

**IN THE SUPREME COURT OF THE STATE OF ALASKA**  
**ORDER NO. 1799**

Rescinding the remaining District Court Criminal Rules and making supportive amendments to Criminal Rules 5, 5.1, 10, 19, and 23 that incorporate the substance of District Court Criminal Rule 1; and amending Minor Offense Rules 5 and 6 to replace references to District Court Criminal Rule 1

**IT IS ORDERED:**

1. The District Court Criminal Rules are rescinded.
2. To support the change above and incorporate the substance of the rescinded District Court Criminal Rule 1, the Criminal Rules are amended as follows:

**Rule 5. Proceedings Before the Judge or Magistrate.**

**(a) Appearance Before Judge or Magistrate 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 be taken before the nearest available judge or magistrate without unnecessary delay and in any event within 48 hours after arrest, including 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) The judge or magistrate 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 judge or magistrate 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 be taken before a judge or magistrate in the community where the jail is located within forty-eight hours of the person's detention in that jail

(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 is taken before a judge or magistrate as specified in subsections (1) and (2) of this section (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 is taken for examination before a judge or magistrate 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 judge or magistrate before whom the person arrested appears.

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

(6) Judges and magistrates shall be available at all times to receive bail, and each judge and magistrate 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 judge or magistrate 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 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 judge or magistrate

(1) shall inform the defendant of the complaint and of any affidavit filed therewith, and

(2) shall require that a copy of the complaint and of any affidavit filed therewith be delivered to the defendant if this has not already been done, and

(3) shall inform the defendant

(A) of the right to retain counsel, and

(B) of the right to request the appointment of counsel at public expense if the defendant is financially unable to employ counsel and could

- (i) be sentenced to jail, or
- (ii) suffer the loss of a valuable license, or
- (iii) suffer a fine sufficiently severe to indicate criminality; and

(C) of the right to be admitted to bail.

(4) shall inform the defendant that the defendant is not required to make a statement and that any statement may be used against the defendant, and

(5) shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided by law and by these rules.

**(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 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 court shall proceed as under paragraph (d)(1).

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

**(e) Felonies—Other Requirements at First Appearance.**

(1) If the charge against the defendant is a felony, the defendant shall not be called upon to plead.

(2) The judicial officer shall inform the defendant of the right to a preliminary examination. A defendant is entitled to a preliminary examination if the defendant is charged with a felony for which the defendant has not been indicted, unless

(A) the defendant waives the preliminary examination,  
or

(B) an information has been filed against the defendant with the defendant's consent in the superior court.

(3) If the defendant after having had the opportunity to consult with counsel waives preliminary examination, the judicial officer shall forthwith hold the defendant to answer in the superior court.

(4) If the defendant does not waive preliminary examination, the judicial officer shall schedule a preliminary examination. Such examination shall be held within a reasonable time, but in no event later than

(A) 10 days following the initial appearance, if the defendant is in custody, or

(B) 20 days following the initial appearance, if the defendant is not in custody.

With the consent of the defendant and upon a showing of good cause, taking into account the public interest in prompt disposition of criminal cases, the judicial officer may extend the

time limits specified in this subsection one or more times. In the absence of consent by the defendant, the judicial officer may extend these time limits only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interest of justice.

**(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.

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

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

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

(5) The judicial officer shall inform the defendant that the defendant may peremptorily disqualify the district judge or magistrate to whom the case is assigned pursuant to AS 22.20.022.

**Rule 5.1. Preliminary Examination in Felony Cases .**

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**Rule 10. Felony Arraignment in Superior Court.**

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**Rule 19. Change of Venue—Application to Court.**

All applications for change of place of trial in the cases provided by AS 22.10.040 or AS 22.15.080 shall be made by motion, supported by affidavit, upon five days' notice to the other party,

except that in misdemeanor cases the request may be made orally on the record. In the event that a change of place of trial shall be ordered, the clerk of the court in which the case is pending shall transmit to the clerk of the court to which the proceeding is transferred all papers in the proceeding, or duplicates thereof, and the prosecution shall continue in that court.

**Rule 23. Trial by Jury or by the Court.**

**(a) Trial by Jury\***. Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial. In felony cases, the waiver must be in writing with the approval of the court and the consent of the state. In misdemeanor cases, the waiver may be in writing or made on the record in open court.

**(b) Number of Jurors.** In felony cases, juries shall be of 12 persons. In misdemeanor cases, juries shall be of six persons. But at any time before verdict, the parties may stipulate in writing with the approval of the court that the jury shall consist of fewer persons.

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4. The Minor Offense Rules are amended to remove reference to District Court Criminal Rule 1, as follows:

**Rule 5. Optional Court Appearance.**

(a) A defendant charged with a minor offense for which a bail forfeiture amount has been established by supreme court order or for which a scheduled fine amount has been established by statute or ordinance must within 30 days after the citation was issued:

- (1) appear for arraignment at the time and place indicated on the citation. Arraignment must be conducted in accordance with Criminal Rule 5(c), to the extent applicable to Minor Offenses; or

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**Rule 6. Mandatory Court Appearance.**

A defendant charged with a minor offense for which no bail forfeiture amount has been established by supreme court order and for which no scheduled fine amount has been established by statute or ordinance must:

- (a) appear for arraignment at the time and place indicated on the citation or summons. Arraignment must be conducted in accordance with Criminal Rule 5(c), to the extent applicable to Minor Offenses; or

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DATED: June 24, 2013

EFFECTIVE DATE: October 15, 2013

/s/  
Chief Justice Fabe

/s/  
Justice Winfree

/s/  
Justice Stowers

/s/  
Justice Maassen

/s/  
Justice Bolger