

# RULES OF CRIMINAL PROCEDURE

447 cases cited  
Rule 45

February 15, 1973; by SCO 1153 effective July 15, 1994; by SCO 1293 effective January 15, 1998; by SCO 1614 effective October 15, 2006; by SCO 1648 effective October 15, 2007; by SCO 1738 effective October 15, 2010; by SCO 1886 effective nunc pro tunc July 12, 2016; and by SCO 1887 effective August 1, 2016)

**Note to SCO 1886:** Chapter 36, SLA 2016 (SB 91) enacted a number of changes relating to criminal procedure. According to section 180(c) of the Act, AS 12.55.078, enacted by section 77 of the Act, has the effect of changing Criminal Rule 43, effective July 12, 2016, by creating an alternate procedure (suspended entry of judgment) for when the court may dismiss charges.

## Cross References

(a) **CROSS REFERENCE:** AS 12.20.020; AS 12.20.050

### Rule 43.1. Clerk's Authority.

Unless otherwise ordered by the court, the clerk is authorized to quash or recall warrants, summonses, and orders to show cause where it is uncontroverted or clearly proven that:

(a) The defendant has paid the fine or restitution for which the warrant, summons, or order to show cause was issued;

(b) The defendant has posted the bail listed on the warrant; or

(c) The charging document for which the warrant, summons, or order to show cause was issued has been dismissed or withdrawn.

(Adopted by SCO 1079 effective January 15, 1992)

### Rule 44. Service and Filing of Papers.

(a) **Service—When Required.** Written motions other than those which are heard ex parte, written notices, and similar papers shall be served upon the adverse parties.

(b) **Service—How Made.** Whenever under these rules or by an order of the court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions.

(c) **Distribution of Orders and Judgments.** The clerk shall distribute to each party affected a copy of every order or judgment entered in the manner provided in civil actions. Every order and judgment shall include a clerk's certificate of distribution as defined in Criminal Rule 32.3(d).

(d) **Filing.** Papers required to be served shall be filed with the clerk at the court location where the case is filed unless otherwise directed by the court. Papers shall be filed in the manner provided in the Alaska Rules of Civil Procedure.

(e) **Proof of Service.** Proof of service of all papers

required by law or these rules to be served shall be filed in the clerk's office promptly and in any event before action is to be taken therein by the court or the parties. The proof shall show the day and manner of service, and may be written acknowledgment of service, by certificate of an attorney, an authorized agent of the attorney, or a pro se defendant, by return of any peace officer, or by affidavit of any other person who served the papers.

(f) **Form.** Pleadings and other filings shall contain a certificate indicating whether the document contains information which is confidential under AS 12.61.100 through 12.61.150. The administrative director shall specify the form and content of the certificate and may exempt types of documents from the certificate requirement. In other respects, the form of pleadings and other filings shall be as provided in Alaska Rules of Civil Procedure 76.

(g) **Filings in Microfilmed and Archived Cases.** If a motion, petition or request is filed in a case that has been microfilmed or archived and destroyed pursuant to the Records Retention Schedule, the attorney or party must attach (1) a copy of any relevant orders, judgments and other documents necessary for the court's ruling, and (2) either proof of notice pursuant to Civil Rule 5(g) or an affidavit that Rule 5(g) is not applicable. If such documents are not attached, the clerk will notify counsel that such documents must be submitted before the court will consider the motion, petition or request.

(Adopted by SCO 4 October 4, 1959; amended by SCO 471 effective June 1, 1981; by SCO 554 effective April 4, 1983; by SCO 685 effective May 1, 1986; by SCO 694 effective September 15, 1986; by SCO 1081 effective nunc pro tunc September 17, 1991; by SCO 1121 effective July 15, 1993; by SCO 1153 effective July 15, 1994; by SCO 1862 effective January 1, 2016; and by SCO 1999 effective February 6, 2023)

**Note:** The form of the certificate required by Criminal Rule 44(f) is specified in Administrative Bulletin 53. The certificate may be included in the document being filed or attached as a separate page. Parties may use Criminal Form CR-101 to satisfy the certificate requirement. It is available in clerk's offices.

### Rule 45. Speedy Trial.

(a) **Priorities in Scheduling Criminal Cases.** The court shall provide for placing criminal proceedings upon appropriate calendars. Preference shall be given to criminal proceedings and the trial of defendants in custody shall be given preference over other criminal cases. The court shall consider the circumstances of the victim, particularly a victim of advanced age or extreme youth, in setting the trial date. Trial dates in criminal cases in the superior court shall be set at the time of arraignment, and if a trial date is thereafter vacated, the trial shall be immediately set for a date certain.

