Rule 62. Title.

These rules may be known and cited as the "Rules of Criminal Procedure."

ORDER ADOPTING RULES

It is hereby ordered:

That the foregoing rules, numbered 1 to 62, inclusive, be and the same are hereby adopted as the Rules of Criminal Procedure governing the superior court and the magistrate courts of the State of Alaska effective at a date to be determined by further order of the court.

Dated at Juneau, Alaska, this 9th day of October, 1959.

/s/ Buell A. Nesbett
Chief Justice

/s/ Walter H. Hodge
Associate Justice

/s/ John H. Dimond
Associate Justice

RULES OF CRIMINAL PROCEDURE

PART I. SCOPE, PURPOSE AND CONSTRUCTION

Rule 1. Scope.

These rules govern the practice and procedure in the superior court in all criminal proceedings and, insofar as they are applicable, the practice and procedure in all other courts.

Rule 2. Purpose and Construction.

These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

PART II. PRELIMINARY PROCEEDINGS

Rule 3. The Complaint.

(a) The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before any magistrate.

(b) Whenever practicable a copy of the complaint shall be served upon the defendant at the time of service of the summons or execution of the warrant.

Rule 4. Warrant or Summons upon Complaint.

(a) Issuance.

(1) Warrant. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it.

(2) Summons. A summons instead of a warrant may issue if the person taking the complaint has reason to believe that the defendant will appear in response thereto, or if the defendant is a corporation. In any case in which it is lawful for an officer to arrest a person without a warrant, he may give such person a summons instead of arresting him.

(3) Failure of Defendant to Appear after Summons. If a defendant who has been duly summoned fails to appear or if there is reasonable cause to believe that he will fail to appear, a warrant of arrest shall issue. If a defendant corporation fails to appear after having been duly summoned, a plea of not guilty shall be entered by the magistrate if he is empowered to try the offense for which the summons was issued and he may proceed to trial and judgment without further process; if the magistrate is not so empowered he shall proceed as though the defendant had appeared.

(4) Additional Warrants or Summonses. More than one warrant or summons may issue on the same complaint.

(b) Form and Contents.

(1) Warrant. The warrant shall be signed by the magistrate, and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty and shall describe the

offense charged in the complaint. The warrant shall be directed to any peace officer or other person authorized by law to execute same and shall command that the defendant be arrested and brought before the nearest available magistrate without unnecessary delay. The magistrate must endorse the amount of bail upon the warrant.

(2) Summons. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a magistrate at the time and place stated therein and shall inform the defendant that if he fails to ap pear a warrant will issue for his arrest.

(c) Execution or Service and Return.

(1) By Whom. The warrant shall be executed by any peace officer or other officer authorized by law. The summons may be served by any peace officer or by any other person authorized to serve a summons in a civil action.

(2) Territorial Limits. The warrant may be executed or the summons may be served at any place within the jurisdiction of the State of Alaska.

(3) Manner. The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to him personally, or by leaving

it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or in any other manner provided for service of process in civil actions.

(4) Return. The officer executing a warrant shall make return thereof to the magistrate or other officer before whom the defendant is brought pursuant to Rule 5. At the request of the prosecuting attorney any unexecuted warrant shall be returned to the magistrate by whom it was issued and shall be cancelled by him. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the magistrate before whom the summons is returnable. At the request of the prosecuting attorney made at any time while the complaint is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the magistrate to the peace officer or other authorized person for execution or service.

Rule 5. Proceedings before the Magistrate.

(a) Appearance before Magistrate. The person arrested must in all cases be taken before the nearest available magistrate without unnecessary delay, and in any event within twenty-four hours after his arrest, including Sundays and holidays. This requirement shall apply to municipal police officers to the same extent as it does to the state police or other peace officers in making an arrest, with or without a warrant. When a person arrested without a warrant is brought before a magistrate a complaint shall be filed forthwith. The magistrate shall be available at all hours and times to receive bail, and shall have authority to delegate such duty to the

person admitting the defendant to jail, or to such other person as shall in the judgment of the magistrate be qualified for such purpose.

(b) Rights of Prisoner to Communicate with Attorney or other Persons. Immediately after an arrest, any prisoner shall have the right to forthwith telephone or otherwise communicate with his attorney or any relative or friend; and any attorney at law entitled to practice in the courts of Alaska shall, at the request of the prisoner, or any relative or friend of such prisoner, have the right to forthwith visit the person so arrested.

