

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1739

Amending Criminal Rule 5(a) and
adding a Note concerning the direct
court rule amendment made by
chapter 19 SLA 2010 (HB 324)

IT IS ORDERED:

1. Criminal Rule 5(a) is amended to read as follows:

Rule 5. Proceedings Before the Judge or Magistrate.

(a) Appearance Before Judge or Magistrate.

(1) Except when the person arrested is issued a citation for a misdemeanor or a violation and immediately thereafter released, the arrested person shall be taken before the nearest available judge or magistrate without unnecessary delay. This appearance may be accomplished by the use of telephonic or television equipment pursuant to Criminal Rules 38.1 and 38.2. ~~Unnecessary~~Necessary delay within the meaning of this paragraph (a) is defined as a period not to exceed ~~twenty-four~~forty-eight hours after arrest, including Sundays and holidays.

(2) If

- (i) The judge or magistrate commits the arrested person to jail for a purpose other than to serve a sentence, and
- (ii) The jail is situated in a different community from the place where the judge or magistrate committed the arrested person to jail, and

- (iii) The arrested person is not represented by counsel, and
 - (iv) The arrested person has not previously had a bail review, and
 - (v) The arrested person has no date, time and place established for his or her next court appearance,
- then the arrested person shall be taken before a judge or magistrate in the community where the jail is located within ~~twenty-four~~forty-eight hours of the person's detention in that jail
- (aa) in order for bail to be reviewed, and
 - (bb) in order to determine if the person is represented by counsel, and
 - (cc) in order for the counsel to be appointed, if appropriate.

* * *

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

NOTE: The Alaska Legislature amended Criminal Rule 5(a) to change the time within which an arrested person must be brought before a judicial officer for a first appearance from 24 hours to 48 hours. Ch. 19, §§ 23 and 24, SLA 2010 (HB 324) (eff. July 1, 2010). The changes to Criminal Rule 5 are adopted for the sole reason that the legislature has mandated the amendments. That legislative rule change creates an apparent conflict with AS 12.25.150(a), which provides that an arrested person must be taken before a judge or magistrate "in any event within 24 hours after arrest."

DATED: October 5, 2010

EFFECTIVE DATE: *nunc pro tunc* to July 1, 2010

/s/
Chief Justice Carpeneti

/s/
Justice Fabe

/s/
Justice Winfree

/s/
Justice Christen

/s/
Justice Stowers