

SENATE BILL NO. 11

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY SENATORS LEMAN, Kelly, Halford, Green

Introduced: 1/16/95

Referred: JUD, FIN

A BILL

FOR AN ACT ENTITLED

1 "An Act revising Rule 15, Alaska Rules of Criminal Procedure, relating to
2 depositions, to adopt the comparable federal rule."

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

4 * **Section 1.** Rule 15, Alaska Rules of Criminal Procedure, is repealed and reenacted to
5 read:

6 Rule 15. DEPOSITIONS. (a) When Taken. When, due to exceptional
7 circumstances of the case, it is in the interest of justice that the testimony of a
8 prospective witness of a party be taken and preserved for use at trial, the court may,
9 on motion of the party and notice to the parties, order that testimony of the witness be
10 taken by deposition and that any designated book, paper, document, record, recording,
11 or other material not privileged be produced at the same time and place. If a witness
12 is detained under AS 12.30.050, the court, on written motion of the witness and on
13 notice to the parties, may direct that the witness' deposition be taken. After the
14 deposition has been subscribed, the court may discharge the witness.

1 (b) Notice of Taking. The party at whose instance a deposition is to be taken
2 shall give to every party reasonable written notice of the time and place for taking the
3 deposition. The notice shall state the name and address of each person to be examined.
4 On motion of a party on whom the notice is served, the court for cause shown may
5 extend or shorten the time or change the place for taking the deposition. The party at
6 whose instance a deposition is to be taken should notify the officer having custody of
7 a defendant of the time and place set for the examination and shall, unless the
8 defendant waives in writing the right to be present, produce the defendant at the
9 examination and keep the defendant in the presence of the witness during the
10 examination, unless, after being warned by the court that disruptive conduct will cause
11 the defendant's removal from the place of the taking of the deposition, the defendant
12 persists in conduct to justify exclusion from that place. A defendant not in custody
13 shall have the right to be present at the examination on request subject to terms as may
14 be fixed by the court, but a failure, absent good cause shown, to appear after notice
15 and tender of expenses under (c) of this rule shall constitute a waiver of that right and
16 of an objection to the taking and use of the deposition based on that right.

17 (c) Payment of Expenses. When a deposition is taken at the instance of the
18 prosecution, or when a deposition is taken at the instance of a defendant who is unable
19 to bear the expenses of the taking of the deposition, the court may direct that the
20 expense of travel and subsistence of the defendant and the defendant's attorney for
21 attendance at the examination and the cost of the transcript of the deposition be paid
22 by the prosecution.

23 (d) How Taken. Subject to the additional conditions the court may provide,
24 and except as otherwise provided in these rules, a deposition shall be taken and filed
25 in the manner provided in civil actions provided that (1) a deposition may not be taken
26 of a party defendant without that defendant's consent, and (2) the scope and manner
27 of examination and cross-examination shall be as would be allowed in the trial itself.
28 The prosecution shall make available to the defendant or the defendant's counsel for
29 examination and use at the taking of the deposition any statement of the witness being
30 deposed that is in the possession of the prosecution and that the defendant would be
31 entitled at the trial.

1 (e) Use. At the trial or a hearing, a part or all of a deposition, otherwise
2 admissible under the rules of evidence, may be used as substantive evidence if the
3 witness is unavailable, as defined in Rule 804(a) of the Alaska Rules of Evidence, or
4 the witness gives testimony at the trial or hearing inconsistent with that witness'
5 deposition. A deposition may be used by a party for the purpose of contradicting or
6 impeaching the testimony of the deponent as a witness. If a part of a deposition is
7 offered in evidence by a party, an adverse party may require the offering of all of the
8 deposition that is relevant to the part offered and any party may offer other parts.

9 (f) Objections to Deposition Testimony. Objections to deposition testimony or
10 evidence, or parts of that testimony or evidence, and the grounds for the objection
11 must be stated at the time of the taking of the deposition.

12 (g) Deposition by Agreement Not Precluded. This rule does not preclude the
13 taking of a deposition, orally or upon written questions, or the use of a deposition by
14 agreement of the parties with the consent of the court.