(c) Preliminary Examination. The defendant shall not be called upon to plead. If the defendant waives preliminary examination the magistrate shall forthwith hold him to answer in the court in which the offense is triable. If the defendant does not waive examination the magistrate shall proceed to such examination and to discharge the defendant or hold hi to answer in conformity with existing law relating to preliminary examinations. The magistrate shall require that a copy of the complaint be delivered to the defendant if this has no already been done. Upon the examination the magistrate shall inform the defendant that he is not required to make a statement, and that any statement made by him may be used against him. If the defendant be held to answer, the magistrate shal admit the defendant to bail as provided by law or in these rules. When a magistrate has discharged a defendant or held him to answer as provided by law or in these rules, he shall transmit to the clerk of the superior court of the judicial district in which the offense is triable all papers in the proceeding, any bail taken by him, and all exhibits introduce

at the examination.

PART III. INDICTMENT AND INFORMATION

Rule 6. The Grand Jury.

(a) Summoning Grand Juries. The presiding judge of the superior court in each judicial district shall order one or more grand juries to be summoned at such times as the public interest requires, but not less frequently than once each year. The grand jury shall consist of not less than 12 nor more than 18 members. The court shall direct that a sufficient number of legally-qualified persons be summoned to meet this requirement. Any qualified member of the grand jury panel not designated to serve as a member of the grand jury may be placed on the petit jury panel.

(b) Qualifications; Manner of Drawing; Oath. The grand jury shall have the qualifications and shall be drawn in the manner provided by law. Before entering upon their duties they shall take the oath prescribed by law.

(c) Objections to Grand Jury and to Grand Jurors.

(1) Challenges. The prosecuting attorney or a defendant who has been held to answer to a complaint charging an indictable offense may challenge the array of jurors on the ground that the grand jury was not selected, drawn or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to the jurors and shall be tried by the presiding judge summoning

the grand jury.

(2) Motion to Dismiss. A motion to dismiss the indictment may be based upon objections to the array or the lack of legal qualification of an individual juror, if not previously determined upon challenge. An indictment shall not be dismissed upon the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to subdivision (d) of this rule that a majority of the total number of grand jurors, after deducting the number not legally qualified, concurred in finding the indictment.

(d) Foreman and Deputy Foreman. The presiding judge shall appoint one of the jurors to be foreman and another to be deputy foreman. The foreman shall have power to administer oaths and affirmations and shall endorse all indictments. He or another juror designated by him shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of the court, but the record shall not be made public except on order of the presiding judge. During the absence of the foreman, the deputy foreman shall act as foreman.

(e) Charge of Court. When the grand jury is formed they shall be charged by the court by written instructions, giving the jury such information as the court may deem proper concerning the nature of their powers and duties.

(f) Preparing Indictments and Presentments. The prosecuting attorney shall prepare all indictments or presentments for the grand jury, and shall attend their sittings to advise them in relation to their duties and to examine witnesses in their presence.

(g) Who May be Present. The prosecuting attorney, the witness under examination, interpreters when needed and, for the purpose of taking the evidence, a stenographer may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting.

(h) Secrecy of Proceedings and Disclosure. Disclosure of matters occurring before the grand jury other than the deliberations and the vote of any juror may be made to the prosecuting attorney for use in the performance of his duties. Otherwise a juror, attorney, interpreter or stenographer may disclose matters occurring before the grand jury only when so directed by the court preliminary to or in connection with a judicial proceeding or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury. No obligation of secrecy may be imposed upon any person except in accordance with this rule. The court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and in that event the clerk shall seal the indictment and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.

(i) Finding and Return of Indictment. An indictment may be found only upon the concurrence of a majority of the total number of jurors. The indictment shall be returned by the grand jury in open court to the presiding judge. If the defendant has been held to answer and a majority of jurors do not concur in finding an indictment, the foreman shall so report to the court in writing forthwith.

(j) Discharge and Excuse. A grand jury shall serve until discharged by the presiding superior court judge of the judicial district but no grand jury may serve more than 5 months, unless for good cause such period is extended. The tenure and powers of a grand jury are not affected by the beginning or expiration of a term of court. At any time for cause shown the presiding judge may excuse a juror either temporarily or permanently, and in the latter event said judge may impanel another person in place of the juror excused.

(k) Other Powers and Duties. The grand jury shall have such other powers and duties, not inconsistent with these rules as are provided by law.

Rule 7. The Indictment and Information.

(a) Use of Indictments and Informations. An offense which may be punished by imprisonment for a term exceeding one year shall be prosecuted by indictment, unless indictment is waived. Any other offense may be prosecuted by indictment or information. An information may be filed without leave of court.

