCO 1055 effective July 15, 1991; by SCO 1126 effective July 15, 1993; and by SCO 1868 effective April 15, 2016)

Rule 51. Procedure Not Otherwise Specified—Construction of Statutes.

These rules are designated to provide for the efficient operation of the court of the State of Alaska. If no specific procedure is prescribed by rule or statute, the court may proceed in any lawful manner not inconsistent with these rules, the constitution, and the common law.

(Adopted by SCO 4 October 4, 1959)

Rule 52. Legal Effect of Rules—Statutes Superseded.

These rules are promulgated pursuant to constitutional authority granting rule making power to the supreme court, and to the extent that they are inconsistent with any procedural provisions of any statute not enacted for the specific purpose of changing a rule, shall supersede such statute to the extent of such inconsistency.

(Adopted by SCO 4 October 4, 1959)

Rule 53. Relaxation of Rules.

These rules are designed to facilitate business and advance justice. They may be relaxed or dispensed with by the court in any case where it shall be manifest to the court that a strict adherence to them will work injustice.

(Adopted by SCO 4 October 4, 1959)

Rule 54. Process.

Process issued in all criminal actions in the superior court shall be issued, and return thereon made, in the manner prescribed by Rule 4, Rules of Civil Procedure.

(Adopted by SCO 4 October 4, 1959)

Rule 56. Definitions.

As used in these rules, unless the content otherwise requires:

(a) "Prosecuting Attorney" includes the attorney general, assistant attorneys general, deputy attorneys general and any other attorneys, legal officers and assistants charged by law with the duty of prosecuting the violation of any law, statute or ordinance.

(b) "Magistrate judge" includes magistrate judges, district judges, superior court judges and any other judicial officer authorized by law to conduct a preliminary examination of a person accused of a crime.

(c) "Presiding Judge" includes the duly-designated presiding judge of the superior court in each judicial district or, in the presiding judge's absence, the person designated presiding judge pro tem.

(d) "Offense" means conduct for which a sentence of imprisonment or payment of a fine is authorized by law.

(e) "Misdemeanor" means an offense for which a sentence of imprisonment for not more than one year may be imposed.

(f) "Violation" means:

(1) an offense as defined in AS 11.81.900(b);

(2) a traffic infraction as defined in Title 28 of the Alaska Statutes; or

(3) Any other offense under state or local law which is punishable only by a fine.

(Adopted by SCO 4 October 4, 1959; amended by SCO 157 effective February 15, 1973; by SCO 427 effective August 1, 1980; by SCO 888 effective July 15, 1988; by SCO 1153 effective July 15, 1994; by SCO 1450 effective October 15, 2001; and by SCO 1829 effective October 15, 2014)

Rule 57. Effective Date.

These rules become effective on the date to be established by order of the supreme court. They shall govern all criminal proceedings thereafter commenced and so far as just and practicable all proceedings then pending.

(Adopted by SCO 4 October 4, 1959)

Rule 58. Title.

These rules shall be known and cited as the Rules of Criminal Procedure.

(Adopted by SCO 4 October 4, 1959)