

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

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

PRESIDING JUDGE'S ADMINISTRATIVE ORDER
EXTENDING THE TIME LIMITS FOR PRELIMINARY EXAMINATION UNDER
CRIMINAL RULE (5)
Effective October 14, 2020

In response to the Covid-19 pandemic, grand jury proceedings were suspended 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

Because of the current Covid-19 case levels and community transmission rates in Fairbanks, a further extension of time for preliminary examination under Criminal Rule

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.

(5)(e) is required for Fairbanks Superior Court cases. The current average daily Covid-19 case rate for Fairbanks over 14 days is 35.01 per 100,000 population.⁴ This is more than three times the threshold for high alert which is 10 per 100,000 population. The current seven day Covid-19 test positivity rate for Fairbanks is 11.86%.⁵ Test positivity rates in the 5% range are considered high. Desired test positivity rates are in the 2% range. Fairbanks Covid 19 case counts and test positivity levels are among the highest in the state.

⁴ <https://content.govdelivery.com/accounts/AKDHSS/bulletins/2a57da0> ; Alaska COVID-19 Case Count Summary: Oct. 12, 2020:

DHSS today announced 197 new people identified with COVID-19 in Alaska. 191 are residents in: Anchorage (98), Fairbanks (42), Eagle River (8), Kotzebue (6), Palmer (6), Utqiagvik (6), North Pole (5), Wasilla (4), Bethel Census Area (3), Juneau (3), Chugiak (2), Kusilvak Census Area (2) and one each in Chevak, Cordova, Kenai, Nome, Northwest Arctic Borough and Yukon-Koyukuk Census Area.

ALERT LEVELS – The current statewide alert level, based on the average daily case rate over 14 days per 100,000 population, is high at 21.41 per 100,000. Regional alert levels are noted below:

High (>10 cases/100,000)

Northwest Region: 35.67 cases per 100,000

Fairbanks North Star Borough: 35.01 per 100,000 population

Anchorage Municipality: 28.88 cases per 100,000 population

YK-Delta Region: 22.26 cases per 100,000

Other Interior Region: 11.27 per 100,000 population

Intermediate (5-10 cases/100,000)

Matanuska-Susitna Region: 9.66 per 100,000 population

Kenai Peninsula Borough: 7.95 per 100,000 population

Juneau City and Borough: 7.82 per 100,000 population

Southwest Region: 6.43 per 100,000 population

Low (<5 cases/100,000)

Other Southeast Region - Northern: 2.79 per 100,000 population

Other Southeast Region - Southern: 2.15 per 100,000 population

⁵ <https://coronavirus-response-alaska-dhss.hub.arcgis.com/>

The Fairbanks 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 16 and moved the panel into the largest courtroom in the Rabinowitz courthouse. 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. The proceedings have been safe, effective, and productive, thus far.

But a temporary pause of the grand jury proceedings 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 transmission rates and to allow time for public health officials and the Fairbanks community to 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.⁶ The current extraordinarily high Covid-19 case counts and transmission rates in Fairbanks are sufficient extraordinary circumstances to require the extension of time for preliminary hearings under Criminal Rule (5)(e) and an extension of time is indispensable to the interests of justice and the health and safety of jurors and other court participants.

⁶ 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."

Accordingly,

IT IS HEREBY ORDERED that the time limits for preliminary examination are extended through November 28, 2020. Grand Jury proceedings are suspended through October 31, 2020. The court will review the suspension of proceedings at the time of the selection of the November panel. 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 14th day of October 2020.



Michael A. MacDonald
Presiding Judge Fourth Judicial District