THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 157

Amendment No. 1
Amending Rules of Criminal Procedure
and Repealing Rule 18

Order No. 157 concerning Criminal Rule 18 is amended as follows:

IT IS ORDERED:

That the Rules of Criminal Procedure are amended to include Rules 18.1 and 24.1. Rule 18.1 shall supersede Rule 18, and by this amendment Rule 18 is repealed.

Rules 18.1 and 24.1 were distributed under cover of Order No. 157.

This amendment shall be effective Thursday, February 15, 1973.

DATED: January 31st, 1973.

Jay A. Rabinowitz

Roger G. Connor

James M. Fitzgerald

C. J. Boochever

Robert C. Erwin

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 157

Amendment No. 2

IT IS ORDERED that the following District Court Rules of Criminal Procedure be amended as set out in the rules attached to Order No. 157:

Rule 1. Applicability of Rules - Special Provisions.

Rule 2. Appeals to the Superior Court.

Rule 3. Review of Judgment and Sentence Other Than Appeal from Final Judgment.

These rules shall be effective Thursday, February 15, 1973.

DATED at Anchorage, Alaska, this 8th day of February, 1973.

Chief Justice

Justice

Justice

Justice

Justice

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THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 157

Amendment No. 3

IT IS ORDERED that the following District Court Rules of Criminal Procedure be amended as follows:

Rule 3 is hereby deleted.

Rule 5 is hereby redesignated Rule 3.

The designation "Rule 5" shall be retained as follows:

"Rule 5. Deleted."

This change shall be effective Thursday, February 15, 1973.

DATED at Anchorage, Alaska, this 14th Day of February, 1973.

Chief Justice

Justice

Justice

Justice

Justice

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THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 157

Rules of Criminal Procedure
Errata - Amendment No. 4

IT IS ORDERED:

That the following shall be inserted on the third line of Criminal Rule 39(b):

(i) If:

DATED: March 12, 1973.

Jay A Rabinowitz
Chief Justice

Roger H. Connor
Justice

Robert C Erwin
Justice

Justice

Justice

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THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 157

Amendment No. 5
Rules of Criminal Procedure

Amending Rule 32(c)(1)

By direction of the court, It Is ORDERED:

The words "When directed by the court" shall be deleted from line one, second sentence, which shall read: "The probation service shall make a pre-sentence investigation and report before the court imposes sentence or grants probation."

EFFECTIVE DATE: July 1, 1974.

Dated March 5, 1974

Josephine M. McS Petras
Clerk

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PART II. PRELIMINARY PROCEEDINGS

Rule 3. The Complaint.

(a) The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before any judge or magistrate, except that complaints for traffic violations or for misdemeanors where the arrest has been made without the necessity of a warrant may be signed before any person authorized by law to administer oaths.

(b) A copy of the complaint shall be served upon the defendant at the time of service of the summons, and whenever practicable, upon execution of the warrant.

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Rule 4. Warrant or Summons Upon Complaint.

(a) Issuance.

(1) Probable Cause. A warrant or summons shall be issued by a judge or magistrate only if it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it.

(2) Summons. A summons shall be issued in all cases unless the judge or magistrate has reason to believe that the defendant will not appear in response to a summons. In any case in which it is lawful for an officer to arrest a person without a warrant, he may give such person a summons instead of arresting him.

(3) Failure of Defendant to Appear After Summons. If a defendant who has been duly summoned fails to appear or if there is reasonable cause to believe that he will fail to appear, a warrant of arrest shall issue. If a defendant corporation fails to appear after having been duly summoned, a plea of not guilty shall be entered by the court if the court is empowered to try the offense for which the summons was issued and the court may proceed to trial and judgment without further process. If the court is not so empowered it shall proceed as though the defendant has appeared.

(4) Additional Warrants or Summonses. More than one warrant or summons may issue on the same complaint.

(b) Form and Contents.

(1) Warrant. The warrant shall be signed by the magistrate, and shall contain the name of the defendant or, if his name is unknown, any name or description by which the defendant can be identified with reasonable certainty, and shall describe the offense charged in the complaint. The warrant shall be directed to any peace officer or other person authorized by law to execute the warrant and shall command that the defendant be arrested and brought before the nearest available magistrate without unnecessary delay. The

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magistrate shall endorse the amount of bail upon the warrant.

(2) Summons. The summons shall be in the same form as the warrant, except that it shall summon the defendant to appear before a magistrate at the time and place stated therein, and shall inform the defendant that if he fails to appear a warrant will issue for his arrest.

(c) Execution or Service and Return.

(1) By Whom. The warrant shall be executed by any peace officer or other officer authorized by law. The summons may be served by any peace officer or by any other person authorized to serve a summons in a civil action.

(2) Territorial Limits. The warrant may be executed or the summons may be served at any place within the jurisdiction of the State of Alaska.

(3) Manner. The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon the defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or in any other manner provided for service of process in civil actions.

(4) Return. The officer executing the warrant shall make return thereof to the magistrate or other officer before whom the defendant is brought pursuant to Rule 5. At the request of the prosecuting attorney any unexecuted warrant shall be returned to the magistrate by whom it was issued and shall be cancelled by him. On or before the return day, the person upon whom the summons has been served shall make return thereof to the magistrate before whom the summons is returnable. At any time while the complaint is pending

and upon the request of the prosecuting attorney, any unexecuted and uncancelled warrant or unserved original or duplicate summons shall be re-executed or re-served.

Rule 5. Proceedings Before the Judge or Magistrate.

(a) Appearance Before Judge or Magistrate.

(1) The person arrested must in all cases be taken before the nearest available judge or magistrate without unnecessary delay. Unnecessary delay within the meaning of this section (a) is defined as a period not to exceed twenty-four hours after arrest, including Sundays and holidays.

(2) If

(i) the judge or magistrate commits the arrested person to jail for a purpose other than to serve a sentence, and

(ii) the jail is situated in a different community from the place where the judge or magistrate committed the arrested person to jail,

then the arrested person shall be taken before a judge or magistrate in the community where the jail is located within twenty-four hours of his detention in that jail

(i) in order for his bail to be reviewed, and

(ii) in order to determine if he is represented by counsel, and

(iii) in order for the counsel to be appointed, if appropriate.

(3) The responsibility for ensuring that the arrested person is taken before a judge or magistrate as specified in subsection (2) of this section (a) shall be borne equally by

(i) municipal police officers and municipal jail personnel, and by

(ii) state troopers, state jail personnel, and all other peace officers.

No distinction shall be drawn between cases in which arrest was made pursuant to a warrant and cases in which arrest was made without a warrant.

(4) Whenever the person arrested is taken for examination before a judge or magistrate other than the one who issued the warrant, the complaint and any other statement or deposition on which the warrant was granted must be furnished to the defendant and must be communicated to the judge or magistrate before whom the person arrested appears.

(5) Whenever a person arrested without a warrant is brought before a judge or magistrate, a complaint shall be filed forthwith.

(6) Judges and magistrates shall be available at all times to receive bail, and each judge and magistrate individually shall have authority to delegate this duty to the person admitting the defendant to jail, or to such other person as shall in the determination of a judge or magistrate be qualified for this purpose.

(b) Rights of Prisoner to Communicate with Attorney or Other Person. Immediately after his arrest, the prisoner shall have the right forthwith to telephone or otherwise to communicate with both his attorney and any relative or friend. Any attorney at law entitled to practice in the courts of Alaska, at the request of either the prisoner or any relative or friend of the prisoner, shall have the right forthwith to visit the prisoner in private.

(c) Statement by Judge or Magistrate - Right to Counsel - Bail. The judge or magistrate

(1) shall inform the defendant of the complaint against him and of any affidavit filed therewith, and

(2) shall require that a copy of the complaint and of any affidavit filed therewith be delivered to the defendant if this has not already been done, and

(3) shall inform the defendant

(i) of his right to retain counsel, and

(ii) of his right to request the assignment of counsel if he is unable to obtain counsel, and

(iii) of his right to have a preliminary examination, and

(4) shall inform the defendant that he is not required to make a statement and that any statement made may be used against him.

The judge or magistrate shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided by law and by these rules.

(d) Misdemeanors. If the charge against the defendant is a misdemeanor the judge or magistrate shall proceed in accordance with Rule 1 of the District Court Rules of Criminal Procedure.

(e) Felonies. If the charge against the defendant is a felony, the defendant shall not be called upon to plead, but shall be given reasonable time and opportunity to consult counsel. The judge or magistrate shall proceed as follows:

(1) Initial Determination of Probable Cause.

(i) If the defendant was arrested without a warrant, the judge or magistrate at the first appearance shall determine

(aa) from the complaint, or

(bb) from an affidavit or affidavits filed with the complaint, or

(cc) from an oral statement under oath of the arresting officer or other person which is taken down by the judge or magistrate, or recorded,

whether the arrest was made with probable cause to believe that an offense has been committed and that the defendant had committed it.

(ii) In the absence of a showing of such probable cause, the judge or magistrate shall discharge the arrested person.

(2) Right to Preliminary Examination.