(b) Waiver of Indictment. An offense which may be punished by imprisonment for a term exceeding one year may be prosecuted by information if the defendant, after he has been advised of the nature of the charge and of his rights, waives in open court prosecution by indictment.

(c) Nature and Contents. The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney. It need not

contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that he committed it by one or more specified means. The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice. When an indictment is found the names of all witnesses examined before the grand jury must be inserted at the foot of the indictment, or endorsed thereon, before it is presented to the court.

(d) Surplusage. The court, on motion of the defendant, may strike surplusage from the indictment or information.

(e) Amendment of Information. The court may permit an information to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(f) Bill of Particulars. The court shall direct the filing of a bill of particulars when the indictment or information is not sufficiently specific to enable the defendant to prepare his defense. A motion for a bill of particulars may be made only within ten (10) days after arraignment or at such other time before or after arraignment as may be prescribed by rule or order. A bill of particulars may be amended at any

time subject to such conditions as justice requires.

Rule 8. Joinder of Offenses and of Defendants.

(a) Joinder of Offenses. Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies, misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a commmon scheme or plan.

(b) Joinder of Defendants. Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count. The disposition of the indictment or information as to one of several defendants joined in the same indictment or information shall not affect the right of the state to proceed against the other defendants.

Rule 9. Warrant or Summons upon Indictment or Information.

(a) Issuance. Upon the return of the indictment or filing of the information the court shall issue a warrant for each defendant named in the information, if it is supported by oath, or in the indictment, except that no warrant need be issued for any defendant who has theretofore been held to answer for the offense or offenses charged. The clerk shall issue a summons instead of a warrant upon the request of the prosecuting

attorney, or by direction of the court. Upon like request or direction he shall issue more than one warrant or summons for the same defendant. He shall deliver the warrant or summons to a peace officer or other person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) Form.

(1) Warrant. The form of the warrant shall be as provided in Rule 4 (b) (1) except that it shall be signed by the clerk, it shall describe the offense charged in the indictment or information and it shall command that the defendant be arrested and brought before the court. The amount of bail may be fixed by the court and endorsed on the warrant.

(2) Summons. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court at a stated time and place.

(c) Execution or Service and Return.

(1) Execution or Service. The warrant shall be executed or the summons served as provided in Rule 4 (c) (1), (2), and (3). A summons to a corporation shall be served by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service, by also mailing a copy to the corporation's last known address within the state or at its principal place of business elsewhere in the United States. The officer executing the warrant shall bring the arrested person promptly before the court or, for the purpose of

admission to bail, before a magistrate.

(2) Return. The officer executing a warrant shall make return thereof to the court. At the request of the prosecuting attorney any unexecuted warrant shall be returned and cancelled. On or before the return day the person to whom a summons was delivered for service shall make return thereof. At the request of the prosecuting attorney made at any time while the indictment or information is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the clerk to a peace officer or other person authorized for execution or service.

PART IV. ARRAIGNMENT AND PREPARATION FOR TRIAL

Rule 10. Arraignment.

Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to him the substance of the charge and calling on him to plead thereto. He shall be given a copy of the indictment or information before he is called upon to plead.

Rule 11. Pleas.

A defendant may plead not guilty, guilty or, with the consent of the court, nolo contendere. The court may refuse to accept a plea of guilty, and shall not accept such plea without first determining that the plea is made voluntarily with understanding of the nature of the charge. If a defendant refuses to plead or stands mute or if the court refuses to

accept a plea of guilty or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

Rule 12. <u>Proceedings and Motions before Trial - Defenses and Objections.</u>

(a) <u>Pleadings and Motions.</u> Pleadings in criminal proceedings shall be the complaint, the indictment and the information, and the pleas of not guilty, guilty and nolo contendere. All other pleas, demurrers and motions to quash are abolished, and defenses and objections raised before trial shall be raised only by motion to dismiss or to grant appropriate relief as provided in these rules.

(b) <u>The Motion Raising Defenses and Objections.</u>

(1) <u>Defenses and Objections Which May be Raised.</u> Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion.

(2) <u>Defenses and Objections Which Must be Raised.</u> Defenses and objections based on defects in the institution of the prosecution or in the indictment or information other than that it fails to show jurisdiction in the court or to charge an offense may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objections constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the indictment or information to charge an offense shall be noticed by the court at any time during the pendency of the proceeding.

(3) Time of Making Motion. The motion shall be made before the plea is entered, but the court may permit it to be made within a reasonable time thereafter.

