IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1269

Amending Civil Rule 3, Civil Rule 90.3, Civil Rule 100, Criminal Rule 6, Criminal Rule 32.1, Delinquency Rule 3, Delinquency Rule 8, Delinquency Rule 14, Delinquency Rule 23, and Evidence Rule 505 to incorporate 1996 legislative changes.

IT IS ORDERED:

1. The following note is added at the end of Civil Rule 8:

> **Note:** In 1996, the legislature enacted AS 45.08.114, which establishes special pleading requirements in an action on a certificated security against the issuer. According to § 70 ch. 17 SLA 1996, this statute has the effect of amending Civil Rule 8 by requiring that a denial of a signature on a certificated security be specific or the signature is admitted, and by requiring a denial even if a responsive pleading is not required.

2. Paragraph (d) of Delinquency Rule 23 is amended to read as follows:

> (d) **Order.** The court shall enter ~~In~~ its disposition order taking into account the considerations set out in AS 47.12.140~~, the court shall order the least restrictive alternative disposition under AS 47.10.080(b) that addresses the juvenile's treatment needs and protects the public~~.

3. The following note is added at the end of Delinquency Rule 23:

> **Note to SCO 1269:** Delinquency Rule 23(d) was amended by § 56 ch. 59 SLA 1996.

4. The following note at the end of Evidence Rule 702:

Note: In 1996, the legislature enacted AS 12.45.037 relating to the admissibility of expert testimony about criminal street gang activity. According to § 11 ch. 60 SLA 1996, this statute has the effect of amending Evidence Rule 702 to allow expert testimony to be admitted in a criminal prosecution to show criminal gang characteristics, activity, and practices.

5. The following note is added at the end of Civil Rule 4:

Note: In 1996, the legislature enacted AS 18.66.160, which relates to service of process in a proceeding to obtain a domestic violence protective order. According to § 77 ch. 64 SLA 1996, this statute has the effect of amending Civil Rule 4.

6. The following note is added at the end of Administrative Rule 9:

Note: In 1996, the legislature enacted AS 18.66.160(c), which prohibits anyone from charging a fee for service of process in a proceeding to obtain a domestic violence protective order. According to § 76 ch. 64 SLA 1996, this statute has the effect of amending Administrative Rule 9(e)(6).

7. The following note is added at the end of Civil Rule 65:

Note: In 1996, the legislature enacted AS 18.66.110 — 18.66.130 relating to domestic violence protective orders. According to § 78 ch. 64 SLA 1996, these statutes have the effect of amending Civil Rule 65 relating to temporary restraining orders, the method of obtaining those orders, and the timing of those orders.

8. Civil Rule 3 is amended to include a new paragraph (h) which provides:

> (h) A petition or request for a protective order on domestic violence under AS 18.66 may be filed in the judicial district
>
> (1) where the petitioner currently or temporarily resides;
>
> (2) where the respondent resides; or
>
> (3) where the domestic violence occurred.

9. The following note is added at the end of Civil Rule 3:

> **Note to SCO 1269:** Civil Rule 3(h) was added by § 68 ch. 64 SLA 1996. Section 8 of this order is adopted for the sole reason that the legislature has mandated the amendment.

10. Paragraph (a) of Civil Rule 100 is amended to read as follows:

> (a) **Application.** At any time after a complaint is filed, a party may file a motion with the court requesting mediation for the purpose of achieving a mutually agreeable settlement. The motion must address how the mediation should be conducted as specified in paragraph (b), including the names of any acceptable mediators. If domestic violence has occurred between the parties and mediation is requested in a matter covered by AS 25, mediation may only be ordered when permitted

under AS 25.20.080, AS 25.24.060, or 25.24.140. In matters not covered by AS 25, the ~~The~~ court may order mediation in response to such a motion, or on its own motion, whenever it determines that mediation may result in an equitable settlement. In making this determination, the court shall ~~may~~ consider whether there is a history of domestic violence between the parties which could be expected to affect the fairness of the mediation process or the physical safety of the domestic violence victim. Mediation may not be ordered between the parties to, or in, a case filed under AS 18.66.100 - 18.66.180 ~~AS 25.35.010 or .020 and conduct which constitutes domestic violence under these statutes may not be the subject of mediation under this rule~~.