(i) The judge or magistrate shall inform the defendant of his right to a preliminary examination. A defendant is entitled to a preliminary examination if he is charged with a felony for which

he has not been indicted, unless

(aa) he waives the preliminary examination, or

(bb) an information has been filed against him with his consent in the superior court.

(ii) If the defendant after having had the opportunity to consult with counsel waives preliminary examination, the judge or magistrate shall forthwith hold him to answer in the superior court.

(iii) If the defendant does not waive preliminary examination, the judge or magistrate shall schedule a preliminary examination. Such examination shall be held within a reasonable time, but in no event later than

(aa) 10 days following the initial appearance, if the defendant is in custody, or,

(bb) 20 days following the initial appearance, if the defendant is not in custody.

With the consent of the defendant and upon a showing of good cause, taking into account the public interest in prompt disposition of criminal cases, the judge or magistrate may extend the time limits specified in this subsection one or more times. In the absence of consent by the defendant, the judge or magistrate may extend these time limits only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.

Rule 5.1 Preliminary Examination.

(a) Representation by Counsel. The defendant is entitled to be represented by counsel. If the defendant cannot secure counsel, counsel shall be appointed for him.

(b) Order of Proof - Witnesses Called by the State. The state shall first present the evidence in support of its case. All witnesses called by the state shall be examined in the presence of the defendant and may be cross-examined by him or by his counsel.

(c) Witnesses Called by the Defendant. The defendant may produce and examine witnesses on his own behalf. All witnesses including the defendant should he make himself his own witness, may be cross-

examined. The production of witnesses shall be governed by Rule 17, so far as it is applicable.

(d) Evidence. At the preliminary examination, the admissibility of evidence other than written reports of experts shall be governed by Criminal Rule 26. Rulings pertaining to the admissibility of evidence shall not be binding upon any subsequent judicial proceeding.

(e) Record. The proceedings shall be electronically recorded.

(f) Exclusion of Witnesses. At the request of either party, the judge or magistrate shall exclude from the courtroom any witness of an adverse party, if at the time of the request the witness is not under examination.

(g) Discharge of the Defendant. If from the evidence, it appears that

(1) there is no probable cause to believe that an offense has been committed, or

(2) if there is probable cause to believe that an offense has been committed, but no probable cause to believe that defendant committed the offense, then

the judge or magistrate shall dismiss the complaint and discharge the defendant. The discharge of the defendant shall not preclude the state from instituting a subsequent prosecution for the same offense.

(h) Commitment of Defendant. If from the evidence it appears that there is probable cause to believe that an offense has been committed and that the defendant committed it, the judge or magistrate shall enter an order holding the defendant to answer to the charge and committing him to proper custody. The judge or magistrate shall admit the defendant to bail as provided by law and by these rules.

(i) Records. When a judge or magistrate has held a defendant to answer, he shall transmit to the clerk of the superior court of the judicial district in which the offense is triable all papers in the proceedings, any bail taken by him, and all exhibits introduced at the examination.

(j) Counsel for Complaining Witness - Counsel for Prosecution. A complaining witness may be represented by counsel at every stage of the preliminary hearing. The attorney general or some attorney authorized to act for him may appear on behalf of the State of Alaska and control the conduct of the prosecution.

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 157

Amending Rules of Criminal Procedure

IT IS ORDERED that the following Rules of Criminal Procedure be amended to read as set out in the attached rules:

Rule 3.	The Complaint.
Rule 4.	Warrant or Summons Upon Complaint.
Rule 5.	Proceedings Before the Judge or Magistrate.
Rule 5.1	Preliminary Examination.
Rule 6.	The Grand Jury.
Rule 10.	Arraignment.
Rule 11.	Pleas.
Rule 12.	Pleadings and Motions Before Trial - Defenses and Objections.
Rule 15.	Depositions.
Rule 16.	Discovery.
Rule 17.	Subpoena.
Rule 26.	Evidence.
Rule 27.	Proceedings Upon Trial - Management of Juries.
Rule 32.	Sentence and Judgment.
Rule 32.1.	Appeal From Conviction.
Rule 32.2.	Sentence Appeal.
Rule 37.	Search and Seizure.
Rule 38.	Presence of the Defendant.
Rule 39.	Appointment of Counsel.
Rule 40.	Time.
Rule 41.	Bail.
Rule 43.	Dismissal.
Rule 56.	Definitions.

These rules shall be effective Thursday, February 15, 1973.

DATED: at Anchorage, Alaska, this 22nd day of January, 1973.

CHIEF JUSTICE

ASSOCIATE JUSTICE

ASSOCIATE JUSTICE

ASSOCIATE JUSTICE

ASSOCIATE JUSTICE

Rule 6. The Grand Jury.

(a) By Whom Convened. The presiding superior court judge of the judicial district encompassing the site as specified in section (b) shall convene the grand jury.

(b) Where Grand Juries Shall Be Convened. In order to investigate crimes, the grand jury shall be convened at a place which shall be determined as follows:

(1) Designated Sites.

(i) If the offense was committed within election districts 1, 2, or 3, then the grand jury shall be convened at either Ketchikan or Sitka, Alaska.

(ii) If the offense was committed within election districts 4 or 5, then the grand jury shall be convened at Juneau, Alaska.

(iii) If the offense was committed within election districts 7 or 8, then the grand jury shall be convened at Anchorage, Alaska.

(iv) If the offense was committed within election districts 6, 9, 10 or 11, then the grand jury shall be convened at either Kenai or Kodiak, Alaska.

(v) If the offense was committed within election districts 12 or 13, then the grand jury shall be convened at Kodiak, Alaska.

(vi) If the offense was committed within election districts 15 or 17, then the grand jury shall be convened at either Nome or Fairbanks, Alaska.

(vii) If the offense was committed within election district 16, then the grand jury shall be convened at Fairbanks, Alaska.

(viii) If the offense was committed within election districts 14, 18 or 19, then the grand jury shall be convened at either Nome or Anchorage, Alaska.

For the purposes of this rule, election districts shall be those set forth in the official reapportionment map of the State of Alaska.

(2) Special Sites. The presiding judge of a judicial district shall be empowered to call a special grand jury to be convened at a site other than the site designated in the preceding subsection, if the presiding judge determines that the designation of a special site is necessary in the interest of justice.

(c) Selection of Grand Jurors. The jurors selected for service on a grand jury shall have the qualifications and shall be drawn and selected as set forth by law, with the additional provisions:

(1) jurors who serve on the grand jury shall be selected from the population within a fifty-mile radius of the place where the grand jury is convened, and

(2) the presiding judge of the superior court may with the approval of the administrative director select grand jurors at large from the judicial district in which the crime occurred.

(d) Summoning Grand Juries. At least once each year the presiding judge of the superior court in each judicial district shall order one or more grand juries to be summoned at such times as the public interest requires. The court shall direct that a sufficient number of legally qualified persons be summoned to meet this requirement. Any qualified member of the grand jury panel not designated to serve as a member of the grand jury may be placed on the petit jury panel.

(e) Oath. The following oath shall be administered by the clerk of the superior court to the persons selected for grand jury duty:

> "You and each of you as members of this grand jury for the State of Alaska, do solemnly swear that you will diligently inquire and true presentment make of all such matters as shall be given to you for consideration, or shall otherwise come to your knowledge in connection with your present service; that you will preserve the secrecy

required by law as to all proceedings had before you; that you will present no one through envy, hatred or malice, or leave any one unpresented through fear, affection, gain, reward, or hope thereof; but that you will present all things truly and impartially as they shall come to your knowledge according to the best of your understanding, so help you God."

(f) Objections to Grand Jury and to Grand Jurors.

(1) Challenges. The prosecuting attorney or a defendant who has been held to answer to a complaint charging an indictable offense may challenge the array of jurors on the ground that the grand jury was not selected, drawn or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to the jurors and shall be tried by the presiding judge summoning the grand jury.

(2) Motion to Dismiss. A motion to dismiss the indictment may be based upon objections to the array or the lack of legal qualification of an individual juror, if not previously determined upon challenge. An indictment shall not be dismissed upon the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to section (j) of this rule that a majority of the total number of grand jurors, after deducting the number not legally qualified, concurred in finding the indictment.

(g) Foreman and Deputy Foreman. The presiding judge shall appoint one of the jurors to be foreman and another to be deputy foreman. The foreman shall have power to administer oaths and affirmations and shall sign all indictments. He or another juror designated by him shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk

of the court, but the record shall not be made public except on order of the presiding judge. During the absence of the foreman, the deputy foreman shall act as foreman.

(h) Charge of the Court. When the grand jury is formed, the court shall charge the jury with written instructions, which the court deems proper, concerning the powers and duties of the grand jury.

(i) Preparing Indictments and Presentments. The prosecuting attorney shall prepare all indictments and presentments for the grand jury, and shall attend their sittings to advise them of their duties and to examine witnesses in their presence.

(j) Record of Proceedings. All proceedings before the grand jury, including the testimony of witnesses and any statements made by the prosecuting attorney or by any of the jurors, shall be electronically recorded.

(k) Who May Be Present. The prosecuting attorney, the witness under examination, interpreters when needed, and a deputy clerk of the court for the purpose of recording the proceedings may be present while the grand jury is in session. No persons other than the jurors shall be present while the grand jury is deliberating or voting.

