

**SUPPLEMENTAL INFORMATION REGARDING THE  
ANCHORAGE FELONY CASE PRETRIAL ORDER**

**Reducing Unnecessary Delay in Anchorage Felony Cases**

The Alaska Court System is committed to a goal of reducing unnecessary delay in felony criminal cases while at the same time ensuring that the requirements of due process are met. To that end, the court system commissioned a study and report by David C. Steelman, in conjunction with the National Center for State Courts, on improving criminal caseflow management in the Anchorage Superior Court. The court system concurs with the findings of Mr. Steelman in his *Final Technical Assistance Report (March 2009)* (<http://www.state.ak.us/courts/feldel/felonydelayreport.pdf>) and hereby adopts the following new policies and procedures to improve criminal caseflow management in the Anchorage Superior Court:

- Revised Felony Case Pretrial Order for Anchorage Superior Court, effective May 1, 2009 ([CR-370 ANCH](#)) (available on court system's website under Forms);
- New Prosecution Pretrial Discovery Report effective for all Anchorage Superior Court felony cases filed after November 1, 2008 ([CR-368 ANCH web](#)) (available on court system's website under Forms);
- New Defense Pretrial Discovery Report effective for all Anchorage Superior Court felony cases filed after November 1, 2008 ([CR-369 ANCH web](#)) (available on court system's website under Forms);
- Policy to Reduce Delay in Anchorage Felony Cases in Pre-Indictment Status, effective May 1, 2009 (section A below);
- Policy for Trial Call of Anchorage Felony Cases, effective immediately (section B below);
- Continuance Policy for Anchorage Felony Cases, effective May 1, 2009 (section C below); and
- Policy to Promote Timely Disposition of Scheduled Court Events in Anchorage Felony Cases, effective May 1, 2009 (section D below)

**A. Policy to Reduce Delay in Anchorage Felony Cases in Pre-Indictment Status**

The Anchorage Superior Court calendars "pre-indictment hearings" to permit defendants charged with felonies to waive preliminary examination otherwise required

by Criminal Rule 5(e). This procedure allows defendants and the state to negotiate cases prior to indictment, but has also resulted in an average time to indictment of 90 days, thereby contributing to the overall time to disposition of felony cases.

In order to provide adequate information for informed pleas, expedite trial, and promote resolution of felony cases without unnecessary delay while insuring that the requirements of due process are met, the following procedures apply to felony cases in the Anchorage Superior Court prior to indictment:

- Absent good cause, the state shall provide all police reports, criminal histories, property and evidence logs, and recordings of statements of witnesses or the defendant relevant to the case within 10 days of request by the defendant.
- Absent good cause, a defendant may not waive preliminary examination for more than 45 days. *See* Criminal Rule 5(e)(2) and (3) for defendant's ability to waive the preliminary examination and Rule 5(e) for court's authority over time frames.

Unusual complexity of the case or the need to obtain test results from the State Crime Lab shall constitute good cause for delay in discovery or continuance of pre-indictment hearings for longer than 45 days.

## **B. Policy for Trial Call of Anchorage Felony Cases**

Felony filings in Anchorage Superior Court increased nearly 50% between 2004 and 2008. The number of felony cases set for trial on any given week has also increased significantly, averaging nearly 60 cases per week for the last six months of 2008. In order to reduce trial backlog and improve trial date certainty for felony cases, the following procedures will apply to felony cases set for trial call on any given week:

- Requests to continue trial must be filed in writing 24 hours prior to trial call. (A notice of unavailability of counsel will not take a case off the trial call calendar.)
- Requests to continue trial beyond a third request will ordinarily not be granted.
- Cases ready for trial will be "stacked" before each available judge for the first available trial day. All counsel for cases so set must report on the assigned day prepared to begin jury selection or announce a change of plea.
- The court system will make additional courtrooms and judicial officers available to try felony cases beyond the five regularly scheduled Superior Court criminal trial judges.

### C. Continuance Policy for Anchorage Felony Cases

To promote the fair resolution of felony cases without unnecessary delay, the court will look with disfavor on unjustified requests to continue court events. In order to preserve scheduled trial dates, requests for continuances that are not supported by good cause will be especially disfavored.

It is expected that all parties will comply with the deadlines contained in the Felony Case Pretrial Order. Any deviations from the order must be based upon written motion for good cause. It is also expected that the parties will be prepared to schedule a realistic trial date and realistic motions deadline at the first pre-trial conference. Requests to continue a trial date scheduled after the first pre-trial conference will only be considered if based upon unforeseen circumstances or circumstances beyond the party's control.

Requests to continue a scheduled court event must be filed in writing and in accordance with Criminal Rules 12(h) and 42. Continuances based on a stipulation by the parties will not automatically be granted absent a showing of sufficient cause. Continuances will not automatically be granted merely because the defendant is willing to waive time under Criminal Rule 45.

Whether sufficient cause justifies a continuance will always be evaluated on a case-by-case basis. However as a guide to practitioners, the following will generally *not* be considered sufficient cause to grant a continuance:

- A need to further investigate, if the case has been pending for more than 90 days and Criminal Rule 16 discovery has been provided.
- A need to further review discovery if discovery has been provided within the preceding 20 days and the case is not unusually complex.
- A request to continue trial for further time to negotiate the case, or further time to consider an offer.
- A request to file motions, if the motions deadline in the pretrial order has already passed.
- A request for further discovery of items not already identified in the parties' Pretrial Discovery Reports.
- Counsel is not prepared to proceed with trial, and sufficient time has elapsed for counsel to prepare given the nature of the case.
- Any continuance of trial beyond a third continuance.

The following *will* generally be considered sufficient cause to grant a continuance:

- Unanticipated absence of a material witness for either party.
- Illness or family emergency of counsel.
- Unavailability of defense counsel due to another trial in progress.
- Change of counsel for the defense within the preceding 30 days.
- Late discovery by the state, if the continuance is requested by the defendant.

The court system will maintain information about each requested continuance in the court file, identifying the party requesting the continuance, the reason or reasons given, whether the continuance was granted, and the delay incurred because of the granting of the continuance. As necessary, the court shall work with representatives of the criminal bar to seek resolution of any organizational or systemic problems that cause cases to be continued.

This policy applies to requests to continue trial, evidentiary hearings, status hearings, sentencings, and any other regularly scheduled court event except continuances of a pretrial conference.

#### **D. A Policy to Promote Timely Disposition of Scheduled Court Events in Anchorage Felony Cases**

The Anchorage Superior Court is committed to improving the efficiency of court resources in order to promote timely disposition of felony criminal cases. The following policy will apply to all scheduled court events in felony criminal cases:

- Judicial officers, in-court clerks, and other court staff will be prepared to begin court events at the scheduled time.
- In-court clerks will call for the presence of in-custody defendants ten minutes prior to the scheduled start time regardless of whether the defendant's counsel is present in the courtroom.
- Judicial Services officers will be prepared to deliver in-custody defendants to the courtroom by the scheduled start time for the court event.

Effective Date: May 1, 2009