11. The following note is added at the end of Civil Rule 100:

Note to SCO 1269: Civil Rule 100(a) was amended by § 69 ch. 64 SLA 1996.

12. The following note is added at the end of Evidence Rule 613:

Note: In 1996, the legislature enacted AS 12.61.127, which provides that statements obtained from victims or witnesses in violation of AS 12.61.120 or 12.61.125 are presumed inadmissible. According to § 79 ch. 64 SLA 1996, this statute has the effect of amending Evidence Rule 613 relating to impeachment of witnesses.

13. Paragraph (a) of Evidence Rule 505 is amended to read as follows:

(a) **Spousal Immunity.**

(1) *General Rule*. A husband shall not be examined for or against his wife, without his consent, nor a wife for or against her husband, without her consent.

(2) *Exceptions*. There is no privilege under this subdivision:

* * * *

(D) In a proceeding in which one spouse is charged with:

(i) A crime against the person or the property of the other spouse or of a child of either, whether such crime was committed before or during marriage.

(ii) Bigamy, incest, adultery, pimping, or prostitution.

(iii) A crime related to abandonment of a child or nonsupport of a spouse or child.

(iv) A crime prior to the marriage.

(v) A crime involving domestic violence as defined in AS 18.66.990.

* * * *

14. The following note is added at the end of Evidence Rule 505:

Note to SCO 1269: Evidence Rule 505(a) was amended by § 70 ch. 64 SLA 1996. Section 13 of this order is adopted for the sole reason that the legislature has mandated the amendment.

15. Criminal Rule 32.1 is amended to read as follows:

(a) **Scheduling.** At the time guilt in a felony case is established by verdict or plea, the judge shall establish the date for a sentencing hearing and a presentencing hearing, if appropriate, and, except as provided in paragraph (f) of this rule, shall order a presentence investigation by the Department of Corrections. The judge may order a presentence investigation in a case in which an investigation is not required under paragraph (f). If the judge elects to schedule a single hearing, all of the procedures for the presentencing and sentencing hearings shall be applicable at the single hearing.

* * * *

(f) **When Presentence Investigation Not Required.** Unless the defendant may be sentenced to a presumptive term of imprisonment under AS 12.55.125(e)(1) or (2), a presentence investigation by the Department of Corrections is not required if the defendant is convicted of the following offenses:

(1) vehicle theft in the first degree in violation of AS 11.46.360;

(2) driving while intoxicated under AS 28.35.030(n); or

(3) refusal to submit to a chemical test under AS 28.35.032(p).

16. The following note is added at the end of Criminal Rule 32.1:

Note to SCO 1269: In 1996, the legislature amended Criminal Rule 32.1 to eliminate presentence investigations for certain defendants convicted of joyriding (§§ 9 & 10 ch. 71 SLA 1996) or felony DWI or refusal (§§ 20 & 21 ch. 143 SLA 1996). Section 15 of this order is adopted for the sole reason that the legislature has mandated the amendments.

17. The following note is added at the beginning of Criminal Rule 16:

Rule 16. Discovery.

Criminal Rule 16 was repealed and reenacted by chapter 95 SLA 1996. The newly-enacted rule was invalidated by the Alaska Court of Appeals in State v. Summerville, 926 P.2d 465 (Alaska App. 1996), leaving the pre-existing version of Rule 16 in effect. The Alaska Supreme Court granted the State's petition for hearing on December 26, 1996 in State v. Summerville, Case No. S-7869. The following version of Criminal Rule 16 is the pre-existing version. This version remains in effect unless and until the supreme court finds that the legislative version of the rule is constitutional.

