

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

In Re:

**Remote and In-Person
Hearings**

PRESIDING JUDGE
ADMINISTRATIVE ORDER 23-10

[Supreme Court Order No. 2012](#) issued on August 15, 2023 and effective November 13, 2023 established the presumptive hearing format for all hearings in the state courts of Alaska. Paragraph 3 of that order relating to criminal orders states that “the following hearings will be based on district presiding judge order:

- pre-trial conferences;
- trial/calendar call;
- pre-indictment hearings;
- discovery hearings;
- omnibus hearings.”

The purpose of this order in accordance with SCO 2012 is to “balance the needs of the parties, the demands of effective administration of justice, and the efficiencies and advantages of remote court proceedings.” In the criminal context this order is informed by the need for lawyers to be present in the courtroom for certain hearings to advise clients and ensure the timely resolution of issues and cases before the court. In addition, it is informed by the current significantly limited capacity of the Department of Corrections to facilitate telephonic or video participation in court hearings.¹ It is also informed by the desire to allow the greatest degree of flexibility possible.

¹ Should DOC eventually implement more effective telephonic access and/or video access to court hearings it may be possible to modify this order to allow for significant savings. In the absence of such capabilities, this order must favor in-person hearings for in-custody defendants.

A. The Defendant's Right to Be Present

Criminal Rule 38(a) independently requires all felony defendants to be present unless the defendant properly waives their appearance at the following hearings:²

- 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;
- at a hearing on an adjudication or disposition for a petition to revoke probation and;
- every hearing at which evidence will be presented.

SCO 2012 permits uncontested PTRP disposition by remote participation.

B. In-Person Proceedings Defined

“Presumptively remote” as that term is used in SCO 2012 refers more generally to “a proceeding conducted by audio or video, unless an alternative format is ordered by the judge.” Except as otherwise specified in Paragraph C of this order or by court order in a specific proceeding, all hearings except uncontested PTRP disposition hearings are presumptively in-person and must be attended by “all parties who can reasonably do so.”

“All parties who can reasonably do so” shall be interpreted to include attorneys and parties who are physically present in the same community where the court is located at the time of the hearing or whose driving distance to the courthouse is not more than 60 miles.³

² “Present” appears to mean “physically present” or present as authorized in Rule 38.2. Rule 38.1 makes clear that “present” as the term is used in Rule 38 does not include telephonic participation.

³ This provision includes in-custody and out-of-custody defendants unless a waiver has been obtained as required by Criminal Rule 38.1 or the court and DOC have complied with Criminal Rule 38.2 including a “procedure by which the defendant may confer with the defendant’s attorney in private.” A defendant’s custody status is not relevant to their right to be present for hearings except that two-way videoconferencing is authorized by Criminal Rule 38.2. As of the date of this order there does not appear to be any system in place at any facility that complies with the attorney

Except as specified in Paragraph D of this order or by court order in the specific case, all parties who are permitted to appear by telephone or video link under this order or SCO 2012 shall be permitted to appear remotely without additional request or notice.⁴ Defendants may also waive their appearance altogether for certain hearings by written consent to proceed as permitted by the Criminal Rules.

C. Fourth District Presiding Judge Order

The following chart is in keeping with the format of SCO 2012 and establishes the presumptive status for each hearing type:

Criminal Case Hearing Type	Format
Pre-Trial Conference	Remote
Trial Call	In-Person
First Pre-Indictment Hearing	In-Person
Second or Subsequent Pre-Indictment Hearing	Remote
Discovery Hearings	Remote
Omnibus Hearings Generally	In-Person ⁵
Out of Custody Omnibus Hearings with the Court's Permission	Remote
Any hearing in which the defendant is permitted to be absent by consent to proceed	Remote

communication requirement noted above, but should any such system be implemented it is, of course, permitted by rule for certain hearings.

⁴ This applies to all types of hearings outlined in SCO 2012, not just criminal proceedings.

⁵ Transportation for OMNI hearings is a significant departure from the current practice. A careful review of the current status of cases across the district suggests that effective remote omnibus hearings are not currently happening in many instances. Should it be possible to implement procedures for OMNI hearings similar to those required under Rule 38.2, this order would likely be modified to permit appearance by video.

D. Mandatory Attorney Presence and Permission for Remote Participation Required in Specific Instances

Attorneys shall be physically present regardless of convenience at all stages of trial.

Attorneys must request permission in advance from the assigned judge to participate in the following presumptively in-person proceedings by telephone or video conference regardless of convenience:

- Evidentiary Hearings Prior to Trial;
- All Contested Felony Sentencings; and
- A and Unclassified Felony Sentencings.

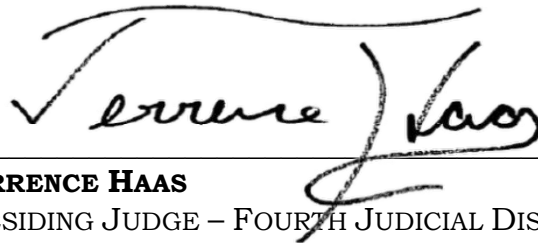
E. Transportation of Defendants for Hearings

For all hearings, including omnibus hearings, in accordance with the [“Presiding Judge’s Statewide Administrative Order Governing In-Custody Defendant Transports”](#) issued December 11, 2018,⁶ the defendant may request to be transported to the court for any hearing. The request may be made on record at a prior hearing so long as the request is made 10 days before the hearing. The judge shall make specific findings on the record relating to any such request.

Transportation for omnibus hearings shall be implemented for all omnibus hearings after December 15, 2023. All other provisions of this order are EFFECTIVE IMMEDIATELY.

IT IS SO ORDERED.

Dated November 15, 2023.



TERRENCE HAAS
PRESIDING JUDGE – FOURTH JUDICIAL DISTRICT

Distributed via email:
Chief Justice
Administrative Director
4th District Everyone
Fairbanks and Bethel DAO
PDA – OPA

⁶ Paragraphs 6 and 7(a) of this statewide order are no longer in effect.