

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 1127

Amending Criminal Rule 45
concerning time for trial.

IT IS ORDERED:

1. Criminal Rule 45(c) is amended to provide:

(c) **When Time Commences to Run.** [THE TIME FOR TRIAL SHALL BEGIN RUNNING, WITHOUT DEMAND BY THE DEFENDANT, AS FOLLOWS:]

(1) Generally. Except as provided in subparagraphs (2) through (6), the time for trial shall begin running, without demand by the defendant, [FROM THE DATE THE DEFENDANT IS ARRESTED, INITIALLY ARRAIGNED, OR] from the date the charging document [CHARGE (COMPLAINT, INDICTMENT, OR INFORMATION)] is served upon the defendant[, WHICHEVER IS FIRST].

(2) Refiling of Original Charge. If a charge is dismissed by the prosecution, the refiling of the charge shall not extend the time. If the charge is dismissed upon motion of the defendant, the time for trial shall begin running from the date of service of the subsequent charge.

(3) New Charges. The time for trial for a new charge arising out of the same criminal episode shall be the same as the commencement date for the original charge, unless the evidence on which the new charge is based was not available to the prosecution on the commencement date for the original charge. When the new charge is based on new evidence

and the prosecution has acted with due diligence in investigating and bringing the new charge, the Rule 45 commencement date for the original charge shall be the same as the commencement date for the new charge.

(4) Defendant in Custody. If the alleged offense is committed by a defendant [IS] in custody or incarcerated on other charges [AT THE TIME THE ALLEGED OFFENSE OCCURS], the time for trial shall begin running 10 days from either referral [AFTER THE CASE IS REFERRED] in writing by correctional officials to the prosecuting attorney, or commencement of formal disciplinary proceedings [15 DAYS FROM THE TIME ACTION IS INSTITUTED IN THE CORRECTIONAL FACILITY TO IMPOSE ADMINISTRATIVE SEGREGATION], whichever is earlier. [THE ARREST, ARRAIGNMENT, OR SERVICE UPON THE DEFENDANT OF A COMPLAINT, INDICTMENT, OR INFORMATION, RELATING TO SUBSEQUENT CHARGES ARISING OUT OF THE SAME CONDUCT, OR THE REILING OF THE ORIGINAL CHARGE, SHALL NOT EXTEND THE TIME, UNLESS THE EVIDENCE ON WHICH THE NEW CHARGE IS BASED WAS NOT AVAILABLE TO THE PROSECUTION AT THE TIME OF THE ORIGINAL COMMENCEMENT DATE OF THE 120 DAY PERIOD AND A SHOWING OF DUE DILIGENCE IN SECURING THE DEFENDANT FOR THE ORIGINAL CHARGES IS MADE BY THE PROSECUTION; OR]

(5) [(2)] Mistrial, New Trial or Remand. If the defendant is to be tried again following a mistrial, an order for a new trial, or an appeal or collateral attack, the time for trial

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shall run from the date of mistrial, order granting a new trial, or remand.

(6) Withdrawal of Plea. If the defendant is to be tried after withdrawal of a plea of guilty or nolo contendere previously entered, the time for trial shall run from the date of the order permitting the withdrawal.

DATED: April 14, 1993

EFFECTIVE DATE: July 15, 1993

Chief Justice Moore

Justice Rabinowitz

Justice Burke

Justice Matthews

Justice Compton