

2/24/24

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of:

Anchorage Superior Court Felony  
Pre-Trial Order

AMENDED

PJ Order # 1006

**ANCHORAGE SUPERIOR COURT FELONY PRE-TRIAL ORDER**

The Anchorage Superior Court issued PJ Order #773 on August 28, 2019, instituting a pilot pre-trial program. This pre-trial order set timelines on case disposition that has not been followed, primarily due to the COVID-19 pandemic. Beginning on May 1, 2024, the Anchorage Superior Court intends to follow the pre-trial order with respect to Class C and Class B felony offenses. See PJ Order #773, paragraphs 9(d)-(f).

Felony offenses subject to this order will only remain in PIH for a max period of 60 days. The prosecution shall provide discovery to the defendant's counsel no later than 30 days after arraignment in superior court. All pretrial motions shall be filed by all parties no later than 90 days after arraignment in superior court. All other motion deadlines set in PJ Order #773 will remain in effect. See paragraphs 14(a)-(c).

Deviations from the above timeline will only be granted for good cause. Substitution of new counsel will result in no more than a 60-day continuance unless good cause is found for more time.

**IT IS SO ORDERED.**

DATED at Anchorage, Alaska this 14th day of February, 2024. Nunc Pro Tunc to February 7, 2024.



Thomas A. Matthews  
Presiding Judge  
Third Judicial District



Catherine M. Easter  
Deputy Presiding Judge  
Anchorage Superior Court

4/18/24

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of:

Anchorage Pre-Indictment Hearing  
Calendar

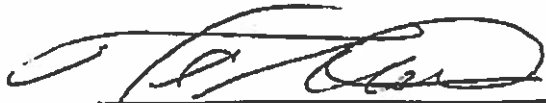
PJ Order # 1009

**ORDER REGARDING OFF-RECORD CONTINUANCES OF ANCHORAGE  
PRE-INDICTMENT HEARINGS**

Starting May 1, 2024, off-record continuances of pre-indictment hearings will no longer be permitted in any case, regardless of the offense classification. This Order modifies PJO 3AN-AO-24-9, which allowed the practice to continue in an A or Unclassified felony case filed after 2022. As of May 1, 2024, the process will be discontinued in all cases on the Anchorage pre-indictment calendar.

**IT IS SO ORDERED.**

DATED at Anchorage, Alaska this 18<sup>th</sup> day of April, 2024.



Thomas A. Matthews  
Presiding Judge  
Third Judicial District

# **RULES OF CRIMINAL PROCEDURE**

## **Excerpt Rules 5 and 5.1**

### **Rule 5. Proceedings Before the Judicial Officer.**

#### **(a) Appearance Before Judicial Officer After Arrest.**

(1) Except when the person arrested is issued a citation for a class C felony, misdemeanor, or a violation and immediately thereafter released, the arrested person shall appear before a judicial officer without unnecessary delay and in any event within 24 hours after arrest, absent compelling circumstances, including weekend days and holidays.

#### **(2) If**

(A) the judicial officer commits the arrested person to jail for a purpose other than to serve a sentence, and

(B) the jail is situated in a different community from the place where the judicial officer committed the arrested person to jail, and

(C) the arrested person is not represented by counsel, and

(D) the arrested person has not previously had a bail review, and

(E) the arrested person has no date, time and place established for his or her next court appearance,

then the arrested person shall appear before a judicial officer the next business day

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

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

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

(3) The responsibility for ensuring that the arrested person appears before a judicial officer as specified in paragraphs (1) and (2) of this subsection shall be borne equally by

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

(B) 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 on a warrant appears before a judicial officer 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 judicial officer before whom the person arrested appears.

(5) Whenever a person arrested without a warrant appears before a judicial officer, a complaint shall be filed

forthwith.

(6) Judicial officers and jail facilities shall be available at all times to receive bail, and each judicial officer 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 judicial officer be qualified for this purpose.

**(b) Rights of Prisoner to Communicate with Attorney and Other Person.** Immediately after arrest, the prisoner shall have the right forthwith to telephone or otherwise to communicate with both an 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. This subsection does not provide a prisoner with the right to initiate communication or attempt to initiate communication under circumstances proscribed under AS 11.56.755.

**(c) Misdemeanor Arraignment or Felony First Appearance.** The judicial officer

(1) shall inform the defendant of the complaint 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

(A) of the right to retain counsel, and

(B) of the right to request the appointment of counsel at public expense if the defendant is financially unable to employ counsel and could

(i) be sentenced to jail, or

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

(iii) suffer a fine sufficiently severe to indicate criminality; and

(C) of the right to be admitted to bail.

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

(5) 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) Initial Determination of Probable Cause at Arraignment or Felony First Appearance.**

(1) If the defendant was arrested without a warrant, the judicial officer at the first appearance shall determine whether the arrest was made with probable cause to believe that an

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offense had been committed and that the defendant had committed it. This determination shall be made from the complaint, from an affidavit or affidavits filed with the complaint, or from an oral statement under oath of the arresting officer or other person which is recorded by the judicial officer. The determination shall be noted in the file.

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(2) If the defendant was arrested on a warrant for a failure to appear at a prior proceeding, the judicial officer shall determine from the file whether the defendant's initial arrest was pursuant to a warrant and, if not, whether at a prior proceeding the court made an initial determination of probable cause as required by paragraph (d)(1). If there has been no judicial determination of probable cause, the judicial officer shall proceed as under paragraph (d)(1).

(3) If probable cause is not shown, the judicial officer shall discharge the defendant.

## **(e) Felonies—Other Requirements at First Appearance.**

(1) If the charge against the defendant is a felony, the defendant shall not be called upon to plead.