(l) Secrecy of Proceedings and Disclosure. Disclosure of matters occurring before the grand jury, other than its deliberations and the vote of any juror, may be made to the prosecuting attorney for use in the performance of his duties. Otherwise a juror, attorney, interpreter, deputy clerk of the court or stenographer may disclose matters occurring before the grand jury only when so directed by the court preliminary to or in connection with a judicial proceeding. No obligation of secrecy may be imposed upon any person except in accordance with this rule. The court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and in that event the clerk shall seal the indictment and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.

(m) Availability of Grand Jury Record to Defendant. Upon request, a defendant shall be entitled to listen to the electronic recording of the grand jury proceedings and inspect all exhibits presented to the grand jury. Upon further request he may obtain a transcript of such proceedings and copies of such exhibits. The trial of the case shall not be delayed because of the failure of a defendant to request the transcript.

(n) Finding and Return of Indictment. An indictment may be found only upon the concurrence of a majority of the total number of jurors. If the defendant has been held to answer and a majority of jurors do not concur in finding "a true bill", the indictment shall be endorsed "not a true bill" and signed by the foreman. Whenever an indictment is found, it shall be endorsed "a true bill" and signed by the foreman. Such indictments, whichever way endorsed, shall be presented in open court and filed with the clerk where they shall remain public records. If the defendant has not been held to answer and a majority of the jurors do not concur in finding an indictment, the indictment and the minutes of the evidence in relation thereto shall be destroyed by the grand jury.

(o) Presentment.

(1) Whenever there is doubt from the evidence presented

(i) whether the facts constitute a crime, or

(ii) whether a defendant is subject to prosecution by reason of either a lapse of time or a former acquittal or conviction, then the grand jury by a concurrence of at least five members may make a presentment of the facts of the case to the court with a request for instructions on the law.

(2) The presentment shall be made by the foreman in the presence of the grand jury.

(3) The presentment shall not mention the names of individuals. The presentment shall not be filed with the court, nor shall it be kept by the court beyond the time that the grand jury is discharged.

(4) When the presentment is made the court shall give such instructions on the law as it considers necessary.

(p) Defense Witnesses. Although the grand jury has no duty to hear evidence on the behalf of the defendant, it may do so.

(q) Sufficiency of Evidence. When the grand jury has reason to believe that other available evidence will explain away the charge, it shall order such evidence to be produced and for that purpose may require the prosecuting attorney to subpoena witnesses. An indictment shall not be found nor a presentment made upon the statement of a grand juror unless such grand juror is sworn and examined as a witness. The grand jury shall find an indictment when all the evidence taken together, if unexplained or uncontradicted, would warrant a conviction of the defendant.

(r) Admissibility of Evidence. Evidence which would be legally admissible at trial shall be admissible before the grand jury. In appropriate cases, however, witnesses may be presented to summarize admissible evidence if the admissible evidence will be available at trial. Hearsay evidence shall not be presented to the grand jury absent compelling justification for its introduction. If hearsay evidence is presented to the grand jury, the reasons for its use shall be stated on the record.

(s) Discharge and Excuse. A grand jury shall serve until discharged by the presiding superior court judge of the judicial district but no grand jury may serve more than 5 months, unless for good cause such period is extended. The tenure and powers of a grand jury are not affected by the beginning or expiration of a term of court. At any time for cause shown the presiding judge may excuse a juror either temporarily or permanently, and in the latter event said judge may impanel another person in place of the juror excused.

(t) Delegation of Duties. Whenever a superior court is sitting other than where the presiding judge is sitting, the presiding judge may delegate his duties under this rule to another superior court judge.

PART IV. ARRAIGNMENT AND PREPARATION FOR TRIAL

Rule 10. Arraignment.

(a) Generally. Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to him the substance of the charge and calling on him to plead thereto. He shall be given a copy of the indictment or information before he is called upon to plead.

(b) Defendant's Name.

(1) When the defendant is arraigned he shall be informed of the name which appears in the indictment or information.

(2) The defendant shall then be given the opportunity to declare his true name.

(i) If the defendant states that another name is his true name, the court shall direct entry thereof to be made in the record. Subsequent proceedings on the indictment or information shall be had against the defendant by both the declared true name and the name which appears on the indictment or information.

(ii) If the defendant declares no other name to be his true name, the case against the defendant shall proceed under the name which appears in the indictment or information.

(c) Peremptory Disqualification of the Judge. At the arraignment any defendant who has waived counsel, shall be advised that he may peremptorily disqualify the judge to whom his case has been assigned for trial on the grounds that he believes he cannot obtain a fair and impartial trial before that judge.

Rule 11. Pleas.

(a) Alternatives. A defendant may plead not guilty, guilty or nolo contendere. If a defendant refuses to plead, stands mute, or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(b) Extension of Time for Pleading. If the defendant requests an extension of time for entering his plea, then the court shall allow the defendant until the next day following the arraignment, or until such further time as the court considers reasonable, to plead to the indictment or information.

(c) Pleas of Guilty or Nolo Contendere. The court shall not accept a plea of guilty or nolo contendere from a defendant without first addressing the defendant personally and

(1) determining that he understands the nature of the charge; and

(2) informing him that by his plea of guilty or nolo contendere he waives his right to trial by jury or trial by a judge and the right to be confronted with the witnesses against him; and

(3) informing him:

(i) of the mandatory minimum punishment, if any, and the maximum possible punishment provided by the statute defining the offense to which the plea is offered, and

(ii) that the defendant has the right to plead not guilty or to persist in that plea if it has already been made, or to plead guilty.

(d) Insuring That the Plea is Voluntary. The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire of the prosecuting attorney, defense counsel and the defendant himself to determine whether the defendant's willingness to plead guilty or

nolo contendere results from prior discussions between the attorney for the state and the defendant or his attorney.

(e) Plea Agreement Procedure.

(1) In General. The attorney for the state and the attorney for the defendant may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the attorney for the state will move for dismissal of other charges, or will recommend or not oppose the imposition of a particular sentence, or will do both.

(2) Notice of Such Agreement. If the parties reach a plea agreement whereby a plea of guilty or nolo contendere will be entered by the defendant in the expectation that a specific sentence will be imposed or other charges before the court will be dismissed, then the court shall require the disclosure of the agreement in open court at the time the plea is offered. Once the agreement has been disclosed the court may accept or reject the agreement, or may defer its decision to accept or reject the agreement until receipt of a presentence report.

(3) Acceptance of Plea. If the court accepts the plea agreement, the court shall inform the defendant that the judgment and sentence will embody either the disposition provided for in the plea agreement or another disposition more favorable to the defendant.

(4) Rejection of Plea. If the court rejects the plea agreement, the court shall inform the parties of this fact and advise the defendant personally in open court that the court is not bound by the plea agreement. The court shall then afford the defendant the opportunity to withdraw his plea, and advise the defendant that if he persists in his plea of guilty or nolo contendere, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(5) Time of Plea Agreement Procedure. Except for good cause shown, notification to the court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the court.

(6) Inadmissibility of Plea Discussions in Other Proceedings. Neither the plea discussion nor any resulting agreement, plea, or judgment shall be admissible against the defendant in any criminal or civil action or administrative proceeding if:

(i) a plea discussion does not result in a plea of guilty, or

(ii) a plea of guilty is not accepted or is withdrawn, or

(iii) judgment on a plea of guilty is reversed on direct or collateral review.

(f) Determining the Accuracy of Plea. The court shall not enter a judgment upon a plea of guilty without first being satisfied that there is a reasonable basis for the plea.

(g) Record. An electronic recording shall be made of the entire proceedings except that no recording need be made of pleas to misdemeanors for which the maximum possible penalty is a fine.

Rule 12. Pleadings and Motions Before Trial - Defenses and Objections.

(a) Pleadings and Motions. Pleadings in criminal proceedings shall be the complaint, the indictment and the information, and the pleas of not guilty, guilty and nolo contendere. All other pleas, demurrers and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

(b) Pre-trial Motions. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Any or all of the following shall be raised prior to trial:

(1) Defenses and objections based on defects in the institution of the prosecution;

(2) Defenses and objections based on defects in the indictment or information (other than a failure to show jurisdiction in the court or to charge an offense, which objections shall be noticed by the court at any time during pendency of the proceeding);

(3) Motions to suppress evidence on the ground that it was illegally obtained;

(4) Requests for a severance of charges or defendants under Rule 14.

(c) Motion Date. 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).

(d) Ruling on Motion. A motion made before trial shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue.

(e) Effect of Failure to Raise Defenses or Objections. Failure by the defendant to raise defenses or objections or to make requests

Rule 15. Depositions.

(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. 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 his 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.

(b) Notice of Taking. The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time.

(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. In no event shall a deposition be taken of a party defendant without his consent.

