

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

In the Matter of:)
)
EXTENSION OF TIME FOR)
PRELIMINARY HEARINGS)
UNDER CRIMINAL RULE 5(e))
COVID-19 BETHEL)
)
)
)
_____)

PRESIDING JUDGE'S ADMINISTRATIVE ORDER
EXTENDING THE TIME LIMITS FOR PRELIMINARY EXAMINATION UNDER
CRIMINAL RULE (5)
Effective October 16, 2020

In response to the Covid-19 pandemic, grand jury proceedings were suspended statewide beginning March 23, 2020, and the time limits for preliminary examination under Alaska Criminal Rule 5(e) were extended.¹ Grand jury proceedings were permitted to resume beginning June 1, 2020.² The courts of the Fourth Judicial District resumed grand jury proceedings and, because of the diligence and productivity of the grand jurors, the local district attorneys' offices, and court staff, the backlog of grand jury proceedings has been eliminated districtwide. The District being caught up, the Chief Justice restored the time limits for preliminary examination under Criminal Rule 5(e) within the District, with further extensions of time being limited to those provided for under the rule.³

¹ Special Order of the Chief Justice, Order No. 8131.

² Special Order of the Chief Justice, Order No. 8144.

³ Special Order of the Chief Justice, Order No. 8194.

Because of the current Covid-19 case levels and community transmission rates in the Bethel region,⁴ a further extension of time for preliminary examination under Criminal Rule (5)(e) is required for Bethel Superior Court cases. The current average daily Covid-19 case rate for Bethel region over 14 days is 22.3 per 100,000 population.⁵ This is a tripling of the case count for the region and more than two times the threshold for high alert which is 10 per 100,000 population. The current seven day Covid-19 test positivity rate for the Bethel region is nearly 5%.⁶ Test positivity rates in the 5% range are considered high. Desired test positivity rates are in the 2% range. The Bethel Region Covid 19 case counts and test positivity levels are a great concern for public health officials.⁷

⁴ <https://content.govdelivery.com/bulletins/gd/AKDHSS-2a61d79> : “More cases (1,256) were reported in Alaskans this week than any previous week, beating last week’s record number of new cases (891) by more than 40%. Alaska continues to see a sharp acceleration in new cases. The sharp acceleration affected urban and rural regions. The largest increases in case rates were in the Yukon-Kuskokwim Delta Region, Anchorage Municipality and Fairbanks North Star Borough. ... Anchorage Municipality, Fairbanks North Star Borough, the Northwest Region and the Y-K Delta Region all had substantial and concerning increases in case rates this week, indicating accelerating cases and high levels of community transmission. The largest acceleration seen was in the Y-K Delta Region, with the two-week average case rate more than tripling, from 7.1 to 22.3.”

⁵ <https://content.govdelivery.com/bulletins/gd/AKDHSS-2a61d79> .

⁶ <https://www.kyuk.org/post/sudden-spike-covid-19-cases-indication-pandemic-out-control-says-ykhc> .

⁷ <https://www.kyuk.org/post/sudden-spike-covid-19-cases-indication-pandemic-out-control-says-ykhc> :

Dr. Ellen Hodges is the Chief of Staff for the Yukon-Kuskokwim Health Corporation, and she’s worried about the region.

“Our test positivity rate in the last two weeks has really increased. That is an indication of a pandemic out of control,” Hodges said.

In those two weeks, 126 people in the Yukon-Kuskokwim Delta tested positive for COVID-19, accounting for nearly half the cases in the region since the pandemic began. In these two weeks, the percentage of people testing positive in the Bethel Census Area

The Bethel court has taken extraordinary measures to protect jurors and staff and to continue grand jury operations. The court has reduced the size of the grand jury panel from 18 down to 15 and moved the panel into a large courtroom. Strict adherence to required social distancing and face coverings has been in place. The attorneys are presenting their cases by video and the witnesses are testifying by telephone so that the grand jurors are not exposed to the parade of social contacts that usually accompanies grand jury proceedings. Jurors are sworn in telephonically, are subject to health screening, and are given their own notebooks and pens. Text messaging with jurors has helped to avoid jurors making unnecessary trips to the court house or waiting at the courthouse unnecessarily. The jury pool has been narrowed to Bethel to limit contact with those traveling on commercial airlines. The proceedings have been safe, effective, and productive, thus far.

But a temporary pause of the grand jury proceedings in Bethel is necessary to allow time to reassess the safety and effectiveness of these Covid-19 response measures in the context of the current extraordinarily high community case counts and

jumped from around 1% to nearly 5%. ...YKHC is urging everyone to stop hosting and attending gatherings with people outside of their households. ...

Hodges said. "But it really involved a concerted village-wide effort to hunker down and shelter-in-place, not be visiting, not be leaving their household, and just working really, really hard to get that under control."

... The health corporation says that it will take everyone following health precautions to contain the virus in the region.

"If everyone hunkers down, if everyone wears their mask, if everyone limits their social circles, we can get ahead of this," Hodges said. "We can flatten the curve. We can make a difference."

transmission rates and to allow time for public health officials and the Bethel community bring rates down.

Criminal Rule 5(e) allows extensions of time for preliminary examinations when extraordinary circumstances exist and a delay is indispensable to the interest of justice.⁸ The current extraordinarily high Covid-19 case counts and transmission rates in Bethel are sufficient extraordinary circumstances to require an extension of time for preliminary hearings under Criminal Rule (5)(e) and such an extension of time is indispensable to the interests of justice and the health and safety of jurors and other court participants.

Accordingly,

IT IS HEREBY ORDERED that the time limits for preliminary examination in Bethel are extended through November 28, 2020. A grand jury may be called or a preliminary examination may be granted in an individual case in the interest of justice upon further order of the presiding judge.

Dated at Fairbanks, Alaska this 16th day of October 2020.



Michael A. MacDonald
Presiding Judge Fourth Judicial District

⁸ Criminal Rule 5(e) states, "...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."