

**IN THE SUPREME COURT OF THE STATE OF ALASKA**  
**SPECIAL ORDER OF THE CHIEF JUSTICE**

**ORDER NO. 8331\***

Order Summarizing Current Pandemic-Related Orders  
\*(correcting typo of reference to SCO 1974 on page 2)

Since the COVID-19 pandemic began, the Supreme Court, the Chief Justice, and the Presiding Judges have issued several orders to respond to immediate situations or to plan for future events. Many orders replace or built upon previous orders. This order summarizes and clarifies which orders are in effect at this time.<sup>1</sup> Modifications to existing orders are identified in *italics*, reflecting the change to the Alaska Department of Health and Social Services (DHSS) COVID-19 alert levels.<sup>2</sup>

**Pandemic-Related Authority to Issue Orders or Relax Court Rules**

At the start of the pandemic, Supreme Court Order [1957](#) suspended or relaxed certain court rules in response to COVID-19. It provided presiding judge and chief justice authority in specified areas and also authorized the chief justice to relax or suspend court rules as needed.

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<sup>1</sup> This order does not include pandemic-related presiding judge orders for individual court locations in the Third Judicial District. Those court-specific orders may be reviewed at <http://courts.alaska.gov/covid19/index.htm> in the “COVID-19 RELATED ORDERS” section under “Third Judicial District” and the specific court location.

<sup>2</sup> DHSS now uses a four-level alert system that reports COVID-19 cases per 100,000 persons in the past 7 days. High alert is greater than 100 cases per 100,000; substantial alert is 50-99.99 cases; moderate is 10-49.99 cases; and low is 0-9.99 cases. For more information about the alert levels, see <http://dhss.alaska.gov/dph/epi/id/pages/covid-19/alertlevels.aspx>.

## **Criminal Rule 45**

When criminal trials were suspended, Chief Justice Special Orders tolled the time under Criminal Rule 45. Supreme Court Order [1974](#) resets, extends and tolls the time depending on when the case was/is filed and the type of offenses charged. It provides factors for trial scheduling priority. It provides that the assigned judge may toll time to address backlogs and scheduling conflicts. It also provides the presiding judge may limit or suspend criminal jury trials for a district or location to address public health concerns, suggesting a suspension when cases are reported as 20-30 per 100,000 over the last 14 days according to the old Alaska DHSS alert system. *The Supreme Court order remains in effect, except the new DHSS alert levels should be reflected with the presiding judge limiting or suspending trials when COVID-19 cases are in the substantial or high alert levels of 50-100+ cases per 100,000 over the last 7 days.*

## **Types of Criminal Offenses Authorized for Jury Trials**

Jury trials involving misdemeanors or class A, B, C and unclassified felonies are authorized, unless the presiding judge temporarily suspends jury trials due to public health concerns as provided in Chief Justice Special Orders [8289](#) and [8259](#). Presiding judges have suspended jury trials in some locations based on local conditions. As those orders are issued and expire at varying intervals, it is best to regularly check the court system pandemic response webpage “Suspended Jury Trial and Grand Jury Locations” to see the orders in effect (<http://courts.alaska.gov/covid19/index.htm>).

## **Request for Jury Trial During a Suspension Period**

Chief Justice Special Order [8259](#) provides that the presiding judge may allow a jury trial or a class of jury trials during a period of general suspension when consistent with public health. A party may request such an order by making a motion to the trial court. In response to a party's request, the assigned trial court judge shall make findings on all relevant factors and submit a recommendation to the presiding judge for decision.

The presiding judge should consider the following factors to determine whether to grant a jury trial or a class of jury trials during a period of suspension:

- The requests of the parties and victim(s);
- The age of the case;
- Whether the defendant is in custody;
- The classification of any charged offense(s);
- The number of other required participants, including victims, custodial officers, interpreters, investigators, or other lawyers;
- The facilities available for the trial or proceeding;
- The prejudice suffered by any party;
- The defendant's access to counsel;
- Any special transportation requirements;
- Any local quarantine requirements or other health mandates;
- The COVID-19 case counts and risk levels for the area or location; and
- Any special health considerations for the trial participants.

### **Conducting Jury Trials, Jury Selection Procedures and Trial Procedures**

Chief Justice Special Order [8259](#) provides that jury trials shall be conducted in accordance with the guidance set out in the [Alaska Court System Conducting Criminal and Civil Jury Trials, and Grand Jury During the COVID-19 Pandemic \(www.courts.alaska.gov/covid19/docs/conducting-trials-gj-pandemic.pdf\)](#).

The trial judge may expand the jury selection area to provide a representative cross-section of the appropriate community as provided in Administrative Rule 15(h)(3).

Chief Justice Special Order [8194](#) in sections C and D provides jury selection procedures and trial procedures.

## **Trial Sites**

Chief Justice Special Orders [8290](#), [8289](#), and [8259](#) provide information about the need to relocate some presumptive trial sites.

The locations where misdemeanor trial sites will be temporarily relocated due to courtroom size restrictions include:

- Angoon trials will be held in Sitka;
- Hoonah and Yakutat trials will be held in Juneau;
- Kake trials will be held in Petersburg;
- Unalakleet trials will be held in Nome; and
- St. Paul and Sand Point trials will be held in Anchorage.