(2) The judicial officer shall inform the defendant of the right to a preliminary examination. A defendant is entitled to a preliminary examination if the defendant is charged with a felony for which the defendant has not been indicted, unless

(A) the defendant waives the preliminary examination, or

(B) an information has been filed against the defendant with the defendant's consent in the superior court.

(3) If the defendant after having had the opportunity to consult with counsel waives preliminary examination, the judicial officer shall forthwith hold the defendant to answer in the superior court.

(4) If the defendant does not waive preliminary examination, the judicial officer shall schedule a preliminary examination. Such examination shall be held within a reasonable time, but in no event later than

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

(B) 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 judicial officer may extend the time limits specified in this subsection one or more times. In the absence of consent by the defendant, the judicial officer may extend these time limits only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interest of justice.

## **(f) Misdemeanors—Other Requirements at Arraignment.**

(1) The judicial officer shall ask the defendant to enter a plea pursuant to Criminal Rule 11.

(2) If the defendant pleads not guilty, the judicial officer shall fix a date for trial at such time as will afford the defendant a reasonable opportunity to prepare.

(3) The judicial officer shall inform the defendant that the case may not be tried before a magistrate judge without the defendant's written consent.

(4) The judicial officer shall inform the defendant that the defendant may peremptorily disqualify the judicial officer to whom the case is assigned pursuant to AS 22.20.022.

**(g) Video or Telephonic Appearance.** The appearances referenced in this rule may be

(1) by court-approved video link under Criminal Rule 38.2; or

(2) by telephone if

(A) the proceeding is held on a weekend day, a holiday, or otherwise outside the court's regular business hours; or

(B) the proceeding is held during the court's regular business hours, but there is no judicial officer available where the defendant is located.

(Adopted by SCO 4 October 4, 1959; amended by SCO 98 effective September 16, 1968; by SCO 157 effective February 15, 1973, by SCO 165 dated June 25, 1973 and by directive from the Clerk of the Court dated June 28, 1973; renumbered by Amendment No. 3 to SCO 157 effective February 15, 1973; by SCO 427 effective August 1, 1980; by SCO 458 effective May 1, 1981; and by SCO 719 effective August 1, 1986; by SCO 723 effective December 15, 1986; by SCO 1153 effective July 15, 1994; by SCO 1189 effective July 15, 1995; by SCO 1339 effective June 13, 1998; by SCO 1739 effective nunc pro tunc to July 1, 2010; by SCO 1763 effective nunc pro tunc to July 1, 2011; by SCO 1799 effective October 15, 2013; by SCO 1829 effective October 15, 2014; by SCO 1883 effective July 1, 2016; by SCO 1898 effective January 1, 2017; and by SCO 1927 effective nunc pro tunc to January 1, 2018)

**Note to SCO 1339:** Criminal Rule 5(b) was amended by § 17 ch. 86 SLA 1998 to make it clear that the rule does not give a prisoner the right to contact a victim or witness in violation of AS 11.56.755. Section 1 of this order is adopted for the sole reason that the legislature has mandated the amendment.

**Note:** The Alaska Legislature amended Criminal Rule 5(a) to change the time within which an arrested person must be brought before a judicial officer for a first appearance from 24 hours to 48 hours. Ch. 19, §§ 23 and 24, SLA 2010 (HB 324) (eff. July 1, 2010). The changes to Criminal Rule 5 are adopted for the sole reason that the legislature has mandated the amendments. That legislative rule change creates an apparent conflict with AS 12.25.150(a), which provides that an arrested person must be taken before a judge or magistrate "in any event within 24 hours after arrest."

## RULES OF CRIMINAL PROCEDURE

### Excerpt Rules 5 and 5.1

**Note:** Chapter 20, section 25, SLA 2011 (HB 127), effective July 1, 2011, amended Criminal Rule 5(a)(1) relating to time for a first appearance. The changes to Criminal Rule 5(a)(1) are adopted for the sole reason that the legislature has mandated the amendments.

#### Cross References

- (a) **CROSS REFERENCE:** AS 12.25.150
- (b) **CROSS REFERENCE:** AS 12.25.150
- (c) **CROSS REFERENCE:** AS 12.30.010

#### **Rule 5.1. Preliminary Examination in Felony Cases.**

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

(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 the defendant's or by the defendant's counsel.

(c) **Witnesses Called by the Defendant.** The defendant may produce and examine witnesses on the defendant's behalf. All witnesses, including the defendant should the defendant choose to testify, 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 the Alaska Rules of Evidence. Rulings pertaining to the admissibility of evidence shall not be binding upon any subsequent judicial proceeding.

#### (e) **Telephonic Testimony.**

(1) A witness may participate telephonically if the witness:

(A) would be required to travel more than 50 miles to court; or

(B) lives in a place from which people customarily travel by air to the court.

(2) A witness who is not entitled to participate telephonically under subparagraph (1) may participate telephonically with approval of the court.

(f) **Record.** The proceedings shall be electronically recorded.

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

(h) **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 judge 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.

(i) **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 judge shall enter an order holding the defendant to answer to the charge and committing the defendant to proper custody. The judge or magistrate judge shall admit the defendant to bail as provided by law and by these rules.

(j) **Records.** When a judge or magistrate judge has held a defendant to answer, the judge or magistrate judge 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 the judge or magistrate judge, and all exhibits introduced at the examination.

(k) **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 the attorney general may appear on behalf of the State of Alaska and control the conduct of the prosecution.

(Added by SCO 157 effective February 15, 1973; amended by SCO 368 effective August 1, 1979; by SCO 1153 effective July 15, 1994; by SCO 1460 effective October 15, 2003; by SCO 1799 effective October 15, 2013; and by SCO 1829 effective October 15, 2014)