

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

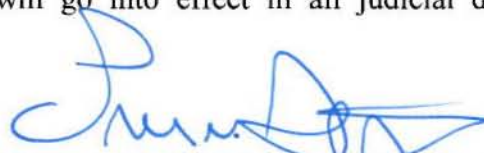
In the Matter of: )  
)  
Procedures for Felony Petitions to Revoke )  
Probation - Including "Out of Town Petitions" )  
\_\_\_\_\_ )

First Judicial District Administrative Order No. 10-02  
Second Judicial District Presiding Judge's Administrative Order No. 2010-2  
Third Judicial District Administrative Order No. 3AO-10-17  
Fourth Judicial District Presiding Judge Standing Order No. 10-4

The attached amended version of the order establishing procedures for felony petitions to revoke probation (including "out-of-town petitions") will go into effect in all judicial districts on October 15, 2012.

10/10/12

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Date



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Trevor Stephens  
Presiding Judge, First Judicial District

10/10/12

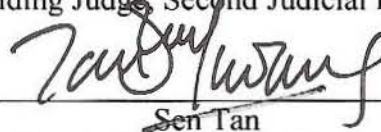
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Ben Esch  
Presiding Judge, Second Judicial District

October 10, 2012

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Date



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Sen Tan  
Presiding Judge, Third Judicial District

10.10-12

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Date



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Douglas Blankenship  
Presiding Judge, Fourth Judicial District

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**Uniform Administrative Order  
Establishing Procedures for  
Felony Petitions to Revoke Probation (Including “Out-of-Town Petitions”)**

This order is adopted by the presiding judges pursuant to Administrative Rule 46 to standardize statewide procedures for handling felony petitions to revoke probation (PTRPs). It clarifies the procedure to be used in the following two situations:

1. The alleged probation violation occurs outside the area served by the court with jurisdiction over the probationer. This order describes how to determine where hearings will be held.
2. The probationer moves to another area of the state and the Department of Corrections transfers supervision of the probationer to another probation office. In this situation, this order implements AS 33.05.060<sup>1</sup> by exercising the discretion allowed by that statute to transfer jurisdiction over a probationer to the court that serves the community where the probationer now resides.

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<sup>1</sup> AS 33.05.060 states: **Transfer of jurisdiction over probationer.** Whenever during the period of probation, a probationer goes from the judicial district in which the probationer is being supervised to another judicial district, jurisdiction over the probationer may be transferred, in the discretion of the court, from the court for the district from which the probationer goes to the court for the other district, with the concurrence of the latter court. Thereupon the court for the district to which jurisdiction is transferred shall have all power with respect to the probationer that was previously possessed by the court for the district from which the transfer is made, except that the period of probation may not be changed without the consent of the sentencing court. This process under the same conditions may be repeated whenever during the period of probation the probationer goes from the district in which the probationer is being supervised to another district.



## Procedures

### A. Sentencing Court Retains Jurisdiction over Probationer

As a general rule, the original sentencing court retains jurisdiction over a defendant while on probation. When the sentencing court has jurisdiction, the following requirements apply to petitions to revoke probation:

1. **Petitions.** All petitions to revoke probation must be filed in the sentencing court, regardless of where the violation occurred.

For purposes of this order, the sentencing court is the court identified in the case number. If that court's case files are maintained in another court location after sentencing, the petition must be filed where the files are kept. The administrative director maintains a list of the courts where case files are kept after sentencing.

2. **Where Proceedings Will Be Held.** (See chart on page 8.)

- a. **Violation Occurred in Sentencing Court's Area.**

If the petition is based on conduct that occurred in the sentencing court's area, adjudication and disposition should be handled by the sentencing court.

- b. **Violation Occurred Outside Sentencing Court's Area.**

If the petition is based on conduct that occurred outside the sentencing court's area:

- (1) **Technical Violation.** If the violation is not a new criminal charge, adjudication and disposition should be handled by the sentencing court, unless otherwise ordered by that court.
- (2) **New Charge.** If the petition alleges new criminal conduct charged in a new criminal case, adjudication should generally be held in the "violation court" (the superior court nearest to where the violation allegedly occurred).<sup>2</sup> The violation court should temporarily reassign the PTRP case to a superior court

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<sup>2</sup> In *McRae v State*, 909 P.2d 1079 (Alaska App. 1996), the Court of Appeals held that it was not an abuse of discretion to assign the adjudication phase of McRae's probation revocation proceeding to the resident Kodiak superior court judge and the dispositive phase to the sentencing judge (an Anchorage judge who had traveled to Kodiak for the original sentencing and would travel there again for the PTRP disposition).

judge at the violation court. Either side may exercise a peremptory challenge if that side has not previously exercised a challenge in the case. Any challenge must comply with Criminal Rule 25.