18. The following note is added at the end of Criminal Rule 16:

1996 Legislative Changes to Criminal Rule 16

The following version of Criminal Rule 16 was enacted by the legislature in chapter 95 SLA 1996. It was subsequently invalidated by the Alaska Court of Appeals in State v. Summerville, 926 P.2d 465 (Alaska App. 1996). For more information about the status of this version of the rule, see the note at the beginning of the preceding version of Criminal Rule 16.

Rule 16. Discovery.

(a) **Objectives of Pretrial Discovery.**

(1) Procedures before trial should, consistent with the constitutional rights of the defendant, the victim, and the prosecution,

(A) promote a fair and expeditious disposition of the charges;

(B) provide the defendant with sufficient information to make an informed plea;

(C) permit thorough preparation for trial and minimize surprise at trial;

(D) reduce interruptions and complications during trial and avoid unnecessary and repetitious trials by identifying and resolving before trial a procedural, collateral, or constitutional issue;

(E) minimize the procedural and substantive inequities among similarly situated defendants;

(F) effect economies in time, money, judicial resources, and professional skills by minimizing paperwork, avoiding repetitious assertions of issues, and reducing the number of separate hearings; and

(G) minimize the burden upon victims and witnesses.

(2) These needs can be served by

(A) full and free exchange of appropriate discovery;

(B) simpler and more efficient procedures; and

(C) procedural pressures for expediting the processing of cases.

(b) **Disclosure to the Defendant.** Except as is otherwise provided as to matters not subject to disclosure and protective orders, the prosecuting attorney shall disclose the following to the defense and

make available for inspection and copying, as appropriate:

(1) the names, addresses, and phone numbers, if known, of persons known by the government to have knowledge of relevant facts and their written or recorded statements;

(2) any written or recorded statements and any oral statements made by the defendant;

(3) any written or recorded statements and any oral statements made by a co-defendant;

(4) any books, papers, documents, photographs, or tangible objects, which the prosecuting attorney is likely to use as evidence in the hearing or trial, or which were obtained from or belong to the defendant, other than models, charts, pictures, compilations of evidence, or other demonstrative evidence created by or on behalf of the prosecuting attorney;

(5) any record of prior criminal convictions of the defendant and of persons whom the prosecuting attorney is likely to call as witnesses at the hearing or trial;

(6) any material, documents, or information relating to lineups, showups, and picture or voice identifications in relation to the case;

(7) any material or information within the prosecuting attorney's possession or control that tends to negate the guilt of the defendant as to the offense or would tend to reduce the defendant's punishment therefor;

(8) any relevant material or information relating to the guilt or innocence of the defendant that has been provided by an informant, and any electronic surveillance, including wiretapping, of conversations to which the defendant or the defendant's attorney was a party, or of premises of the defendant or the defendant's attorney;

(9) any relevant material or information regarding the relationship, if any, of witnesses to the prosecuting authority, including the nature and circumstances of any agreement, understanding, or representation between the prosecution and the witness that constitutes an inducement for the cooperation or testimony of the witness; however, the prosecution does not have to disclose any payments or provision for witness travel, housing, or meals in order to enable the witness to attend a specific court proceeding;

(10) any relevant material and information regarding

(A) searches and seizures of the property or person of the defendant; and

(B) the acquisition of statements from the defendant;

(11) if the prosecution is likely to use character, reputation, or other act evidence relating to the defendant, notice of that likelihood and disclosure of the substance of that evidence;