(d) Use. At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used by stipulation of the parties or if the witness is unavailable, as defined in section (e) of this rule, or if the witness gives testimony at the trial or hearing inconsistent with

his deposition. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

(e) Unavailability. A witness is "unavailable" when he is:

(1) Exempted by ruling of the judge on the ground of privilege from testifying concerning the subject matter of his statement; or

(2) Persistent in refusing to testify despite an order of the judge to do so; or

(3) Unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(4) Absent from the hearing and beyond the jurisdiction of the court to compel appearance and the proponent of his statement has exercised reasonable diligence but has been unable to procure his attendance.

(f) Objections to Admissibility. Objections to receiving in evidence a deposition or part thereof, may be made as provided in civil actions.

(g) Deposition by Agreement Not Precluded. Nothing in this rule shall preclude the taking of a deposition, orally or upon written questions, or the use of a deposition, by agreement of the parties with the consent of the court.

(h) Joint Defendants. Where persons are jointly tried, the court for good cause shown may refuse to permit the use at the trial of a deposition taken at the instance of a defendant over the objection of any other defendant.

Rule 16. Discovery.

(a) Scope of Discovery. In order to provide adequate information for informed pleas, expedite trial, minimize surprise, afford opportunity for effective cross-examination, and meet the requirements of due process, discovery prior to trial should be as full and free as possible consistent with protection of persons, effective law enforcement, and the adversary system.

(b) Disclosure to the Accused.

(1) Information Within Possession or Control of Prosecuting Attorney. Except as is otherwise provided as to matters not subject to disclosure and protective orders, the prosecuting attorney shall disclose the following information within his possession or control to defense counsel and make available for inspection and copying:

(i) The names and addresses of persons known by the government to have knowledge of relevant facts and their written or recorded statements or summaries of statements;

(ii) Any written or recorded statements and summaries of statements and the substance of any oral statements made by the accused;

(iii) Any written or recorded statements and summaries of statements and the substance of any oral statements made by a co-defendant;

(iv) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons;

(v) Any books, papers, documents, photographs or tangible objects, which the prosecuting attorney intends to use in the hearing or trial which were obtained from or belong to the accused; and

(vi) Any record of prior criminal convictions of the defendant and of persons whom the prosecuting attorney intends to

call as witnesses at the hearing or trial.

(2) Information Provided by Informant - Electronic Surveillance. The prosecuting attorney shall inform defense counsel:

(i) of any relevant material or information relating to the guilt or innocence of the defendant which has been provided by an informant, and

(ii) of any electronic surveillance, including wiretapping, of

(aa) conversations to which the accused or his attorney was a party,

(bb) the premises of the accused or his attorney.

(3) Information Tending to Negate Guilt or Reduce Punishment. The prosecuting attorney shall disclose to defense counsel any material or information within his possession or control which tends to negate the guilt of the accused as to the offense or would tend to reduce his punishment therefor.

(4) Information Within Possession or Control of Other Members of Prosecuting Attorney's Staff. The prosecuting attorney's obligations extend to material and information in the possession or control of

(i) members of his staff, and

(ii) any others who have participated in the investigation or evaluation of the case and who either regularly report or with reference to the particular case have reported to his office.

(5) Availability of Information to Defense Counsel. Whenever defense counsel designates and requests production of material or information which would be discoverable if in the possession or control of the prosecuting attorney, the prosecuting attorney shall use diligent good faith efforts to make such material available to defense counsel. If the prosecuting attorney is unsuccessful and such material is subject to the jurisdiction of the court, the court shall issue suitable

subpoenas or orders to cause such material to be made available to defense counsel.

(6) Information Regarding Searches and Seizures - Statements From the Accused - Relationship of Witnesses to Prosecuting Attorney. Except as otherwise provided the prosecuting attorney shall, upon request of defense counsel, disclose and permit inspection, testing, copying and photographing of any relevant material and information regarding:

(i) Specified searches and seizures;

(ii) The acquisition of specified statements from the accused; and

(iii) The relationship, if any, of specified witnesses to the prosecuting authority.

(7) Other Information. Upon a reasonable request showing materiality to the preparation of the defense, the court in its discretion may require disclosure to defense counsel of relevant material and information not covered by subsections (b)(1), (b)(2), (b)(3), and (b)(6).

(8) Legal Research and Records of Prosecuting Attorney. Disclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the prosecuting attorney or members of his legal staff.

(c) Disclosure to the Prosecuting Attorney.

(1) Non-Testimonial Identification Procedures. A judicial officer may upon motion, for good cause shown, require the accused to do or submit to any or all of the following:

(i) Appear in a line-up;

(ii) Speak for identification by witnesses to an offense;

(iii) Be fingerprinted;

(iv) Pose for photographs not involving reenactment of a scene;

(v) Try on articles of clothing;

(vi) Permit the taking of specimens of material under his fingernails;

(vii) Permit the taking of samples of his blood, hair and other materials of his body which involve no unreasonable intrusion thereof;

(viii) Provide specimens of his handwriting;

(ix) Submit to a reasonable physical or medical inspection of his body.

(2) Reports or Statements of Experts. The trial court may require that the prosecuting attorney be informed of and permitted to inspect and to copy or photograph any reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons which are intended by the defendant to be used at trial. Information obtained by the state under the provisions of this section shall be used only for cross-examination or rebuttal of defense testimony.

(3) Notice of Intent to Raise Insanity Defense. Following substantial compliance by the state with section (b) of this rule a defendant who intends to offer evidence of a defense of insanity shall inform the state of such intention at the time of plea or at such other time as may be designated by the trial court. The court may order the defendant to submit to psychiatric examination by a psychiatrist or psychologist selected by the court, and the report shall be made available to both parties. Notice of intent to raise a defense of insanity shall not be commented on by the prosecution at trial.

(d) Regulation of Discovery.

(1) Advice to Refrain from Discussing Case. Except as is otherwise provided as to matters not subject to disclosure and protective orders, neither counsel for the parties nor other prosecution

(6) Denial or Regulation of Disclosure - Disclosure to Court in Camera - Record of Proceedings. Upon request of any party, the court may permit

(i) any showing of cause for denial or regulation of disclosure, or

(ii) any portion of any showing of cause for denial or regulation of disclosure

to be made to the court in camera. A record shall be made of such proceedings. If the court enters an order granting relief following such a showing, the entire record of the proceedings shall be sealed and preserved in the records of the court, to be made available to the supreme court in the event of an appeal.

(e) Sanctions.

(1) Failure to Comply with Discovery Rule or Order. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court may order such party to permit the discovery of material and information not previously disclosed or enter such other order as it deems just under the circumstances.

(2) Willful Violations. Willful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court.

(f) Omnibus Hearing.

(1) Time for Hearing - When Set. When a plea of not guilty is entered to an indictment or information, the court shall set a time for an omnibus hearing to be held on the record. An omnibus hearing may be set by the court at the time of entry of a not guilty plea to a misdemeanor.

(2) Duties of Trial Court at Hearing. At the omnibus hearing, the trial court on its own initiative shall:

or defense personnel shall advise persons (except the accused) having relevant material or information to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsel's investigation of the case.

(2) Additional or Newly Discovered Information. If, subsequent to compliance with these rules of orders issued pursuant thereto, a party discovers additional material or information which is subject to disclosure, he shall promptly notify the other party or his counsel of its existence. If the additional material or information is discovered during trial, the court shall also be notified.

(3) Materials to Remain in Exclusive Custody of Attorney. Any materials furnished to an attorney pursuant to these rules shall remain in his exclusive custody, shall be used only for the purposes of conducting his side of the case, and shall be subject to such other terms and conditions as the court may provide.

(4) Restriction or Deferral of Disclosure of Information. Upon a showing of cause, the court may at any time order that specified disclosure be restricted or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled shall be disclosed in time to permit his counsel to make beneficial use thereof.

(5) Material Partially Discoverable. When some parts of certain material are discoverable under these rules, and other parts are not discoverable, as much of the material shall be disclosed as is consistent with this rule. Excision of certain material and disclosure of the balance shall be preferred to withholding of the whole. Material excised pursuant to court order shall be sealed and preserved in the records of the court, and shall be made available to the supreme court in the event of an appeal.

(i) Ascertain whether the parties have completed the discovery required in sections (b) and (c), and if not, make orders appropriate to expedite completion; and

(ii) Ascertain whether there are requests for additional disclosure pursuant to subsections (b)(5), (b)(6), (b)(7), or section (c);

(iii) Make rulings on any motions then pending; and

(iv) Ascertain whether there are any procedural or constitutional issues which should be considered; and

(v) Upon agreement of counsel, or upon a finding that the trial is likely to be protracted or otherwise unusually complicated, set a time for a pre-trial conference pursuant to Rule 22; and

(vi) Upon the accused's request, permit him to change his plea.

(3) Pre-Trial Motions and Requests - Effect of Failure to Raise at Hearing. All motions and other requests made prior to trial should ordinarily be reserved for and presented at the omnibus hearing unless the court otherwise directs. Subject to constitutional limitations failure to raise at the omnibus hearing any pre-trial error or issue, other than the failure of the indictment to show jurisdiction or to charge an offense, constitutes waiver of such error or issue unless the party concerned does not then possess the information necessary to raise it.