Disposition should be handled by the **sentencing court** unless the defendant is entering into an agreement at the violation court which disposes of the PTRP. The violation court judge may accept such an agreement and enter disposition accordingly. The violation court judge may wish to contact the sentencing judge before accepting an agreement.

**B. Jurisdiction over Probationer Transfers to a New Supervising Court**

1. **Transfer of Jurisdiction when Probationer Moves.** If the Department of Corrections transfers supervision of the probationer to another probation office because the probationer has moved, jurisdiction over the probationer transfers to the superior court or felony PTRP filing location nearest to where the defendant now resides, unless the sentencing judge retains jurisdiction as provided in paragraph 2 below. The administrative director maintains a list of the felony PTRP filing locations designated by each presiding judge.
2. **Sentencing Judge May Retain Jurisdiction.** The sentencing judge may, at any time, enter an order retaining jurisdiction over a probationer and requiring all petitions and motions relating to probation to be filed in the sentencing court even if supervision of the probationer is transferred to a different probation office.
3. **Filings after Transfer.** Unless the sentencing judge has entered an order retaining jurisdiction, all petitions to revoke probation and motions relating to probation must be filed in the new supervising court under the original case number. The first petition or motion filed in the new supervising court must be accompanied by the documents listed in Section C.

If the prosecutor or probationer files a motion or petition relating to probation, the party filing the motion or petition must send a copy to the supervising probation office.

4. **Judicial Assignment.** If a petition or motion is filed, the new supervising court will reassign the case to a superior court judge in that court. The supervising court will give notice of the judicial assignment to the local district attorney and to the probationer's attorney when appointed or



otherwise identified. Either side may exercise a peremptory challenge if that side has not previously exercised a challenge in the case.<sup>3</sup> Any challenge must comply with Criminal Rule 25.

5. **New Judge's Authority.** Under AS 33.05.060, the assigned judge at the new supervising court shall have the same power with respect to the probationer that the sentencing judge possessed, except that the period of probation may only be changed pursuant to a disposition agreement or with the sentencing judge's consent. If the sentencing judge is no longer available, the supervising court judge has the power to change the period of probation to the extent permitted by law.
6. **Warrants.** If the new supervising court issues a warrant for the probationer's arrest, the supervising court will deliver the original warrant to the AST office that serves that court. The warrant will be issued under the original case number, but must clearly indicate that it was issued by the supervising court and that return of service must be made to the supervising court. See Administrative Bulletin 80 on warrants.
7. **Where Proceedings Will Be Held.** (See chart on page 8.)
  - a. **Violation Occurred in New Supervising Court's Area.**

If the petition is based on conduct that occurred in the new supervising court's area, adjudication and disposition should be handled by the supervising court.
  - b. **Violation Occurred Outside New Supervising Court's Area.**

If the petition is based on conduct that occurred outside the new supervising court's area:

    - (1) **Technical Violation.** If the violation is not a new criminal charge, adjudication and disposition should be held in the new supervising court, unless otherwise ordered by that court.
    - (2) **New Charge.** If the petition alleges new criminal conduct charged in a new criminal case, adjudication should generally be held in the "violation court" (the superior court nearest to

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<sup>3</sup> See *McRae v. State*, 909 P.2d 1079, 1082-83 (Alaska App. 1996).

where the violation allegedly occurred).<sup>4</sup> Disposition should be handled by the new supervising court unless the defendant is entering into an agreement at the violation court which disposes of the PTRP.

See Section A.2.b(2) for additional instructions to the violation court regarding reassignment, peremptory challenge and accepting a disposition agreement.

### **C. Probation Officer and Prosecutor Requirements When Probation Supervision Transfers**

When the Department of Corrections transfers supervision of a probationer to another probation office because the probationer has moved, jurisdiction over the probationer transfers to the superior court or felony PTRP filing location nearest to where the defendant now resides, unless the sentencing judge retains jurisdiction as provided in Section B. The administrative director maintains a list of the PTRP filing locations designated by each presiding judge.

When the Department of Corrections transfers supervision, the department must file a *DOC Supervision Transfer* form (using court form CR-559) with the sentencing court. If the department later transfers supervision to another new supervising court, the department must file the CR-559 form with the prior supervising court and also with the original sentencing court.

Unless the sentencing judge has entered an order retaining jurisdiction, all petitions to revoke probation and motions relating to probation must be filed in the new supervising court under the original case number.