(b) **Speedy Trial Time Limits.** A defendant charged with a felony, a misdemeanor, or a violation shall be tried within 120 days from the time set forth in paragraph (c) of this rule.

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by Rep. Josephson

(c) **When Time Commences to Run.**

(1) *Generally.* Except as provided in subparagraphs (2) through (5), the time for trial shall begin running, without demand by the defendant, from the date the charging document is served upon the defendant.

(2) *Refiling of Original Charge.* If a charge is dismissed by the prosecution, the refiling of the charge shall not extend the time. If the charge is dismissed upon motion of the defendant, the time for trial shall begin running from the date of service of the second charge.

(3) *New Charges.* The Rule 45 commencement date for a new charge arising out of the same criminal episode shall be the same as the commencement date for the original charge, unless the evidence on which the new charge is based was not available to the prosecution on the commencement date for the original charge. When the new charge is based on new evidence and the prosecution has acted with due diligence in investigating and bringing the new charge, the Rule 45 commencement date for the original charge shall be the same as the commencement date for the new charge.

(4) *Mistrial, New Trial or Remand.* If the defendant is to be tried again following a mistrial, an order for a new trial, or an appeal or collateral attack, the time for trial shall run from the date of mistrial, order granting a new trial, or remand.

(5) *Withdrawal of Plea, or Notice That Defendant No Longer Intends to Enter a Plea of Guilty or Nolo Contendere.* When a defendant withdraws a plea of guilty or nolo contendere, the time for trial shall run from the date of the order permitting the withdrawal. When a defendant who previously informed the court of an intention to plead guilty or nolo contendere notifies the court that the defendant now intends to proceed to trial, the time for trial shall run from the date of that notification.

(6) *Minor Offenses.* In cases involving minor offenses as defined in Minor Offense Rule 2, the defendant must be tried within 120 days from the date the defendant's request for trial is received by the court or the municipality, whichever occurs first.

(d) **Excluded Periods.** The following periods shall be excluded in computing the time for trial:

(1) The period of delay resulting from other proceedings concerning the defendant, including but not limited to motions to dismiss or suppress, examinations and hearings on competency, the period during which the defendant is incompetent to stand trial, interlocutory appeals, and trial of other charges. Except as provided by Rule 16(d)(8)(C) for defense discovery motions, no pretrial motion shall be held under advisement for more than 30 days and any time longer than 30 days shall not be considered as an excluded period.

(2) The period of delay resulting from an adjournment or continuance granted at the timely request or with the consent of the defendant and the defendant's counsel. The court shall grant such a continuance only if it is satisfied that the postponement is in the interest of justice, taking into account

the public interest in the prompt disposition of criminal offenses, and after consideration of the interests of the crime victim, if known, as provided in (h) of this rule. A defendant without counsel shall not be deemed to have consented to a continuance unless the defendant has been advised by the court of the right to a speedy trial under this rule and of the effect of consent.

(3) The period of delay resulting from a continuance granted at the timely request of the prosecution, if:

(A) The continuance is granted because of the unavailability of evidence material to the state's case, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date; or

(B) The continuance is granted to allow the prosecuting attorney in a felony case additional time to prepare the state's case and additional time is justified because of the exceptional complexity of the particular case.

(4) The period of delay resulting from the absence or unavailability of the defendant. A defendant should be considered absent whenever the defendant's whereabouts are unknown and in addition the defendant is attempting to avoid apprehension or prosecution or the defendant's whereabouts cannot be determined by due diligence. A defendant should be considered unavailable whenever the defendant's whereabouts are known but the defendant's presence for trial cannot be obtained or the defendant resists being returned to the state for trial.

(5) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases, the defendant shall be granted a severance in order that the defendant may be tried within the time limits applicable to the defendant.

(6) The period of delay resulting from detention of the defendant in another jurisdiction provided the prosecuting attorney has been diligent and has made reasonable efforts to obtain the presence of the defendant for trial. When the prosecution is unable to obtain the presence of the defendant in detention, and seeks to exclude the period of detention, the prosecution shall cause a detainer to be filed with the official having custody of the defendant and request the official to advise the defendant of the detainer and to inform the defendant of the defendant's rights under this rule.

(7) Other periods of delay for good cause.

(e) **Rulings on Motions to Dismiss or Continue.** In the event the court decides any motion brought pursuant to this rule, either to continue the time for trial or to dismiss the case, the reasons underlying the decision of the court shall be set forth in full on the record.

(f) **Waiver.** Failure of a defendant represented by counsel to move for dismissal of the charges under these rules prior to plea of guilty or trial shall constitute waiver of the defendant's rights under this rule.

