

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 938

Adding Criminal Rule 6.1
concerning grand jury reports

IT IS ORDERED:

Criminal Rule 6.1 is adopted to provide:

CRIMINAL RULE 6.1: GRAND JURY REPORTS

(a) Authority to Issue Reports.

- (1) A grand jury may investigate and make reports and recommendations concerning the public safety or welfare. An indictment is not a "report" as used in this rule and Criminal Rule 6.
- (2) A grand jury report may be made only upon the concurrence of a majority of the total number of grand jurors on the panel at the commencement of the proceedings resulting in the report. The report must be signed by the foreperson. A grand jury report may include allegations of criminal conduct.

(b) Initial Judicial Review.

The grand jury shall present any proposed report to the presiding judge of the judicial district. The judge shall examine the report and the grand jury record before the grand jury is discharged. The judge may order production of audio copies or transcripts of the grand jury proceeding and may request the prosecuting attorney to submit a summary of the evidence presented to the grand jury. The judge shall make specific findings on the record as required by the following subparagraphs.

- (1) The judge shall determine first whether the report satisfies the requirements of subparagraphs (a)(1) & (2). If it does not, the judge shall proceed under subparagraph (b)(3).
- (2) The judge shall then determine if publication of the report would improperly infringe upon a constitutional right of any person, including but not limited to improper interference with a person's right to privacy or right to a fair trial in a pending or planned criminal proceeding. The judge shall make an ex parte on the record inquiry of the prosecuting attorney about any planned or pending criminal prosecutions related to the subject of the grand jury report.
- (3) If the judge determines that the report does not meet the standards of subparagraphs (a)(1), (a)(2) or (b)(2) the judge shall return

the report to the grand jury with an explanation of the reasons for returning the report. The grand jury may conduct further proceedings, revise the report, or seek appellate review of the judge's decision not to release the report.

(c) Judicial Review If Report Adversely Reflects on Identifiable Person.

If the judge determines that the standards of paragraph (b) are satisfied, the judge shall determine whether any part of the report may reflect adversely on any person who is named or otherwise identified in the report. "Person" includes a natural person or an organization, but does not include a governmental subdivision or agency. If the report may adversely reflect on any identifiable person, the judge shall proceed under the following subparagraphs (c)(1)-(5).

- (1) The judge shall order that notice of the report be provided to the person. The notice must advise the person of his or her rights as provided in this paragraph.
- (2) The person may move, within ten days of notice of the report, for a hearing. The hearing will be held in camera and on the record.
- (3) The person must be given a reasonable period of time prior to the hearing to examine the grand jury report and the record of the grand jury proceedings. A person receiving notice or a copy of the report and record may not disclose any matter occurring before

the grand jury except as permitted by the court. Each person receiving these materials must be advised of this obligation.

- (4) The person named or otherwise identified in the report may be represented by counsel at the hearing and may present argument as to whether the standards stated in subparagraph (c)(5) are satisfied. The prosecuting attorney may be present at this hearing and may also present argument. Neither side may present evidence nor examine witnesses, except that the named or otherwise identifiable person may submit a written response to the grand jury report which the person may request that the court issue with the report under paragraph (d).

- (5) The judge shall determine at the close of the hearing whether that part of the report which may adversely reflect upon a named or otherwise identified person is supported by substantial evidence or, if raised at the hearing, whether the report satisfies the requirements of paragraph (b) of this rule and paragraph (f) of Criminal Rule 6. If the judge finds that these requirements are not satisfied, the judge shall return the report to the grand jury with an explanation of why the report has not been released. The court may request that the grand jury consider further evidence as to the named or otherwise identifiable person. The grand jury may conduct further proceedings, revise the report, or seek appellate review of the decision not to release the report.

(d) Release of Report.

(1) The court shall withhold publication of the report until the expiration of the time for making a motion for a hearing under paragraph (c). If such a motion is made, publication must be withheld pending a ruling on the motion or pending any review under paragraph (e). All proceedings under this rule are confidential until the presiding judge orders the report released.

(2) If the judge finds that the standards of paragraphs (b) and (c) are met, the judge shall order the report released. The judge may order that a response to the report by a person named or otherwise identified, or other additional materials, be attached to the report as an appendix. The report and any appendices will be filed with the clerk of the court and made available for public inspection. The court shall also direct that copies of the report and any appendices be sent to other persons as reasonably requested by the grand jury.

(e) Appeal.

(1) A judicial determination under paragraph (d) of this rule is a final order for purposes of appeal. Such an appeal is governed by Appellate Rule 216 except that the appeal is to the Supreme Court. Any named or otherwise identifiable person, the state, or the grand jury by majority vote may seek review of the presiding judge's decision.

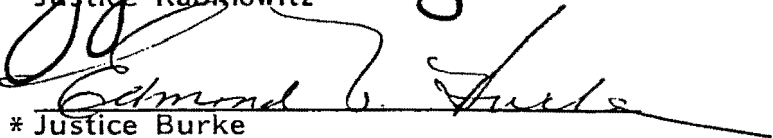
(2) The grand jury will be permitted access to the record of the in camera hearing to assist it in determining whether to pursue appellate review. The grand jury shall maintain the confidentiality of this record.

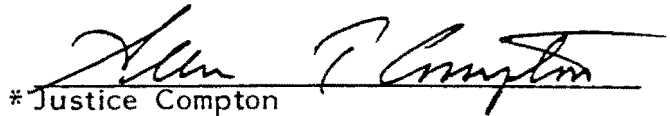
DATED: September 8, 1988

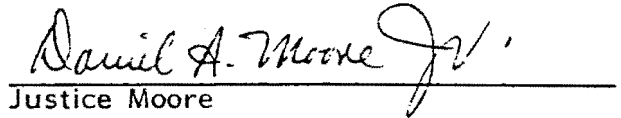
EFFECTIVE DATE: January 15, 1989


Chief Justice Matthews


Justice Rabinowitz


* Justice Burke


* Justice Compton


Justice Moore

*Justices Burke and Compton, dissenting, would not adopt this rule, being of the view that it violates article I, section 8 of the Alaska Constitution.