The following requirements apply to the first petition or motion filed in the new supervising court by a probation officer or prosecutor:

1. The petitioner must file a *Notice of Transfer of Supervision* (using court form CR-560).
2. The petitioner must attach a copy of the following documents to the petition or motion:

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<sup>4</sup> In *McRae v State*, 909 P.2d 1079 (Alaska App. 1996), the Court of Appeals held that it was not an abuse of discretion to assign the adjudication phase of McRae's probation revocation proceeding to the resident Kodiak superior court judge and the dispositive phase to the sentencing judge (an Anchorage judge who had traveled to Kodiak for the original sentencing and would travel there again for the PTRP disposition).



- a. the original judgment in the case;
- b. any prior petitions to revoke probation filed in the case;
- c. any supplemental judgments or orders disposing of prior petitions; and
- d. the original presentence report as corrected by the sentencing judge under Criminal Rule 32.1(f)(5), and any updates to that report.

A petitioner is not required to attach the above documents to subsequent petitions filed in the same supervising court.

3. If the petition is filed by DOC, the probation officer must provide three copies of the notice, petition, and attachments to the local district attorney. The district attorney must serve the probationer at or before the initial appearance on the petition and must serve the probationer's attorney when appointed or otherwise identified. (Exception: Where authorized by the clerk of court, the probation officer may deliver the copies to the court for distribution to the parties and attorneys.)

**Example:** Defendant is sentenced by the Bethel Superior Court. The defendant moves to Fairbanks and supervision transfers to the Fairbanks Probation Office. Any petition to revoke probation must be filed in Fairbanks using the original Bethel case number. Three copies of the petition (and the attachments listed above) must be served on the Fairbanks District Attorney. At the defendant's initial appearance in the Fairbanks court, the district attorney gives one copy of the petition to the defendant. If the defendant qualifies for court-appointed counsel, the district attorney gives the second copy of the petition to the appointed attorney.

4. If, after a supervision transfer, the probationer files a motion before the Department of Corrections or a prosecutor files either a motion or a petition, the department will file the documents listed above upon request by the court.

D. **Clerical Procedures**

Detailed clerical instructions will be provided by the Administrative Office.

1. **When Jurisdiction over Probationer Transfers to a New Supervising Court**
  - a. **Case Number.** When jurisdiction over a probationer transfers to a new supervising court, the case number will not change. This is not a change of venue.<sup>5</sup>
  - b. **Case File.** The original case file will remain at the original sentencing court. If a petition or motion relating to probation is filed, the clerk at the new supervising court will create a new volume of the case file under the original case number.
  - c. **Reassignment of Judge.** If a petition or motion relating to probation is filed in the new supervising court, the clerk at the new supervising court will reassign the case to a judge at that court and give notice of judicial reassignment to the local district attorney and to the probationer's attorney when appointed or otherwise identified.
2. **Sentencing Judge Retains Jurisdiction.** If the sentencing judge enters an order retaining jurisdiction as provided in Section B, the clerk at the sentencing court will notify DOC and the parties that any petitions to revoke probation or motions relating to probation must continue to be filed in the sentencing court.
3. **Proceedings in Violation Court.** If a petition alleges new criminal conduct, adjudication will generally be held in the "violation court" (the superior court nearest to where the violation allegedly occurred).
  - a. **Petition Filed At Supervising Court.** Although adjudication may be held in the violation court, the petition must be filed at the supervising court. (If probation supervision has not transferred, the original sentencing court is the "supervising court.")
  - b. **Fax Petition.** The clerk at the supervising court will fax a copy of the petition and other related documents to the violation court.

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<sup>5</sup> It is undesirable to change venue after conviction because the case number would change, making it difficult for the court and other agencies to tie the various records in the case together.



- c. **Substitute Case File.** The clerk at the violation court will create a substitute (temporary) case file. When the proceedings are concluded, the clerk will mail the documents in the substitute case file to the supervising court.
  - d. **Reassignment of Judge.** The clerk at the violation court will reassign the case to a new judge at that court and give notice of judicial reassignment to the local district attorney and to the probationer's attorney.
4. **Notice to Probation Office.** The clerk must send a copy of all orders and notices relating to probation to the supervising probation office.

CHART SUMMARIZING WHERE PROCEEDINGS SHOULD BE HELD

Nature of Violation	Where Violation Occurred	Where To File Petition	Where Adjudication Occurs	Where Disposition Occurs
Technical	Anywhere	Supervising Court	Supervising Court	Supervising Court
New Criminal Case	Supervising Court's Area	Supervising Court	Supervising Court	Supervising Court
(or both technical violation <u>and</u> new criminal case)	Outside Supervising Court's Area	Supervising Court	Violation Court	Supervising Court unless defendant enters into disposition agreement at violation court.

**Note:** Unless probation supervision has transferred, the original sentencing court is the supervising court.