

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1293

Amending Criminal Rules 6 and 43 and Evidence Rules 404 and 615 to incorporate changes made by chapter 63 SLA 1997.

IT IS ORDERED:

1. Paragraph (u) of Criminal Rule 6 is amended to read:

(u) **Telephonic Testimony.**

(1) A witness may participate telephonically in grand jury proceedings if ~~the witness is not a victim and the witness:~~

(A) would be required to travel more than 50 miles to the situs of the grand jury; or

(B) lives in a place from which people customarily travel by air to the situs of the grand jury.

(2) A witness who is not entitled to participate telephonically under subparagraph (1) may participate telephonically with approval of the presiding judge of the judicial district, or the presiding judge's designee. A motion to allow telephonic testimony under this subparagraph may be ex parte and shall be accompanied by an affidavit of the prosecuting attorney that states the reason telephonic testimony is requested.

(3) If a witness participates telephonically in grand jury proceedings,

after the witness is sworn, the prosecuting attorney shall require the witness to:

(A) state the location from which the witness is testifying; and

(B) verify

(i) that the witness' conversation cannot be overheard;

(ii) that no extension for the telephone from which the witness is testifying is in use; and

(iii) that the witness will notify the grand jury immediately if any person can overhear the witness' testimony or if the witness becomes aware that an extension for the telephone enters use during the testimony.

~~(4) As used in this paragraph, "victim" means a natural person against whom an offense under consideration by the grand jury has been perpetrated.~~

2. The following note is added at the end of Criminal Rule

6:

Note to SCO 1293: Criminal Rule 6(u) was amended by §§ 20 & 25 ch. 63 SLA 1997 to eliminate the requirement that the prosecution must obtain permission from the court before a victim can testify by telephone. Section 1 of this order is adopted for the sole reason that the legislature has mandated the amendment.

3. Paragraph (d) of Criminal Rule 43 is amended to read:

(d) Discharge from Custody — Exoneration of Bail. Except as provided in AS 12.30.035, when ~~When~~ dismissal is ordered pursuant to this rule the defendant shall be discharged from custody, or if admitted to bail, the bail exonerated, or money deposited in lieu thereof refunded to the depositors.

4. Paragraph (b) of Evidence Rule 404 is amended by adding subparagraph (4) which reads:

(4) In a prosecution for a crime involving domestic violence or of interfering with a report of a crime involving domestic violence, evidence of other crimes involving domestic violence by the defendant against the same or another person or of interfering with a report of a crime involving domestic violence is admissible. In this paragraph, "domestic violence" and "crime involving domestic violence" have the meanings given in AS 18.66.990.

5. The following note is added at the end of Evidence Rule 404:

Note to SCO 1293: Evidence Rule 404(b)(4) was added by § 22 ch. 63 SLA 1997. Section 5 of this order is adopted for the sole reason that the legislature has mandated the amendment.

6. Evidence Rule 615 is amended to read:

At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order on its own motion. This rule does not authorize exclusion of

(1) a party who is a natural person,~~or~~;

(2) an officer or employee of a party which is not a natural person designated as its representative by its attorney,~~or~~;

(3) a person whose presence is shown by a party to be important to the presentation of ~~his~~ the party's cause; or

(4) the victim of the alleged crime or juvenile offense during criminal or juvenile proceedings when the accused has the right to be present; in this paragraph, "victim" has the meaning given in AS 12.55.185.

7. The following note is added at the end of Evidence Rule 615:

Note to SCO 1293: Paragraph (4) of Evidence Rule 615 was added by § 23 ch. 63 SLA 1997. Section 6 of this order is adopted for the sole reason that the legislature has mandated the amendment.

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Effective Date: January 15, 1998
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DATED: October 29, 1997

EFFECTIVE DATE: January 15, 1998

/s/
Chief Justice Matthews

/s/
Justice Compton

/s/
Justice Eastaugh

/s/
Justice Fabe

/s/
Justice Bryner