

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1239

Amending Criminal Rule 15
concerning depositions.

IT IS ORDERED:

1. Paragraph (a) of Criminal Rule 15 is amended to read as follows:

(a) **When Taken.** ~~Upon order of the court for good cause shown, the testimony of a prospective witness may be taken by either party for discovery upon notice and after the deposing party has disclosed all statements, exhibits, and witness lists required by Rule 16.~~ 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.

2. Paragraph (c) of Criminal Rule 15 is amended to read as follows:

(c) **How Taken.** ~~Subject to such additional conditions as the court shall provide and except as otherwise provided in these rules a deposition shall be taken and filed in the manner provided in Civil Rules 26, 28, 29, 30, 31 and 32.~~ 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.

3. Sections 1 and 2 of this order are adopted for the sole reason that the legislature has mandated the amendments.

4. The following note is added at the end of Criminal Rule 15:

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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.

DATED: May 2, 1996

EFFECTIVE DATE: July 15, 1996

/s/
Chief Justice Compton

/s/
Justice Rabinowitz

/s/
Justice Matthews

/s/
Justice Eastaugh

/s/
Justice Fabe