(4) Issues Raised - Continuation of Hearing. Any and all issues should be raised either by counsel or by the court without prior notice, and if appropriate, informally disposed of. If additional discovery, investigation, preparation, evidentiary hearing, or formal presentation is necessary for a fair and orderly determination of any issue, the omnibus hearing should be continued from time to time until all matters raised are properly disposed of.

(5) Stipulations. Stipulations by any party or his counsel shall be binding upon the parties at trial unless set aside or modified by the court in the interests of justice.

(6) Summary Memorandum and Hearing Order. At the conclusion of the hearing, a summary memorandum shall be either electronically recorded or written and indicate disclosures made, rulings and orders of the court, stipulations, and any other matters determined or pending.

(7) Determination of Defendant's Comprehension of and Consent to Hearing Order. At the conclusion of the hearing the court shall inquire of a defendant who is present whether he understands the proceedings and consents to the entry of the hearing order.

Rule 17. Subpoena.

(a) For Attendance of Witnesses - Form - Issuance.

(1) Subpoenas shall be issued by the clerk under the seal of the court, and shall be signed and sealed but otherwise in blank. The party requesting a subpoena shall fill in the blanks before the subpoena is served.

(2) A subpoena shall

(i) state the name of the court and the title, if any, of the proceeding, and

(ii) state whether the witness is to testify on behalf of the state, and order any witness testifying on behalf of the state to appear without the prepayment of any witness fee, and

(iii) command each person to whom the subpoena is directed to attend and give testimony at the time and place specified therein.

(3) Magistrates may issue subpoenas in any proceeding before them.

(b) Defendants Unable to Pay. A subpoena shall be issued by the clerk as provided in section (a) for a defendant financially unable to pay the fees of the witness. The determination of financial inability shall be made in accordance with the criteria provided under Rule 39(b) of these rules, and if counsel was previously appointed for defendant pursuant to said Rule 39, or the defendant is represented by the Alaska Public Defender Agency, no further showing of financial inability shall be required. Subpoenas issued under this section (b) shall contain an order to appear without the prepayment of any witness fee. The cost incurred by the process and the fees of the witness so subpoenaed shall be paid by the Alaska Public Defender Agency.

(c) For Production of Documentary Evidence and of Objects. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may suppress or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may, upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

(d) Service.

(1) A subpoena may be served by any peace officer or any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and subject to the provisions of sections (a) and (b) of this rule, by tendering to him the fee for one day's attendance and the mileage allowed by law or by rule.

(2) A subpoena may also be served upon a person of known residence within the state by registered or certified mail. In such case the clerk shall mail the subpoena for delivery only to the person subpoenaed and, unless not required under sections (a) or (b) of this rule, shall enclose a warrant or postal money order in the amount of the fees for one day's attendance and for the mileage allowed by law or rule. The returned delivery receipt shall be attached to the copy of the subpoena retained by the clerk. If the subpoena is returned unsigned by the person subpoenaed to whom it was addressed, the clerk shall deliver the subpoena or duplicate thereof to a peace officer or other authorized person for service.

(e) Place of Service. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the State of Alaska.

(f) For Taking Deposition - Place of Examination.

(1) Issuance. An order to take a deposition authorizes the issuance by the clerk of the court or by a magistrate of subpoenas for the persons named or described therein.

(2) Place. The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the trial court within the state.

(g) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued.

Rule 18.1 Criminal Cases - Place of Trial - Report of the Administrative Director.

(a) Unless the convenience of the parties and witnesses or the change of venue provisions of AS 22.10.030(d) otherwise dictates, the trial shall take place in the urban center

(1) nearest the place where the crime was committed, and

(2) in the senate election district where the crime was committed, and

(3) in which there are facilities available to house the court and jury and to conduct the trial or related hearings.

(b) Upon a determination that there are no facilities of the kind specified in subsection (a)(3) of this rule, the presiding judge of the district may direct that the proceedings be held in the nearest senate district with reasonably suitable facilities.

(c) Upon the request of the presiding superior or district court judge of a judicial district, the administrative director shall investigate the availability of facilities of the kind specified in subsection (a)(3) of this rule and report to said superior or district court judge. The report shall contain

(1) a specific recommendation as to the feasibility of holding trial at the place where the crime was committed, and

(2) a recommendation as to alternate places of trial.

The administrative director's report shall be a permanent part of the record.

(d) For the purposes of this rule, election districts shall be those set forth in the current official reapportionment map of the State of Alaska.

Rule 24.1. Selection of Petit Jurors. The jurors selected for service on a petit jury shall have the qualifications and shall be drawn and selected in the manner set forth by law, with these additional provisions:

(a) Jurors who serve on the petit jury shall be selected from the population within a fifty-mile radius of the urban center designated as the site of the criminal trial under Rule 18.1.

(b) If the court finds that the selection area determined in section (a) will not provide

(1) a petit jury which is a truly representative cross-section of the appropriate community or,

(2) selection of jurors under section (a) would cause unreasonable transportation expenses,

then the trial court, on its own motion or on the motion of the parties, may designate an area other than that specified in section (a) from which the petit jurors shall be selected.

Rule 26. Evidence.

(a) In General. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by statute or by these rules. The admissibility of evidence shall be governed by Civil Rule 43 and by these rules, or in the absence of rule, by the principles of common law as they may be interpreted by the courts of the state in the light of reason and experience. In the absence of rule, the evidence shall be presented according to the most convenient method prescribed by common law principles, and the principle which favors the reception of the evidence shall govern. The competency and privileges of witnesses shall be governed by Civil Rule 43 and by these rules, or in the absence of rule, by common law principles.

(b) Privileges of Accused.

(1) In General. In any criminal action in which he is an accused every person has a privilege not to be called as a witness and not to testify.

(2) Marital Privilege.

(i) A husband shall not be examined for or against his wife, without her consent, nor a wife for or against her husband, without his consent.

(ii) Neither during the marriage nor afterwards shall either spouse be examined as to any communications made by one spouse to the other during the marriage, without the consent of the other spouse.

(iii) These privileges do not apply to a criminal action or proceeding for a crime committed against the person or property of the other spouse or of a child of either.

(3) Attorney-Client Privilege. An attorney shall not be examined

(i) as to any communication made by his client to him, nor

(ii) as to the attorney's advice given thereon in the course of the attorney's professional employment

except with the consent of his client.

(4) Confessor-Confessant Privilege. A priest or clergyman shall not, without the consent of the person making the confession, be examined as to any confession made to him in his professional capacity, in the course of discipline enjoined by the church to which he belongs.

(5) Acts Other Than Testifying. An accused in a criminal action has no privilege to refuse, when ordered by the court, to submit his body to examination or to do any act in the presence of the court or the trier of the fact, except to refuse to testify.

(6) Failure to Testify - Effect. If the accused in a criminal action exercises his or her privilege not to testify or to prevent another from testifying,

(i) no person shall make any comment thereon, and

(ii) no presumption shall arise with respect to the exercise of the privilege, and

(iii) no adverse inference shall be drawn therefrom by the trier of fact.

(c) Co-Defendant as Witness. In any criminal action the fact that two or more persons are jointly accused shall not render any one so accused incompetent as a witness for or against a co-defendant, whether said co-defendants are tried jointly or severally.

(d) Plea of Not Guilty - Effect - Evidence. A plea of not guilty controverts every material allegation in the indictment or information, and all facts tending to establish a defense to the charge may be given in evidence.

(e) Proof of Records. An official or business record or an entry therein or the lack of such a record or entry may be proved in the same manner as in civil actions.

(f) Impeachment by Evidence of Conviction of Crime.

(1) General Rule. For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime is admissible but only if the crime involved dishonesty or false

statement.

(2) Time Limit. Evidence of a conviction under this rule is inadmissible if a period of more than 5 years has elapsed since the date of the conviction of the witness.

(3) Effect of Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is inadmissible under this rule if:

(i) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure, and

(ii) the procedure under which the same was granted or issued required a substantial showing of rehabilitation or was based on innocence.

(4) Admissibility. Before a witness may be impeached by evidence of a prior conviction, the court shall be advised of the existence of the conviction and shall rule if the witness may be impeached by proof of the conviction by weighing its probative value against its prejudicial effect.

(g) Evidence Illegally Obtained. Evidence illegally obtained shall not be used for any purpose including the impeachment of a witness.

Rule 27. Proceedings Upon Trial - Management of Juries.

(a) Order of Proceedings. After a jury is impanelled and sworn, the trial shall proceed in the following order:

(1) The prosecuting attorney shall state the case of the prosecution, and may briefly state the evidence by which he expects to sustain it.

(2) (i) The defendant, or his counsel, may then state his defense, and may briefly state the evidence he expects to offer in support of it.

(ii) If no statement of the defendant's case is made after the statement of the prosecution's case, then after the state has produced its evidence and presented its case in chief, the defendant, or his counsel, if he intends to produce evidence, shall state his defense, and may briefly state the evidence he expects to offer in support of it.

(3) The state shall first produce its evidence; and the defendant may then produce his evidence. The state will then be confined to rebutting evidence unless the court, for good reason and in furtherance of justice, permits it to offer evidence in chief.

