

CS FOR HOUSE BILL NO. 26(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 1/26/95

Referred: Finance

Sponsor(s): REPRESENTATIVES PARNELL, Porter, Green, Bunde, B.Davis, Toohey, Robinson, Hanley

SENATORS Donley, Kelly, Leman, Taylor, Rieger

A BILL

FOR AN ACT ENTITLED

1 "An Act amending Rule 15, Alaska Rules of Criminal Procedure, relating to
2 depositions."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. Rule 15(a), Alaska Rules of Criminal Procedure, is amended to read:

5 (a) When Taken. The deposition of a prospective witness may be taken by
6 either party, upon notice as provided in (b) of this rule and upon motion filed
7 with the court if the court finds by clear and convincing evidence that (1) the
8 witness will not be present to testify at trial; or (2) due to exceptional
9 circumstances, the deposition is necessary to prevent a failure of justice. [UPON
10 ORDER OF THE COURT FOR GOOD CAUSE SHOWN, THE TESTIMONY OF A
11 PROSPECTIVE WITNESS MAY BE TAKEN BY EITHER PARTY FOR
12 DISCOVERY UPON NOTICE AND AFTER THE DEPOSING PARTY HAS
13 DISCLOSED ALL STATEMENTS, EXHIBITS, AND WITNESS LISTS REQUIRED
14 BY RULE 16.] Any designated book, paper, document, record, recording, or other

1 material not privileged may be subpoenaed at the same time and place of the taking
2 of the deposition. If a witness is committed for failure to give bail or appear to testify
3 at a trial or hearing, the court on written motion of the witness and upon notice to the
4 parties may direct that the witness' deposition be taken. After the deposition has been
5 subscribed the court may discharge the witness. In considering a request for the taking
6 of depositions, the court shall grant such motion only if the taking of such deposition
7 will not cause unreasonable delay in the trial of the action **and shall apply a**
8 **presumption against granting a deposition under (a)(2) of this rule if, in regard**
9 **to that action, the witness has testified before the grand jury or in a prior court**
10 **proceeding, or has given a recorded statement to a law enforcement agency and**
11 **the moving party had the opportunity to obtain such a recorded statement.**

12 * Sec. 2. Rule 15(c), Alaska Rules of Criminal Procedure, is amended to read:

13 (c) How Taken. **The court shall preside over a deposition it orders under**
14 **(a) of this rule. The deposition shall be conducted in a closed proceeding and**
15 **recorded in the same manner as other closed court proceedings. This rule does**
16 **not preclude a party from also recording the deposition by other means approved**
17 **by the court.** [SUBJECT TO SUCH ADDITIONAL CONDITIONS AS THE COURT
18 SHALL PROVIDE AND EXCEPT AS OTHERWISE PROVIDED IN THESE RULES
19 A DEPOSITION SHALL BE TAKEN AND FILED IN THE MANNER PROVIDED
20 IN CIVIL RULES 26, 28, 29, 30, 31 AND 32.] In no event shall a deposition be
21 taken of a party defendant without that defendant's consent.