

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1883

Amending Criminal Rule 5 concerning the timing and manner of appearing, updating references to judicial officers; and amending Criminal Rule 38.1(a) to add reference to the new Criminal Rule 5(g).

IT IS ORDERED:

Criminal Rules 5 and 38.1 are amended to read as follows:

Rule 5. Proceedings Before the Judicial Officer~~Judge or Magistrate Judge~~.

(a) Appearance Before Judicial Officer ~~Judge or Magistrate Judge~~ After Arrest.

(1) Except when the person arrested is issued a citation for a misdemeanor or a violation and immediately thereafter released, the arrested person shall appear ~~be taken before a the nearest available judicial officer judge or magistrate judge~~ without unnecessary delay and in any event within 48 hours after arrest, including weekend days ~~Sundays and holidays~~. ~~This appearance may be accomplished by the use of telephonic or television equipment pursuant to Criminal Rules 38.1 and 38.2.~~

(2) If

(A) ~~t~~The judicial officer judge or magistrate judge 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 ~~judge or magistrate judge~~ 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 ~~be taken~~ before a judicial officer ~~judge or magistrate judge~~ in the community where the jail is located within forty-eight hours of the person's detention in that jail 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 ~~the~~ counsel to be appointed, if appropriate.

(3) The responsibility for ensuring that the arrested person appears ~~is taken~~ before a judicial officer ~~judge or magistrate judge~~ as specified in ~~subsections~~ paragraphs (1) and (2) of this subsection ~~(a)~~ 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 ~~is taken for examination~~ appears before a judicial officer ~~judge or magistrate judge~~ 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 ~~judge or magistrate judge~~ before whom the person arrested appears.

(5) Whenever a person arrested without a warrant ~~is brought~~ appears before a judicial officer ~~judge or magistrate judge~~, a complaint shall be filed forthwith.

(6) Judicial officers ~~Judges and magistrate judges~~ and jail facilities shall be available at all times to receive bail, and each judicial officer ~~judge and magistrate judge~~ 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 ~~judge or magistrate judge~~ 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 ~~paragraph~~ 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 ~~judge or magistrate judge~~

* * * *

(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 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.

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

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

* * * *

(f) Misdemeanors—Other Requirements at Arraignment.

~~(1) The defendant may appear by use of telephonic or television equipment pursuant to Criminal Rules 38.1 and 38.2.~~

~~(12)~~ The judicial officer shall ask the defendant to enter a plea pursuant to Criminal Rule 11.

~~(23)~~ If the defendant pleads not guilty, the judicial officer ~~court~~ shall fix a date for trial at such time as will afford the defendant a reasonable opportunity to prepare.

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

(45) The judicial officer shall inform the defendant that the defendant may peremptorily disqualify the judicial officer ~~district judge or magistrate judge~~ 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.

Rule 38.1. Telephonic Participation in Criminal Cases.

(a) In any proceeding at which the defendant's presence is required under Criminal Rule 38(a), as modified by Rule 38.2, the defendant may waive the right to be present and request to participate by telephone. The defendant's waiver of the right to be physically present may be obtained orally on the record or in writing. If Rule 5(g)(2) applies, no waiver from the defendant is required. The court may allow telephonic participation of one or more parties, counsel or the judge at any proceeding in its discretion. The court may allow telephonic participation of witnesses at bail hearings, omnibus hearings, probation revocation hearings or at trial with the consent of the prosecution and

the defendant. The court may allow telephonic participation of witnesses at other hearings in its discretion.

* * * *

DATED: June 3, 2016

EFFECTIVE DATE: July 1, 2016

/s/
Chief Justice Stowers

/s/
Justice Winfree

/s/
Justice Maassen

/s/
Justice Bolger