(4) Unless the case be submitted without argument, counsel for the state shall commence, the defendant or his counsel shall follow and counsel for the state shall conclude the arguments to the jury. Unless good cause is shown, the state shall present in its concluding argument no theory of law or fact which was not presented in one or both of the prior arguments. The court may, in its discretion, limit the time of such arguments.

(5) At the conclusion of the arguments the court shall charge the jury. Either party may offer requested instructions; objections shall be heard and considered by the court in accordance with Rule 30.

(b) View of Premises by Jury.

(1) The court may, on application of a party or on its own motion, order the jury in a body to view the property which is the

subject of the litigation or the place where a material fact occurred. The court may order the applying party to pay the expenses connected with fulfilling the order.

(2) An officer of the court shall accompany the jury at such times and shall ensure that no one speaks to the jury on any subject connected with the trial while the jury makes its inspection.

(c) Admonition to Juror Upon Separation From Jury.

(1) If any juror is permitted to separate from the jury during the trial, the court shall admonish him that it is his duty

(i) not to converse with any person, including other jurors, on any subject connected with the trial, and

(ii) not to form or express any opinion thereon until the case is finally submitted to the jury.

(2) If any juror is permitted to separate from the jury after the case is submitted to the jury, the court shall admonish him that it is his duty

(i) to discuss the case only with other jurors in the jury room, and

(ii) not to converse with any other person on any subject connected with the trial.

(d) Juror Unable to Continue. If, prior to the time the jury retires to consider its verdict, a juror is unable to perform or is disqualified from performing his duty, the court may order him to be discharged. If an alternate juror has not been impanelled as provided in the rules,

(1) the trial may proceed with the other jurors with the consent of the parties, or

(2) another juror may be sworn and the trial may begin anew, or

(3) the jury may be discharged and a new jury then or afterwards formed.

(e) Selection of Foreman - Deliberations of Jury - Communications.

(1) When the jury has retired to consider their verdict, they shall elect one of their number foreman. The foreman shall preside

over their deliberations, sign the verdict unanimously agreed upon, and speak for them on the return of their verdict in open court.

(2) The jury shall be and remain under the charge of an officer of the court until they agree upon their verdict or are discharged by the court; except that the court with the agreement of the parties, may permit the jurors to adjourn their deliberations to return to their homes for reasonable periods of rest. Such periods of adjournment for rest shall be ordered only after hearing from all parties outside the presence of the jury. The admonition set forth in section (c) shall be given before any adjournment for rest, and the court shall specifically state that no deliberations are to take place unless all jurors are present in the jury room.

(3) Unless otherwise ordered by the court, the officer of the court having the jury under his charge shall keep the jurors together, and separate from other persons. The officer shall not suffer any communication to be made to the jury nor make any himself except to ask the jury if they have agreed upon their verdict. He shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon. The officer shall be sworn to conduct himself according to the provisions of this section (e).

PART VII. JUDGMENT

Rule 32. Sentence and Judgment.

(a) Sentence. Sentence shall be imposed without unreasonable delay. Pending sentence the court may commit the defendant or continue or alter the bail. Before imposing sentence the court shall afford the defendant an opportunity to make a statement in his own behalf and to present any information in mitigation of punishment. If the defendant is being sentenced following a plea of guilty or nolo contendere the court shall question the defendant to ascertain that he understood the meaning of his plea, and that it was freely and voluntarily entered.

(b) Judgment - Execution. The judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. At the time of imposition of sentence, the judge or magistrate shall make a statement on the record explaining his reasons for imposition of the sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge or magistrate and entered by the clerk. When the judgment has been entered, the clerk shall forthwith deliver to a peace officer a certified copy of the judgment for execution. The peace officer shall note on the copy of the judgment the date of its delivery to him. When the judgment has been executed, the peace officer shall promptly return the copy to the clerk with his proceedings endorsed thereon.

(c) Pre-Sentence Investigation.

(1) When Made. When directed by the court the probation service shall make a pre-sentence investigation and report before the court imposes sentence or grants probation. The report shall not be submitted to the court or its contents disclosed to anyone except counsel unless the defendant has tendered a plea of guilty or nolo contendere or has been found guilty. The court may utilize the report in determining if a bargained sentence recommendation will be followed

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pursuant to Rule 11. In the event the attorneys for the parties request the preparation of a pre-sentence report to aid them in plea bargaining the court may order such report to be made prior to the time stated in this rule.

(2) Report. The report of the pre-sentence investigation shall contain any prior criminal conviction including a finding of delinquency of the defendant and such information about his characteristics, his financial condition, and the circumstances affecting his behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court. No record of arrest or other police contacts shall be included in the report. The report shall be made available to the state's attorney and to the defendant's attorney in all cases and to the defendant unless the court enters on the record findings of reasons why the report would prove detrimental to the rehabilitation of the defendant or safety of the public.

(d) Plea Withdrawal.

(1) The court shall allow the defendant to withdraw his plea of guilty or nolo contendere whenever the defendant, upon a timely motion for withdrawal, proves that withdrawal is necessary to correct manifest injustice.

(i) A motion for withdrawal is timely and is not barred because made subsequent to judgment or sentence if it is made with due diligence.

(ii) Withdrawal is necessary to correct a manifest injustice whenever the defendant demonstrates that:

(aa) He was denied the effective assistance of counsel guaranteed to him by constitution, statute or rule, or

(bb) The plea was not entered or ratified by the defendant or a person authorized to so act in his behalf, or

(cc) The plea was involuntary, or was entered

without knowledge of the charge or that the sentence actually imposed could be imposed, or

(dd) He did not receive the charge or sentence concessions contemplated by the plea agreement, and

(A) the prosecuting attorney failed to seek or opposed the concessions promised in the plea agreement or

(B) after being advised that the court no longer concurred and after being called upon to affirm or withdraw his plea, he did not affirm his plea.

(iii) The defendant may move for withdrawal of his plea without alleging he is innocent of the charge to which the plea has been entered.

(2) Once the plea has been accepted by the court and absent a showing that withdrawal is necessary to correct a manifest injustice, a defendant may not withdraw his plea of guilty or nolo contendere as a matter of right. Before sentence, the court may in its discretion allow the defendant to withdraw his plea for any fair and just reason unless the prosecution has been substantially prejudiced by reliance upon the defendant's plea.

(3) A plea of guilty or nolo contendere which is not accepted or has been withdrawn shall not be received against the defendant in any criminal proceedings.

(e) Conviction of a Corporation. If a corporation is convicted of any criminal offense the court may give judgment thereon and shall cause such judgment to be enforced in the same manner as a judgment in a civil action, or as otherwise provided by law.

(f) Transcript of Sentencing Proceeding. A transcript of any sentencing proceeding at which the defendant is committed to serve in excess of 6 months on one or more charges shall be prepared and furnished to the state attorney, defendant, and the Alaska Parole Board.

Rule 32.1. Appeal from Conviction - Notification of Right to Appeal. A person convicted of a crime after trial shall be advised by the judge or magistrate that

(a) he has the right to appeal from the judgment of conviction within 30 days from entry of the judgment of conviction by filing a notice of appeal with the clerk of court, and

(b) that if he wants counsel and is unable to pay for the services of an attorney, the court will appoint an attorney to represent him on the appeal.

Rule 32.2. Sentence Appeal.

(a) Notification of Right to Appeal Sentence. At the time of imposition of any sentence for a term or for aggregate terms exceeding one year, the judge shall inform the defendant as follows:

(1) That the sentence may be appealed to the supreme court on the ground that it is excessive;

(2) That upon such appeal the supreme court may modify the sentence as provided by law;

(3) That if he wants counsel and is unable to pay for the services of an attorney, the court will appoint an attorney to represent him on the sentence appeal.

(b) Notice of Appeal. Written notice of appeal from a sentence of the superior court by the state, or by a defendant appealing solely on the ground that the sentence is excessive, shall be filed with the clerk of the superior court which imposed the sentence not later than 30 days after sentence was imposed. The notice of appeal need only state that the sentence which is being appealed is too lenient or excessive.

(c) Termination of Appeal. Any appeal of a sentence initiated by the defendant may be terminated by his filing within 30 days from the filing of the notice of appeal a notice of intent to terminate the appeal. Such a termination shall prevent any increase in the sentence or sentences imposed.

(d) Indigent's Right to Counsel on Sentence Appeal. An indigent defendant is entitled to the assistance of counsel in prosecuting an appeal on the ground that the sentence is excessive. Where an appeal is taken by the state pursuant to AS 12.55.120(b) on the ground that the sentence is too lenient, and the defendant has not appealed, the supreme court in its discretion may appoint counsel for an indigent defendant.

(e) Forwarding Notice of Appeal. Upon receipt of a notice of sentence appeal, the clerk shall forthwith forward a copy of the notice to the defendant and his counsel, to the district attorney, to the office of the public defender if appropriate, to the superior court judge who imposed the sentence, and to the clerk of the supreme court.

(f) Record on Appeal.

(1) Preparation and Contents. Immediately upon the filing of a notice of sentence appeal, the clerk shall prepare sufficient copies of the record on appeal, which shall consist of the following:

(i) A transcript of the entire sentencing proceeding; and

(ii) All reports and documents which were available to the sentencing court as an aid in imposing sentence.

