

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 1126

Amending Criminal Rules 50, 40,
12, 16, and 42 concerning motion
practice in criminal cases.

IT IS ORDERED:

1. Criminal Rule 50(b) is amended to provide:

(b) **Civil Rules to Apply.** All other provisions of the Rules of Civil Procedure relating to attorneys, regarding [APPLICATIONS TO THE COURT, STIPULATIONS,] examining witnesses, counsel as a witness, [ARGUMENTS ON MOTIONS OR HEARINGS,] non-resident attorneys, and disbarment and discipline, shall apply to practice in criminal actions in the courts of the state.

2. Paragraph (d) of Criminal Rule 40 is deleted.
3. Existing paragraph (e) of Criminal Rule 40 is relettered (d).
4. Criminal Rule 12(c) is amended to provide:

(c) **Pre-Trial Motion Date.** In misdemeanor cases, all pretrial motions listed in Rule 12(b) must be filed within 20 days after the defendant's arraignment. In felony cases, all pretrial motions listed in Rule 12(b) must be filed within 45 days after the defendant's arraignment. The court may vary these times for good cause shown. [AT THE TIME OF THE ARRAIGNMENT OR AS SOON THEREAFTER AS PRACTICABLE, THE COURT SHALL SET A TIME FOR

THE MAKING OF PRE-TRIAL MOTIONS. IN THE EVENT THAT ADDITIONAL TIME IS REQUIRED FOR HEARING THE PRE-TRIAL MOTIONS, THE REMAINING MOTIONS SHALL BE PROCESSED DURING THE OMNIBUS HEARING IN ACCORDANCE WITH RULE 16(f)(2)(iii).]

5. Paragraph (f) of Criminal Rule 16 is repealed and reenacted to provide:

(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.

6. Criminal Rule 42 is repealed and reenacted to provide:

Criminal 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 three 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.

(1) 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.

DATED: April 14, 1993

EFFECTIVE DATE: July 15, 1993

Chief Justice Moore

Justice Rabinowitz

Justice Burke

Justice Matthews

Justice Compton