(12) unless a different date is set by the court, as soon as known and no later than 45 days before trial, the prosecution shall provide the defense with any written report or written statement of experts made in connection with the case; with respect to each expert the prosecution is likely to call at trial or another court proceeding, (A) the prosecution shall also provide to the defendant the address, phone number, and a curriculum vitae of the expert, and (B) if a written report by the expert is not made or is not adequate to provide fair notice of the expert's opinion and the basis for that opinion, (i) the prosecution shall provide the defendant with a written description of the substance of the proposed testimony, including the expert's opinion and the basis for that opinion, and (ii) upon request, the defense is entitled to conduct a telephonic or in-person deposition or recorded interview of the expert, at the expense of the defense; failure to provide timely disclosure entitles the defendant to a continuance; if the court finds that a continuance is not an adequate remedy under the circumstances of the case, the court may impose other sanctions, including prohibiting the prosecutor from calling the expert at trial or declaring a mistrial;

(13) upon a reasonable request showing materiality to the preparation of the defense, the court in its discretion may require disclosure to defense counsel of relevant and admissible information not covered by (b)(1)-(12) of this rule.

(c) **Disclosure to the Prosecution.** Except as is otherwise provided as to matters not subject to disclosure and protective orders, the defense shall disclose the following to the prosecution and make available for inspection and copying, as appropriate:

(1) the names, addresses, and phone numbers, if known, of persons the defendant is likely to call as witnesses and their written or recorded statements;

(2) any books, papers, documents, photographs, or tangible objects the defense is likely to use as evidence at a hearing or trial and which are not otherwise disclosed under (b) of this rule, other than models, charts, pictures, compilations of evidence, or other demonstrative evidence created by or on behalf of the defendant's attorney;

(3) if the defense is likely to use character, reputation, or other act evidence not relating to the defendant, notice of that likelihood and disclosure of the substance of that evidence;

(4) any relevant material or information regarding the relationship, if any, of witnesses to defense counsel and the defendant, including the nature and circumstances of any agreement, understanding, or representation between the defense and the witness that constitutes an inducement for the cooperation or testimony of the witness; however, the prosecution does not have to disclose any payments or provisions for witness travel, housing, or meals in order to enable the witness to attend a specific court proceeding;

(5) unless a different date is set by the court, no later than 10 days before trial in misdemeanor cases and 30 days in felony cases, notice of defenses if the defendant is likely to rely on a defense of alibi, justification, duress, entrapment, or other statutory or affirmative defense; failure to provide timely notice shall entitle the prosecutor to a continuance; if the court finds that a continuance is not an adequate remedy under the circumstances of the case, the court may impose other sanctions, including prohibiting the defendant from asserting the designated defense;

(6) unless a different date is set by the court, as soon as known and no later than 30 days before trial, the defense shall provide the prosecution with the address, phone number, curriculum vitae, and any report or written statement of any expert witness likely to be called at trial or another court proceeding; with respect to each expert, if a written report by the expert is not made or is not adequate to provide fair notice of the expert's opinion and the basis for that opinion, (A) the defense shall provide the prosecution with a written description of the substance of the proposed testimony, including the expert's opinion and the basis for that opinion, and (B) upon request, the prosecution is entitled to conduct a telephonic or in-person deposition or recorded interview of the expert, at the expense of the prosecution; failure to provide timely disclosure entitles the prosecution to a continuance; if the court finds that a continuance is not an adequate remedy under the circumstances of the case, the court may impose other sanctions, including prohibiting the defense from calling the expert at trial or declaring a mistrial;

(7) notice of an insanity defense or a defense of diminished capacity due to mental disease or defect in compliance with AS 12.47;

(8) turn over to the prosecutor any physical evidence of the offense received by defense counsel; if the physical evidence is received from the attorney's client or the client's agent or acquired as a direct result of information communicated by the client, defense counsel may not be compelled to provide any information concerning the source of the evidence or the manner in which it was obtained; in such cases, the prosecutor may not reveal the source of the evidence to the jury; if the physical evidence is not received from the client or the client's agent or acquired as a direct result of information communicated by the client,

defense counsel shall reveal the manner in which the physical evidence was obtained unless that information is otherwise privileged;

(9) upon a reasonable request showing materiality to the preparation of the prosecution, the court in its discretion may require disclosure to the prosecution of relevant and admissible information not covered by (c)(1)-(8) of this rule.