(g) **Absolute Discharge.** If a defendant is not brought to trial before the running of the time for trial, as extended by excluded periods, the court upon motion of the defendant shall dismiss the charge with prejudice. Such discharge bars prosecution for the offense charged and for any other lesser included offense within the offense charged.

(h) **Victim's Interest in Ruling on Motion to Continue.** Before ruling on a motion for a continuance in a case involving a victim, as defined in AS 12.55.185, the court shall consider the victim's position, if known, on the motion to continue and the effect of a continuance on the victim.

(Adopted by SCO 4 October 4, 1959; amended by SCO 131 effective September 1, 1971; by SCO 151 on March 9, 1972, nunc pro tunc as of September 1, 1971; by SCO 227 effective January 1, 1976; by SCO 240 effective February 4, 1976; by SCO 427 effective August 1, 1980; by SCO 486 effective November 16, 1981; by SCO 746 effective December 15, 1986; by SCO 932 effective January 15, 1989; by SCO 1127 effective July 15, 1993; by SCO 1153 effective July 15, 1994; by SCO 1291 effective January 15, 1998; by SCO 1383 effective April 15, 2000; by SCO 1422 effective April 15, 2001; by SCO 1788 effective June 19, 2012; by SCO 1787 effective July 1, 2012; and by SCO 1775 effective October 15, 2019)

**Note (effective nunc pro tunc to June 19, 2012):** Chapter 72, section 7, SLA 2012 (SB 135), effective June 19, 2012, amended Criminal Rule 45(d)(2) relating to the rights of crime victims, as reflected in section 4 of this Order. The changes to Criminal Rule 45(d)(2) are adopted for the sole reason that the legislature has mandated the amendments.

**Note (effective nunc pro tunc to June 19, 2012):** Chapter 72, section 8, SLA 2012 (SB 135), effective June 19, 2012, amended Criminal Rule 45 relating to the rights of crime victims, as reflected in section 6 of this Order. The changes to Criminal Rule 45(h) are adopted for the sole reason that the legislature has mandated the amendments.

**Note:** Chapter 71, section 47, SLA 2012 (SB 86), effective July 1, 2012, amended Criminal Rule 45(a) relating to the protection of vulnerable adults, as reflected in section 4 of this Order. The changes to Criminal Rule 45(a) are adopted for the sole reason that the legislature has mandated the amendments.

#### **Rule 46. Exceptions Unnecessary.**

Exceptions to rulings or orders of the court are unnecessary. It is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him.

(Adopted by SCO 4 October 4, 1959; amended by SCO 1153 effective July 15, 1994)

#### **Rule 47. Harmless Error and Plain Error.**

(a) **Harmless Error.** Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) **Plain Error.** Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

(Adopted by SCO 4 October 4, 1959)

#### **Rule 48. Regulation of Conduct in the Court Room.**

The taking of photographs in the court room during the progress of judicial proceedings, or radio or television broadcasting of judicial proceedings from the court room, shall not be permitted by the court except in accordance with applicable provisions of the Administrative Rule 50.

(Adopted by SCO 4 October 4, 1959; amended by SCO 322 effective September 15, 1978; and by SCO 1158 effective July 15, 1994)

#### **Rule 49. Records.**

(a) The clerks of court shall keep such records in criminal proceedings as may be prescribed by rule or order of the supreme court or by the administrative director with the approval of the chief justice.

(b) Psychiatric and psychological reports ordered by the court under AS 12.47 are confidential as defined in Administrative Rule 37.5.

(Adopted by SCO 4 October 4, 1959; amended by SCO 1297 effective January 15, 1998; and by SCO 1928 effective October 15, 2018)

#### **Rule 50. Attorneys.**

(a) **Appearance by Counsel—Withdrawal.** In all criminal actions, counsel retained to represent the accused shall, immediately after being retained, file with the clerk a formal written appearance. The Rules of Civil Procedure relating to the withdrawal of an attorney for a party shall apply to attorneys retained to represent an accused in a criminal action. If review is sought of a final judgment in a criminal case or a final order resolving a post-conviction relief action, counsel will not be permitted to withdraw unless a different attorney has entered the case or until the notice of appeal or petition and the initial documents required to be filed under Appellate Rule 204(b), Appellate Rule 215(c), or Appellate Rule 403(h) have been accepted for filing by the clerk of the appellate courts as provided in Appellate Rule 517.1(f)(1)(A), or unless the appellate court otherwise allows.

(b) **Civil Rules to Apply.** All other provisions of the Rules of Civil Procedure relating to attorneys, regarding examining witnesses, counsel as a witness, non-resident attorneys, and disbarment and discipline, shall apply to practice in criminal actions in the courts of the state.

(c) **Penalties.** After giving the attorney reasonable notice and an opportunity to be heard, the court may impose against