

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1339

Amending Criminal Rule 5(b) and
Evidence Rule 404(b) to include
changes made by chapter 86 SLA
1998.

IT IS ORDERED:

1. Paragraph (b) of Criminal Rule 5 is amended to read:

(b) **Rights of Prisoner to Communicate with Attorney or 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.

2. The following note is added at the end of Criminal Rule 5:

Note to SCO 1339: Criminal Rule 5(b) was amended by § 17 ch. 86 SLA 1998 to make it clear that the rule does not give a prisoner the right to contact a victim or witness in violation of AS 11.56.755. Section 1 of this order is adopted for the sole reason that the legislature has mandated the amendment.

3. Paragraph (b) of Evidence Rule 404 is amended to read:

(b) **Other Crimes, Wrongs, or Acts.**

(1) Evidence of other crimes, wrongs, or acts is not admissible if the sole purpose for offering the evidence is to prove the character of a person in order to show that the person acted in conformity therewith. It is, however, admissible for other purposes, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(2) In a prosecution for a crime involving a physical or sexual assault or abuse of a minor, evidence of other acts by the defendant toward the same or another child is admissible if admission of the evidence is not precluded by another rule of evidence and if the prior offenses

(i) occurred within the 10 years preceding the date of the offense charged;

(ii) are similar to the offense charged;
and

(iii) were committed upon persons similar to the prosecuting witness.

(3) In a prosecution for a crime of sexual assault in any degree, evidence of other sexual assaults or attempted sexual

assaults by the defendant against the same or another person is admissible if the defendant relies on a defense of consent. In a prosecution for a crime of attempt to commit sexual assault in any degree, evidence of other sexual assaults or attempted sexual assaults by the defendant against the same or another person is admissible.

(4) In a prosecution for a crime involving domestic violence or of interfering with a report of a crime involving domestic violence, evidence of other crimes involving domestic violence by the defendant against the same or another person or of interfering with a report of a crime involving domestic violence is admissible. In this paragraph, "domestic violence" and "crime involving domestic violence" have the meanings given in AS 18.66.990.

4. The following note is added at the end of Evidence Rule 404:

Note to SCO 1339: Evidence Rule 404(b)(3) was amended by § 18 ch. 86 SLA 1998 to expand the circumstances when evidence of other sexual assaults or attempted sexual assaults by the defendant will be admitted. Section 3 of this order is adopted for the sole reason that the legislature has mandated the amendment.

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Effective Date: June 13, 1998
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DATED: August 13, 1998

EFFECTIVE DATE: June 13, 1998

/s/ Warren W. Matthews
Chief Justice Matthews

/s/ Mr. P. Compton
Justice Compton

/s/ D. S. Eastaugh
Justice Eastaugh

/s/ Walden Labe
Justice Fabe

/s/ J. Beyner
Justice Beyner