(2) Distribution. Immediately upon preparation of the record on appeal, the clerk shall serve personally or send copies by certified mail to the defendant and his counsel, the district attorney, the public defender if appropriate, and to the clerk of the supreme court.

(g) Memoranda on Appeal.

(1) By Appellant. Within 15 days after receipt of copies of the record on appeal provided for in section (f) of this rule, the appellant shall file with the supreme court the original of a typewritten memorandum in support of the appeal.

(2) By Appellee. Within 10 days after receipt of a copy of appellant's memorandum, the appellee may file with the supreme court the original of a typewritten memorandum in opposition to the appeal.

(3) Reply Memorandum. Within 10 days after receipt of a copy of appellee's memorandum, the appellant may file with the supreme court the original of a typewritten reply memorandum.

(4) Form and Contents of Memoranda. The memoranda filed by either the appellant or the appellee need not comply with the requirements of Supreme Court Rule 11 unless ordered by the supreme court.

(5) Duplication and Service of Memoranda. The clerk of the supreme court shall forthwith reproduce and serve upon all interested persons involved in the appeal copies of all memoranda.

(h) Bail Pending Appeal. A sentence appealed on the sole ground that the sentence is excessive does not confer or enlarge the right to bail pending appeal.

Rule 37. Search and Seizure.

(a) Search Warrant - Issuance and Contents.

(1) A search warrant authorized by law shall issue only on

(i) (aa) affidavit sworn to before a judge or magistrate or any person authorized to take oaths under the law of the state, or

(bb) sworn testimony taken on the record in court, and

(ii) establishing the grounds for issuing the warrant.

(2) If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant

(i) identifying the property, and

(ii) naming or describing the person or place to be searched.

(3) The warrant

(i) shall be directed to a peace officer of the state authorized to enforce or assist in enforcing any law thereof, and

(ii) shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof, and

(iii) shall command the officer to search forthwith the person or place named for the property specified, and

(iv) shall direct that it be served between 7:00 a.m. and 10:00 p.m., but if an affiant is positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time, and

(v) shall designate the judge or the magistrate to whom it shall be returned.

(b) Execution and Return With Inventory. The warrant shall be executed and returned within 10 days after its date. The officer taking property under the warrant

(1) shall give to the person from whom or from whose premises the property was taken a copy of the warrant, a copy of the supporting

affidavits, and receipt for the property taken, or

(2) shall leave the copies and the receipt at the place from which the property was taken.

The return shall be made promptly and shall be accompanied by a written inventory of any property taken as a result of the search pursuant to or in conjunction with the warrant. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be signed by the officer under the penalty of perjury pursuant to AS 09.65.012. The judge or magistrate shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(c) Motion for Return of Property and to Suppress Evidence. A person aggrieved by an unlawful search and seizure may move the court in the judicial district in which the property was seized or the court in which the property may be used for the return of the property and to suppress for use as evidence anything so obtained on the ground that the property was illegally seized.

(d) In Camera Hearing. A person who challenges the validity of a search and seizure predicated on information gained from an informant used either in

(1) support of an application for a warrant, or

(2) as the basis of a search without warrant

may move the court for disclosure of the identity of the informant pursuant to Rule 16. In the event the court determines that disclosure of the identity of the informant is not required under Rule 16, the court shall conduct an in camera recorded hearing in which it shall investigate and take evidence so as to determine whether or not a search based on the informant's information was justified.

Following the in camera hearing, the court shall grant or deny the motion to suppress on the record, and shall make written findings concerning the validity of the search based on the informer's information. The written findings, together with the record of the hearing, shall be sealed, and if the validity of the search is upheld the sealed testimony and findings shall, on appeal of a conviction in which evidence of the search was admitted, be transmitted to the supreme court for automatic review of the motion to suppress.

PART IX. GENERAL PROVISIONS

Rule 38. Presence of the Defendant.

(a) Presence Required. The defendant shall be present at the arraignment, at the preliminary hearing, at the time of plea, at the omnibus hearing, and at every stage of the trial, including the impaneling of the jury and return of the verdict, and at the imposition of sentence, except as otherwise provided in this rule.

(b) Continued Presence Not Required. The further progress of the trial to and including the return of the verdict shall not be prevented whenever a defendant, initially present;

(1) Voluntarily absents himself after the trial has commenced; or

(2) Engages in conduct which is such as to justify his being excluded from the courtroom.

(c) Presence Not Required. A defendant need not be present in the following situations:

(1) A corporation may appear by counsel for all purposes;

(2) In prosecutions for offenses punishable by fine or by imprisonment for not more than one year or both, the court, with the written consent of the defendant, may permit arraignment, plea, trial, and imposition of sentence in the defendant's absence;

(3) The defendant's presence is not required at a hearing on reduction of sentence under Rule 35(a).

Rule 39. Appointment of Counsel.

(a) Informing Defendant of Right to Counsel. If the defendant appears for arraignment or trial without counsel, the court shall advise him of his right to have counsel, and shall ask him if he desires the aid of counsel.

(b) Appointment of Counsel for Persons Financially Unable to Employ Counsel.

" "

(i) the defendant states that

(aa) he desires the aid of counsel, and

(bb) he is financially unable to employ counsel, and

(ii) the court determines that defendant is in fact unable to employ counsel,

then the defendant is entitled to have counsel provided at public expense, and the court shall immediately notify the Alaska Public Defender Agency that the Agency has been appointed to represent the defendant and immediately appoint the Public Defender to represent the defendant.

(2) If the Agency has a conflict or is otherwise unable to represent the defendant, the court shall appoint counsel to represent him pursuant to statute.

(3) In the absence of a request by a defendant, otherwise entitled to appointment of counsel, the court shall appoint counsel for him unless he demonstrates that he understands the benefits of counsel and knowingly waives the same.

(4) The court, in its discretion, may appoint counsel in any case in which appointment best serves the interest of justice.

Rule 40. Time.

(a) Computation. Except as otherwise specifically provided in these rules, in computing any period of time, the day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday. When a period of time prescribed or allowed is less than 7 days, intermediate Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

(b) Enlargement. When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion:

(1) With or without motion or notice, order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or

(2) Upon motion permit the act to be done after the expiration of the specified period if the failure to act was the result of excusable neglect; but the court may not enlarge the period for taking any action under Rules 33, 34 and 35 except as otherwise provided in those rules, or the period for taking an appeal.

(c) Unaffected by Expiration of Term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the expiration of a term of court. The expiration of a term of court in no way affects the power of a court to do any act in a criminal proceeding.

(d) For Motions - Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown, such an order may be made on ex parte

application. Copies of all photographs, affidavits, other documentary evidence and a brief, complete written statement in support of the motion, shall be served with the motion. The opposing party shall serve either

(1) a written statement that he does not oppose the motion, or

(2) copies of all photographs, affidavits, and other documentary evidence upon which he intends to rely, together with a brief, complete written statement of reasons in opposition to the motion not less than 1 day before the hearing. A timely reply or supplemental memoranda will be considered, but hearing of a motion shall not be delayed pending the filing of such memoranda.

(e) Additional Time After Service by Mail. Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon him and the notice or other paper is served upon him by mail, 3 days shall be added to the prescribed period.

Rule 41. Bail.

(a) Admission to Bail. The defendant in a criminal proceeding is entitled to be admitted to bail pursuant to AS 12.30.010 - 12.30.080.

(b) Prosecuting Attorney - Appearance and Notice. The prosecuting attorney may appear and be heard in all proceedings relating to bail. The judge or magistrate, in his discretion, may require that notice of such proceedings be given the prosecuting attorney.

(c) Surrender of Defendant. At any time before forfeiture of the undertaking or the cash deposit in lieu thereof, the sureties on the undertaking or the owner of the deposit may surrender the defendant to the custody of a peace officer or the defendant may surrender himself to the officer. There shall be delivered to the officer at the time of surrender a certified copy of the undertaking or a certificate as to the cash deposit executed by the clerk of court. The peace officer shall thereupon detain the defendant in custody as upon a commmitment and acknowledge the surrender by a written certificate.

(d) Forfeiture.

(1) Declaration. If the person released on bail on the giving or pledging of security fails to appear before a court or judicial officer as required, the judge or magistrate before whom the person released was to appear shall set a time for hearing to determine if the nonappearance was willful. Notice of the hearing shall be furnished and opportunity to be heard shall be granted to the prosecuting attorney, the defendant, the defense attorney, and the person giving or pledging the security. Nothing in this section shall interfere with the issuance of a summons or bench warrant for a person who fails to appear as required before a court or judicial officer.

(2) Judgment of Forfeiture. If after the hearing the judge or magistrate determines that the nonappearance of the person released on bail was willful, the security, given or pledged, shall be forfeited.

An appeal may be taken of the judgment of forfeiture in the manner of other appeals.

(3) Enforcement. Execution shall issue on judgments of forfeiture in the same manner as on other judgments for the payment of money.

Rule 43. Dismissal.

(a) By Prosecuting Attorney. The prosecuting attorney may file a dismissal of an indictment, information or complaint and the prosecution shall thereupon terminate. Such a dismissal shall not be filed during the trial without the consent of the defendant.

