

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 1115

Amending Criminal Rule 6 and
Criminal Rule 38.1 concerning
telephonic testimony in grand
jury proceedings.

IT IS ORDERED:

1. New subparagraph (u) is added to Criminal Rule 6 to
provide:

(u) Telephonic Testimony.

(1) A witness may participate
telephonically in grand jury proceedings if the
witness is not a victim and 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.

(4) As used in this paragraph, "victim" means a natural person against whom an offense under consideration by the grand jury has been perpetrated.

2. Criminal Rule 38.1 is amended to provide:

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 the telephone. The defendant's waiver of the right to be physically present may be obtained orally on the record or in writing. 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.

[A MOTION TO ALLOW TELEPHONIC TESTIMONY IN A GRAND JURY PROCEEDING MUST BE SUBMITTED TO THE PRESIDING JUDGE OF THE JUDICIAL DISTRICT OR THE PRESIDING JUDGE'S DESIGNEE. THE MOTION MUST BE ACCOMPANIED BY AN AFFIDAVIT OF THE PROSECUTING ATTORNEY WHICH STATES THE REASONS TELEPHONIC TESTIMONY IS REQUESTED. IF TELEPHONIC TESTIMONY IS ALLOWED, THE PROSECUTING ATTORNEY IS RESPONSIBLE FOR ENSURING THAT THE REQUIREMENTS OF CIVIL RULES 99(b)(3) ARE FOLLOWED.]

(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.

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EFFECTIVE DATE: November 12, 1992

Chief Justice Moore

Justice Rabinowitz

Justice Burke

Justice Matthews

Justice Compton