

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1189

Amending Criminal Rule 5
concerning initial appearances.

IT IS ORDERED:

1. Criminal Rules 5(d) and (e) are amended to read as follows:

~~(d) **Misdemeanors and Violations.** If the charge against the defendant is a misdemeanor or a violation the judge or magistrate shall proceed in accordance with Rule 1 of the Alaska District Court Rules of Criminal Procedure.~~

~~(e) **Felonies.** If the charge against the defendant is a felony, the defendant shall not be called upon to plead, but shall be given reasonable time and opportunity to consult counsel. The judge or magistrate shall proceed as follows:~~

~~(1) Initial Determination of Probable Cause.~~

(d) Initial Determination of Probable Cause.

~~(i) (1)~~ If the defendant was arrested without a warrant, the ~~judge or magistrate~~ judicial officer at the first appearance shall determine whether the arrest was made with probable cause to believe that an offense had been committed and that the defendant had committed it. This determination shall be made

~~(aa) from the complaint, or~~

~~(bb) from an affidavit or affidavits
filed with the complaint, or~~

~~(cc) from an oral statement under oath of
the arresting officer or other person which is
taken down recorded by the judge or magistrate
judicial officer, or recorded,~~

~~whether the arrest was made with probable
cause to believe that an offense had been
committed and that the defendant had committed
it. The determination shall be noted in the
file.~~

(2) If the defendant was arrested on a
warrant for a failure to appear at a prior
proceeding, the court 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 subparagraph (d)(1). If there has
been no judicial determination of probable
cause, the court shall proceed as under
subparagraph (d)(1).

~~(ii) (3) In the absence of a showing of
such If probable cause is not shown, the judge
or magistrate judicial officer shall discharge
the arrested person defendant.~~

~~(2) Right to Preliminary Examination.~~

(e) Felonies.

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

~~(i)~~ (2) The ~~judge or magistrate~~ 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

~~(aa)~~ (A) the defendant waives the preliminary examination, or

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

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

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

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

~~(bb)~~ (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 ~~judge or magistrate~~ judicial officer may extend the time limits specified in this subsection one or more times. In the absence of consent by the defendant, the ~~judge or magistrate~~ 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.

(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 court shall fix a date for trial at such time as will afford the defendant a reasonable opportunity to prepare.

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Effective Date: July 15, 1995
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DATED: January 13, 1995

EFFECTIVE DATE: July 15, 1995

/s/
Chief Justice Moore

/s/
Justice Rabinowitz

/s/
Justice Matthews

/s/
Justice Compton

/s/
Justice Eastaugh