(d) **Regulation of Discovery.**

(1) *Timing of Discovery.*

(A) Defense counsel has an immediate obligation to disclose evidence subject to (c)(8) of this rule.

(B) When the prosecution has provided the discovery required under (b)(1)-(8) of this rule, the prosecuting attorney shall provide written notice to defense counsel or to the defendant if the defendant is not represented by counsel. Within 10 days of receiving notice from the prosecuting attorney, or such later date as agreed by the prosecuting attorney or ordered by the court, the defense shall provide to the prosecution the discovery required under (c)(1) and (2) of this rule.

(C) Discovery required of the prosecution under (b)(9)-(11) and of the defense under (c)(3) and (4) of this rule shall be provided as agreed by the parties or as ordered by the court.

(D) Other discovery required by (b) and (c) of this rule shall be provided as set out in the specific provision or as ordered by the court.

(2) *Advice to Refrain From Discussing Case.* Except as is otherwise provided as to matters not subject to disclosure and protective orders, neither counsel for the parties nor other prosecution or defense personnel shall advise persons (except the defendant) having relevant material or information to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsel's investigation of the case.

(3) *Additional or Newly Discovered Information.* If, subsequent to compliance with these rules or orders issued pursuant thereto, a party discovers additional material or information which is subject to disclosure, that party shall promptly notify the other party or the other party's counsel of its existence. If the additional material or information is discovered during trial, the court shall also be notified.

(4) *Materials to Remain in Exclusive Custody of Attorney.*

(A) Materials furnished to an attorney pursuant to these rules shall remain in the attorney's exclusive custody, shall be used only for the purposes of

conducting the case, and shall be subject to other terms and conditions that the court may provide if the information is

(i) a criminal history record of a victim or witness;

(ii) a medical, psychiatric, psychological, or counseling record of a victim or witness;

(iii) an adoption record;

(iv) a record that is confidential under AS 47.12.300 or a similar law in another jurisdiction;

(v) a report of a presentence investigation of a victim or witness prepared pursuant to Criminal Rule 32 or a similar law in another jurisdiction;

(vi) a record of the Department of Corrections other than an incident report relating to the crime with which the defendant is charged; or

(vii) any other record that the court orders be kept in the exclusive custody of the attorney.

(B) An attorney shall not disclose to a defendant the residence or business address or telephone number of a victim or witness, obtained from information provided under this rule, even if the defendant is acting as co-counsel. If the address and telephone numbers of all victims and witnesses have been obliterated, materials that had contained the address or telephone number of a victim or witness may be provided to a defendant proceeding without counsel only as allowed by AS 12.61.120.

(C) Notwithstanding a defendant's status as co-counsel, materials covered by (d)(4)(A) or (B) of this rule shall remain in the exclusive custody of the defendant's attorney. If an attorney violates (d)(4)(A) or (B) of this rule, regardless of whether the defendant is co-counsel, the court shall refer the attorney's violation to the Disciplinary Board of the Alaska Bar Association as a grievance.

(D) If a defendant is proceeding without counsel, materials covered by (d)(4)(A) of this rule may be provided to the defendant. If materials are provided to an unrepresented defendant under this paragraph, the court shall order that the materials remain in the defendant's exclusive custody, be used only for purposes of conducting the case, and be subject to other terms, conditions, and restrictions that the court may provide. The court shall also inform the defendant that violation of an order issued under this paragraph is punishable as a contempt of court.

(5) *Restriction or Deferral of Disclosure of Information.* Upon a showing of cause, the court may at any time order that specified disclosure be restricted or deferred, or make such other order as is appropriate,

provided that all material and information to which a party is entitled shall be disclosed in time to permit the party's counsel to make beneficial use thereof.