(b) By Court. If there is unnecessary delay in presenting the charge to a grand jury or in filing an information against a defendant who has been held to answer to the superior court, or if there is unnecessary delay in bringing a defendant to trial pursuant to Criminal Rule 45, the court shall dismiss the indictment, information or complaint.

(c) In Furtherance of Justice. The court may, either on its own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action, after indictment or waiver of indictment, to be dismissed. The reasons for the dismissal shall be set forth in the order.

(d) Discharge From Custody - Exoneration of Bail. When dismissal is ordered pursuant to this rule the defendant shall be discharged from custody, or if admitted to bail, his bail exonerated, or money deposited in lieu thereof refunded to the depositors.

Rule 56. Definitions.

As used in these rules, unless the content otherwise requires:

(a) "Prosecuting Attorney" includes the attorney general, assistant attorneys general, deputy attorneys general and any other attorneys, legal officers and assistants charged by law with the duty of prosecuting the violation of any law, statute or ordinance.

(b) "Magistrate" includes magistrates, district judges, superior court judges and any other judicial officer authorized by law to conduct a preliminary examination of a person accused of a crime.

(c) "Presiding Judge" includes the duly-designated presiding judge of the superior court in each judicial district or, in his absence, the person designated presiding judge pro tem.

(d) "Offense" means a crime as that term is defined in AS 11.05.010 - 11.75.110.

(e) "Peace Officer" includes any officer of the state police, members of the police force of any incorporated city or village, United States Marshals and their deputies, and any other officers whose duty is to enforce and preserve the public peace.

DISTRICT COURT RULES OF CRIMINAL PROCEDURE

Rule 1. Applicability of Rules - Special Provisions.

Wherever practicable the Rules of Criminal Procedure shall apply to criminal actions within the jurisdiction of district courts presided over by district judges and magistrates.

(a) Commencement of Actions. A criminal action is commenced by the filing of a complaint, verified by the oath of the officer or other person commencing the action, and the issuance of a warrant or summons, in the manner provided by Criminal Rules 3 and 4. When a complaint is made by any person other than a peace officer, no judgment of conviction may be given except upon a plea of guilty unless the person making the complaint, or the person injured by the offense charged, appears at the trial as a witness.

(b) Arraignment and Plea. When the defendant is brought before the district judge or magistrate the complaint shall be read to him, and he shall be furnished a copy of the complaint.

The district judge or magistrate shall inform the defendant

(1) of his right to counsel, and

(2) of his right to have counsel appointed at public expense for him if the defendant could

(i) be sentenced to jail, or

(ii) suffer the loss of a valuable license, or

(iii) suffer a heavy enough fine to indicate criminality, and

(3) of his right to be admitted to bail, and

(4) that he is not required to make a statement, and

(5) that any statement made by him may be used against him, and

(6) that if he is charged by the State of Alaska he may demand to be tried before a district judge, and

(7) that he may peremptorily disqualify the district judge or magistrate to whom his case is assigned pursuant to AS 22.20.022.

(c) Trial. The date of the trial shall be fixed by the district judge or magistrate at such time as will afford the defendant a reasonable opportunity for preparation. The trial shall be conducted as are trials in criminal cases in the superior court.

(d) Procedure When Crime Not Within District Court's Jurisdiction. Whenever it appears to the district judge or magistrate during the progress of a trial that the defendant has committed a crime not within the jurisdiction of the district court, the district judge or magistrate shall dismiss the jury and continue the proceeding pursuant to Criminal Rule 5. The magistrate shall release the defendant upon his own recognizance or admit the defendant to bail, pending trial.

(e) Trial by Jury - Waiver. The manner of drawing juries shall be as provided by AS 09.20.040 - 09.20.090. Waiver by the defendant of jury trial need not be in writing, but shall be made in open court, and the district judge or magistrate shall make a proper notation thereof in the record of the proceedings.

(f) Change of Venue. All applications for a change of place of trial in the cases provided by AS 22.15.080 shall be by motion, either orally or in writing, specifying the particular grounds therefor, made to the district judge or magistrate prior to the date of the trial, and upon such notice to the prosecuting attorney as the court finds necessary. In the event that a change of place of trial is ordered, the district judge or magistrate shall transmit to the district court in whose district the proceeding is transferred all papers in the proceeding, and the prosecution shall continue in that court.

(g) Proceedings Before Magistrate. If the defendant does not consent in writing to trial before a magistrate the magistrate shall hold the proceedings in abeyance until the district judge becomes available to try the case.

(h) Process - Return. Process shall be issued as provided by AS 22.15.140. A person serving any process of the district courts

shall promptly make proof thereof to the court, and in any event at or within the time during which the person served must respond to the process. If service is made by other than a peace officer, the person serving such process shall make affidavit thereof. Failure to make proof of service shall not affect the validity of the service.

(i) Record of Proceedings. Wherever practicable there shall be kept an electronic record of all criminal actions and proceedings in the district court. The district judge or magistrate shall keep a docket of all cases filed before him, which shall show:

(1) the date of the complaint; and

(2) the nature of the offense charged, and a reference to the statute or regulation upon which the complaint is based; and

(3) the date of issuance and service of the warrant of arrest or summons; and

(4) the date of arraignment and plea; and

(5) the plea entered; and

(6) the defendant's written consent to be tried before a magistrate, if such be the case; and

(7) the date of trial; and

(8) the verdict of the jury; and

(9) the judgment and sentence; and

(10) the names of the witnesses for the state and the defendant; and

(11) a notation of any documentary evidence or other exhibits received; and

(12) a record of all orders and proceedings in the case.

Except when a plea of guilty is entered or when an electronic record of proceedings has been made, the district judge or magistrate shall also make and preserve in the record of the case a condensed summary of the testimony of all witnesses for the state and the defendant.

(j) Rules Inapplicable in Misdemeanor Cases. In a misdemeanor case the provisions of the following Rules of Criminal Procedure shall not apply:

(1) Rule 5, relating to preliminary examination; and

(2) Rule 32(c), relating to pre-sentence investigation; and

(3) Rule 32.2, relating to sentence appeals, except as required by Rule 4 of these rules.

Rule 2. Appeals to the Superior Court.

(a) How Taken - Notice.

(1) Written Notice. As provided by AS 22.15.240, an appeal from a judgment of conviction in a district court is taken by filing with the district judge or magistrate a notice in duplicate stating that the defendant appeals from the judgment. The notice of appeal shall set forth

(i) the title of the case, and

(ii) the names and addresses of the appellant and the appellant's attorney, if any, and

(iii) a general statement of the nature of the offense, and

(iv) the date of the judgment, and

(v) the sentence imposed, and

(vi) whether the defendant is in custody, and if so, the place where he is confined, and

(vii) a concise statement of the grounds of appeal.

(2) Oral Notice. In lieu of written notice, a defendant may give oral notice of appeal in open court, immediately following the imposition of sentence, which shall be entered by the district judge or magistrate in the docket. When oral notice is given, the defendant shall state to the court the grounds of appeal, each of which the court shall note in the record. Additional grounds of appeal may be set forth by written notice to the court filed within the time allowed for the filing of a written notice of appeal.

(3) Basis of Review. The grounds of appeal stated orally, in writing, or both, shall constitute the sole basis for review by the superior court.

(b) Proceedings on Appeal.

(1) District Court Level. The district judge or magistrate shall promptly forward to the clerk of the superior court of the district the duplicate notice of appeal, together with a copy of all

of his docket entries and the originals or copies of the complaint, the warrant, all orders and judgments entered by him, and the originals of all exhibits received in evidence, certified under his hand and seal. He shall also serve upon or mail to the prosecuting attorney a copy of the notice of appeal, or if oral notice be given in open court he shall inform the prosecuting attorney accordingly; and he shall also furnish the prosecuting attorney copies of his docket entries and other records upon request.

(2) Superior Court Level. From the time of the filing of the district court's record the superior court shall have supervision and control of the proceedings on appeal. At any time and upon 5 days' notice, the superior court may

(i) entertain appropriate motions for directions to the district judge or magistrate, including motions to dismiss, and

(ii) vacate or modify any order of the district judge or magistrate in relation to the appeal, including any order for admission to bail.

(c) Bail. Admission to bail upon appeal shall be allowed in all cases.

(d) Stay of Execution. A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail. A sentence to pay a fine or a fine and costs may be stayed, if an appeal is taken, by the district judge or magistrate or by the superior court upon such terms as the court deems proper. During appeal the court may require the defendant to deposit the whole or any part of the fine and costs in the registry of the superior court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make an appropriate order to restrain the defendant from dissipating his assets. An order placing the defendant on probation shall be stayed if an appeal is taken.

Rule 3. Review of Judgment and Sentence Other Than Appeal from Final Judgment. Petitions for review of any judgment and sentence claimed to be illegal for any cause, or of errors of law appearing on the face of the judgment or the proceedings in connection therewith, shall be filed with the superior court in accordance with Criminal Rule 35(b), and shall thereafter be under the supervision and control of such court. The superior court, or a judge thereof, may require of the district judge or magistrate such records, as provided in District Court Criminal Rule 1, section (i), as will enable the court to determine the matter.