The following felony trial sites will be temporarily relocated, unless court administration can obtain an alternate public facility:

- Petersburg trials will be held in Ketchikan;
- Wrangell trials will be held in Ketchikan;
- Naknek trials will be held in Dillingham;
- Cordova and Glennallen trials will be held in Valdez;
- Unalaska trials will be held in Anchorage or Dillingham;
- Seward trials will be held in Kenai;
- Delta Junction trials will be held in Fairbanks; and
- Tok felony trials will be held in Fairbanks.

The following locations listed in Administrative Bulletin 27 will not be available as additional trial sites: Angoon, Haines, Kake, Pt. Hope, Unalakleet, St. Paul, and Sand Point.

### **Presumptive Death Trials by Videoconference**

Chief Justice Special Order [8168](#) authorizes presumptive death trials in all locations to occur by videoconference and provides procedures. This expands an earlier Third District pilot project.

### **Civil Jury Trials**

Chief Justice Special Order [8322](#) suspends in-person civil jury trials until November 1, 2021, with the exception of presumptive death trials in which videoconference proceedings have been approved. The presiding judge may allow in-person civil jury trials before November 1 at the request of the trial judge or the parties. The order sets out the process to request an in-person trial and the factors the presiding judge shall consider when deciding whether to grant an in-person trial. The presiding judge may approve a request for a jury trial to be conducted by videoconference by agreement of the parties. All other court proceedings shall be conducted by teleconference or videoconference whenever possible.

### **Visitor Health Precautions**

Chief Justice Special Order [8310](#), Update Regarding Visitor Health Precautions and Remote Participation, issued August 3, 2021, remains in effect. It provides information about visitor screening when entering a courthouse, mask requirement unless exempted or authorized by a judge for removal during proceedings for specified reasons, and social distancing requirement except for those authorized because of their professional relationship to reduce the distance during courtroom proceedings. The order also addresses remote participation in regions with “high average daily case rates as reported by DHSS.” *Order 8310 was issued before Alaska DHSS changed their alert system to a four-level system. As such, this Order amends No. 6 in that Order to reflect the updated DHSS alert levels and now requires:*

*Judges should continue to liberally allow remote participation in regions with high or substantial case rates per 100,000 people over the last 7 days as reported by DHSS. Judges should also continue to*

*liberally allow remote participation by the parties for all pretrial hearings where personal appearance is not necessary. And judges should avoid requiring the parties to attend large block hearings where they cannot enforce social distancing. During courtroom proceedings, the judge may authorize removal of face coverings/masks as necessary, including for purposes of witness testimony, defendant identification, or making an appropriate record, provided that other protective measures are in place such as Plexiglas barriers.*

If there is a more restrictive municipal ordinance or local emergency order requiring face coverings or masks, the court system facility in that location shall also follow that ordinance regarding visitors.

### **Filings by Email and Fax and Payment of Filing Fees Online**

Chief Justice Special Order [8135](#), issued February 23, 2021, authorizes filings by email or fax. It permits signatures using “s[name]” and the usage of the Self-Certification form TF-835 Self-Certification (No Notary Available) when a notary is not available. It also allows payment of filing fees online by credit card.

[Amended Second Updated Presiding Judges’ Statewide Administrative Order Governing Relaxation and Suspension of Various Court Rules Based on the COVID-19 Pandemic](#), issued April 24, 2020, outlines telephone and videoconference appearance requirements and procedures for electronic filing and signature.

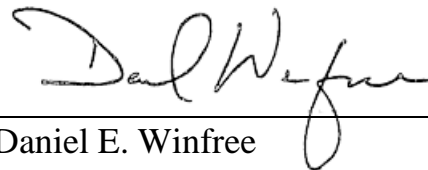
### **Grand Jury**

Grand jury proceedings are authorized, unless limited or suspended by a presiding judge due to public health concerns. Presiding judges have suspended grand jury trials in some locations based on local conditions. As those orders are issued and expire at varying intervals, it is best to regularly check the court system pandemic response webpage “Suspended Jury Trial and Grand Jury Locations” to see the orders in effect (<http://courts.alaska.gov/covid19/index.htm>).

Chief Justice Special Order [8234](#) provides that the presiding judge may allow witnesses and interpreters to appear at grand jury proceedings by videoconference or teleconference following the procedures in Chief Justice Order No. 8148. The presiding judge may allow videoconference grand jury proceedings for any location where in-person grand jury proceedings are limited or suspended. This includes circumstances when courtrooms become unavailable due to social distancing and other pending proceedings. The clerk shall maintain an audio recording of videoconference grand jury proceedings; a video recording is not required. *Special Order 8234 remains in effect, except the new DHSS alert levels should be reflected with the presiding judge limiting or suspending grand jury proceedings when COVID-19 cases are in the substantial or high alert levels of 50-100+ cases per 100,000 over the last 7 days.*

Chief Justice Special Order [8204](#) allows grand jury proceedings by videoconference for all judicial districts, outlining the procedures and expanding the Kotzebue pilot project authorized in Chief Justice Special Order [8157](#).

DATED: September 15, 2021



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Daniel E. Winfree  
Chief Justice

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