(6) *Material Partially Discoverable.* When some parts of certain material are discoverable under these rules, and other parts are not discoverable, as much of the material shall be disclosed as is consistent with this rule. Excision of certain material and disclosure of the balance shall be preferred to withholding of the whole. Material excised pursuant to court order shall be sealed and preserved in the records of the court, and shall be made available to the court of appeals and the supreme court in the event of an appeal.

(7) *Denial or Regulation of Disclosure — Disclosure to Court in Camera — Record of Proceedings.* Upon request of any party, the court may permit:

(A) any showing of cause for denial or regulation of disclosure; or

(B) any portion of any showing of cause for denial or regulation of disclosure to be made to the court in camera ex parte; a record shall be made of such proceedings; if the court enters an order granting relief following such a showing, the entire record of the proceedings shall be sealed and preserved in the records of the court, to be made available to the court of appeals and the supreme court in the event of an appeal.

(8) *Information Within Possession or Control of Other Members of Prosecuting Attorney's or Defense Counsel's Staff.* The prosecuting attorney's or defense counsel's obligations under this rule extend to material and information in the possession or control of

(A) members of the prosecuting attorney's or defense counsel's staff, respectively; and

(B) any others who have participated in the investigation or evaluation of the case and who either regularly report or with reference to the particular case have reported to the prosecuting attorney's office or defense counsel, respectively.

(9) *Legal Research and Records of Prosecuting Attorney or Defense Counsel.* Disclosure shall not be required of legal research or those portions of records, correspondence, reports or memoranda that contain the opinions, theories, or conclusions of the

(A) prosecuting attorney or members of the prosecuting attorney's legal staff; or

(B) defense counsel or members of the defense counsel's legal staff.

(e) **Sanctions.**

(1) *Failure to Comply with Discovery Rule or Order.* If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court shall order such party to permit the discovery of material and information not previously disclosed or enter such other order as it deems just under the circumstances.

(2) *Willful Violations.* Willful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court.

(f) **Omnibus Hearing.**

(1) *Time for Hearing — When Set.* If the defendant is charged with a felony, the court shall set a time for an omnibus hearing when a plea of not guilty is entered. The omnibus hearing shall be scheduled for a time when the briefing of pretrial motions should be complete.

The omnibus hearing may be canceled by the court only upon the stipulation of counsel that there are no motions which require hearing and that discovery is complete. Counsel shall also provide the information outlined in (f)(2)(D) of this rule.

The court may set an omnibus hearing in a misdemeanor case.

(2) *Duties of Trial Court at Hearing.* At the omnibus hearing the court shall:

(A) ensure that discovery under this rule is complete;

(B) rule on any pending motions which are ripe for decision;

(C) schedule any necessary evidentiary hearings; and

(D) obtain case management information from the parties, including the expected length of trial, the likelihood of trial, and any anticipated scheduling difficulties.

(g) **Non-Testimonial Identification Procedures.**

(1) *Authority.* Upon application of the prosecuting attorney, the court by order may direct any person to participate in one or more of the procedures specified in (g)(2) of this rule if affidavit or testimony shows probable cause to believe that:

(A) an offense has been committed by one of several persons comprising a narrow focal group that includes the subject person;

(B) the evidence sought may be of material aid in identifying who committed the offense; and

(C) the evidence sought cannot practicably be obtained from other sources.

(2) *Scope*. An order issued under (g)(1) of this rule may direct the person to do or submit to any and all of the following:

(A) appear in a lineup;

(B) speak words, phrases or sentences relevant to the case for identification by witnesses;

(C) be fingerprinted;

(D) pose for photographs not involving reenactment of a scene;

(E) try on articles of clothing;

(F) permit the taking of specimens of material under the person's fingernails;

(G) permit the taking of samples of blood, hair, and other materials of the person's body which involve no unreasonable intrusion thereof;

(H) provide specimens of the person's handwriting;

(I) submit to a reasonable physical or medical inspection of the person's body.

