

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 131

Amending Rule 45
Rules of Criminal Procedure

IT IS ORDERED:

Criminal Rule 45, Rules of Criminal Procedure, is amended to read as follows:

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.

(b) Speedy trial time limits. A defendant charged with either a felony or a misdemeanor shall be tried within four months from the time set forth in section (c).

(c) When time commences to run. The time for trial shall begin running, without demand by the defendant, as follows:

- (1) From the date the defendant is initially arraigned or from the date the charge (complaint, indictment, or information) is filed, whichever is first. The filing of subsequent charges arising out of the same conduct or the refileing of the original charge shall not extend the time, unless the evidence on which the newly filed charge is based was not available to the prosecution at the time the original charge was filed, and a showing of due diligence

Filed and entered JUN 14 1971

SUPREME COURT of the State of Alaska

[Signature]

By _____ Deputy

in securing evidence for the original charge is made by the prosecution; or

- (2) If the defendant is to be tried again following a mistrial, an order for a new trial, or an appeal or collateral attack, from the date of mistrial, order granting a new trial, or remand.

(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. No pre-trial 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 his 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. A defendant without counsel shall not be deemed to have consented to a continuance unless he has been advised by the court of his right to a speedy trial under

SCO 131
effective 6/10/71

this rule and of the effect of his 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 his whereabouts are unknown and in addition he is attempting to avoid apprehension or prosecution or his whereabouts cannot be determined by due diligence. A defendant should be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained or he resists being returned to the state for trial.
- (5) A reasonable period of delay when the defendant is joined for trial with a co-defendant 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 he may be tried within the time limits applicable to him.

(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 his 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 his 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.

(8) This rule shall become effective on September 1, 1971, and shall apply to all cases commenced after that date.

DATED: June 10, 1971.

George F. Roney
Chief Justice

John H. Dismal
Associate Justice

John A. Reberwitz
Associate Justice

Roger H. Connor
Associate Justice

James C. Quinn
Associate Justice

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