(3) *Right to Counsel*. When issuing an order under (g)(1) of this rule, the court shall also order that the person be represented by counsel or waive the right to be represented by counsel before being required to appear in a lineup, give a specimen of handwriting, or speak for identification by witnesses to an offense.

(h) **Material not in Possession or Control of Prosecuting Attorney; Confidential Records.**

(1) Whenever defense counsel provides notice to the prosecuting attorney and designates and requests production of material or information that is not in the possession or control of the prosecuting attorney, other than confidential records under (h)(2) of this rule, but would be discoverable if in the possession or control of the prosecuting attorney, the court shall issue suitable subpoenas or orders to cause such material to be made available to defense counsel.

(2) If a defendant makes a particularized showing that confidential records not in the possession of the prosecuting attorney are likely to contain relevant information that would negate guilt or reduce the defendant's punishment, the court may conduct an in camera review of the records after providing an opportunity to be heard to the person who is the subject

of the records and the agency keeping the records. If the court determines during its in camera review that such information exists, the court shall (A) provide a copy of that portion of the records that contains the information to the defense, (B) provide a copy of the material provided to the defense to the prosecution, except for any statements by the defendant the disclosure of which would violate the defendant's right against compulsory self-incrimination, and (C) enter an order that a hearing be held before the information may be introduced, used, or mentioned during an open court proceeding. The hearing conducted by the court under (h)(2)(C) of this rule will be outside the presence of the jury, and the court shall determine how the records may be used after taking into consideration, among other things the court may find appropriate, whether use of the records violates the right of privacy of the subject of the records, hampers the ability of the agency to collect records, or violates the constitutional or statutory rights of crime victims. The hearing to determine admissibility shall be conducted in camera if there is a danger of unwarranted invasion of privacy.

(i) As used in this rule,

(1) "oral statement" means the substance of a statement of any kind by a person, whether or not reflected in any existing writing or recording;

(2) "written or recorded statement" means

(A) any statement made by a person in writing that is signed, adopted, or approved by that person; or

(B) a statement of any kind made by a person that is embodied or summarized in a writing or recording, whether or not specifically signed or adopted by that person; the term is intended to include statements contained in police or investigative reports, or notes taken by police officers or investigators, but does not include attorney work product or notes taken by the attorney.

Effective Date: *According to ch. 95, § 3, SLA 1996, this version of Criminal Rule 16 is retroactive and applies to all criminal cases pending on or arising after July 1, 1996.*

19. Paragraph (c) of Civil Rule 90.3 is amended to read:

(c) **Exceptions.**

* * * *

(3) In addition to ordering a parent to pay child support as calculated under this rule, the court may, in appropriate circumstances, order one or more grandparents of a child to pay child support to an appropriate person in an amount determined by the court to serve the best interests of the child. However, the amount may not exceed the smaller of (A) a proportionate share of the amount required to provide care in a supervised setting to the grandchild, as determined by the court, or (B) the amount that would have been awarded if the child's parents had the incomes of the child's grandparents and paragraphs (a) and (b) were applied. An order under this paragraph may be issued only with respect to a child whose parents are both minors, and the order terminates when either parent becomes 18 years of age. The court must specify in writing the reasons why it considers it to be appropriate to order a grandparent to pay child support under this paragraph and the factors considered in setting the amount of the child support award. In this paragraph, "grandparent" means the natural or adoptive parent of the minor parent.

20. The following note is added at the end of Civil Rule 90.3:

Note to SCO 1269: Civil Rule 90.3(c)(3) was added by § 44 ch. 107 SLA 1996. Section 22 of ch. 107 SLA 1996 enacts 25.27.195(b), which allows CSED to vacate an administrative support order that was based on a default amount rather than the obligor's actual

ability to pay. If an order is vacated on this basis, AS 25.27.195(d) allows the agency to modify the obligor's arrearages under the original order. According to § 50 ch. 107 SLA 1996, AS 25.27.195(d) has the effect of amending Rule 90.3(h)(2), which prohibits retroactive modification of child support arrearages.

21. The following note is added at the end of Civil Rule 3:

Note: In 1996, the legislature enacted AS 37.15.583(b), which requires that certain actions pertaining to Alaska clean water fund revenue bonds be commenced and conducted in the superior court at Juneau. According to § 13 ch. 141 SLA 1996, this statute has the effect of amending Civil Rule 3.

22. Paragraph (r) of Criminal Rule 6 is amended to read:

(r) **Admissibility of Evidence.**

(1) Evidence which would be legally admissible at trial shall be admissible before the grand jury. In appropriate cases, however, witnesses may be presented to summarize admissible evidence if the admissible evidence will be available at trial. Except as stated in subparagraphs (2), ~~and~~ (3), and (6), hearsay evidence shall not be presented to the grand jury absent compelling justification for its introduction. If hearsay evidence is presented to the grand jury, the reasons for its use shall be stated on the record.

* * * *

(6) In a prosecution for driving while intoxicated under AS 28.35.030(n) or for refusal to submit to a chemical test under AS 28.35.032(p), hearsay evidence received through the Alaska Public Safety Information Network or from other government agencies of prior convictions of driving while intoxicated or refusal to submit to a chemical test may be presented to the grand jury.

23. The following note is added at the end of Criminal Rule 6:

Note to SCO 1269: Criminal Rule 6(r) was amended by §§ 18 & 19 ch. 143 SLA 1996 to allow certain hearsay evidence to be presented to the grand jury in a prosecution for felony DWI or felony refusal to submit to a chemical test. Section 21 of this order is adopted for the sole reason that the legislature has mandated the amendments.

24. Paragraph (b) of Delinquency Rule 3 is amended to read as follows:

(b) **Presence of Juvenile and Other Parties.** The presence of the juvenile is required unless the juvenile:

(1) waives the right to be present and the juvenile's presence is excused by the court; or

(2) engages in conduct which justifies exclusion from the courtroom.

The presence of the parent or guardian is required ~~preferred, but not required~~ unless excused by the court for good cause ~~so orders~~.

25. The following note is added at the end of Delinquency Rule 3:

Note to SCO 1269: Delinquency Rule 3(b)(2) was amended by § 5 ch. 144 SLA 1996. Section 23 of this order is adopted for the sole reason that the legislature has mandated the amendment.

26. Paragraph (b) of Delinquency Rule 8 is amended to read as follows:

(b) **Summons.** Upon the filing of a petition for adjudication, the court shall set a time for the arraignment on petition and shall, if the juvenile is not in custody, issue a summons to be served with the petition compelling the attendance of the juvenile. The court shall ~~may~~ issue a summons compelling the attendance of the juvenile's parents or guardian at the hearing. If the summons and petition are not contained in one document, the petition must be attached to and incorporated by reference into the summons. The summons must contain a statement advising the parties of their right to counsel.

27. The following note is added at the end of Delinquency Rule 8:

Note to SCO 1269: Delinquency Rule 8(b) was amended by § 6 ch. 144 SLA 1996. Section 25 of

this order is adopted for the sole reason that the legislature has mandated the amendment.

28. Paragraph (b) of Delinquency Rule 14 is amended to read as follows:

(b) **Order of Proceedings.**

(1) *Opening Address.* The court shall ensure that all parties have received copies of the petition and understand its contents. The court shall advise the parties of the nature of the proceedings and the possible disposition that may occur. In addition, the court shall advise the parties of the possibility of temporary detention or placement outside the home pending final disposition, that the parents or guardian must attend all hearings and may be held in contempt for failure to do so, and that the parents may be liable for child support payments if the child is placed outside the home at any time during the proceeding.

* * * *

DATED: May 15, 1997

EFFECTIVE DATE: July 15, 1997

/s/
Chief Justice Compton

/s/
Justice Matthews

/s/
Justice Eastaugh

/s/
Justice Fabe

/s/
Justice Bryner