(4) Hearing on Motion. A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue. An issue of fact shall be tried by a jury if a jury trial is required under the constitution or by statute. All other issues of fact shall be determined by the court with or without a jury, or on affidavits, or in such other manner as the court may direct.

(5) Effect of Determination. If a motion is determined adversely to the defendant, he shall be permitted to plead if he had not previously pleaded. A plea previously entered shall stand. If the court grants a motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that the defendant be held in custody or that his bail be continued for a specified time pending the filing of a new indictment or information. If not so ordered, the defendant shall be discharged from custody or his bail exonerated. If the court directs that the case be resubmitted, and unless a new indictment be found before the next grand jury is discharged, the court must order that the defendant, if in custody, be discharged therefrom, or if he has given bail that his bail be exonerated. An order to set aside an indictment, as provided in this rule, is no bar to a further prosecution for the same crime. Nothing in this rule shall be deemed to affect the provisions of any statute of limitation.

Rule 13. Trial of Indictments or Informations Together.

The court may order two or more indictments or informations or both to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information.

Rule 14. Relief from Prejudicial Joinder.

If it appears that a defendant or the state is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants, or provide whatever other relief justice requires.

Rule 15. Depositions.

(a) When and How Taken. If it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing, that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court at any time after the filing of an indictment or information may upon motion of a defendant and notice to the parties order that his testimony be taken by deposition and that any designated books, papers, documents, or tangible objects, not privileged, be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness, or on its own motion, and upon notice to the parties, may direct that his deposition be taken. After the deposition has been subscribed

the court may discharge the witness.

(b) Notice of Taking. The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time.

(c) Defendant's Counsel and Payment of Expenses. If a defendant is without counsel the court shall advise him of his right and assign counsel to represent him unless the defendant elects to proceed without counsel or is able to obtain counsel. If it appears that a defendant at whose instance a deposition is to be taken cannot bear the expense thereof, the court may direct that all expenses of travel and subsistence of the defendant's attorney for attendance at the examination shall be paid by the state. In that event payment shall be made accordingly.

(d) How Taken. A deposition shall be taken in the manner provided in civil actions. The court at the request of a defendant may direct that a deposition be taken on written interrogatories in the manner provided in civil actions.

(e) Use. At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears:

(1) That the witness is dead;

(2) or that the witness is out of the state, unless it appears that the absence of the witness was procured

by the party offering the deposition;

(3) or that the witness is unable to attend or testify because of sickness or infirmity;

(4) or that the party offering the deposition has been unable to procure the attendance of the witness by subpoena

Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is competent and relevant to the part offered, and any party may offer other parts.

(f) Objections to Admissibility. Objections to receiving in evidence a deposition or part thereof, may be made as provided in civil actions.

(g) Joint Defendants. Where persons are jointly tried the court for good cause shown may refuse to permit the use at the trial of a deposition taken at the instance of a defendant over the objection of any other defendant.

Rule 16. Discovery and Inspection.

Upon motion of a defendant at any time after the filing of the indictment or information, the court may order the prosecuting attorney to permit the defendant to inspect and copy or photograph designated books, papers, documents or tangible objects, obtained from or belonging to the defendant or obtained from others by seizure or by process, upon a showing that the items sought may be material to the preparation of his defense and that the request is reasonable. The order shall specify the time, place and manner of making the inspection and of taking the copies or photographs and may

prescribe such terms and conditions as are just.

Rule 17. Subpoena.

(a) For Attendance of Witnesses - Form - Issuance. A subpoena shall be issued by the clerk under the seal of the court. It shall state the name of the court and the title, if any, of the proceeding, and if the witness is to testify on behalf of the state, it shall so note and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena, signed and sealed but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served. If the witness is to testify on behalf of the state, the subpoena shall contain an order to appear without the prepayment of any witness fee. A subpoena may be issued by the magistrate in a proceeding before him.

(b) Indigent Defendants. The court or a judge thereof may order at any time that a subpoena be issued upon motion or request of an indigent defendant. The motion or request shall be supported by affidavit in which the defendant shall state the name and address of each witness and the testimony which he is expected by the defendant to give if subpoenaed, and shall show that the evidence of the witness is material to the defense, that the defendant cannot safely go to trial without the witness and that the defendant does not have sufficient means and is actually unable to pay the fees of the witness. If the court or judge orders the subpoena to be issued it shall contain an order to appear without the prepayment of any witness fee. The costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same

manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the state.

(c) For Production of Documentary Evidence and of Objects. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may suppress or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may, upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

(d) Service. A subpoena may be served by any peace officer or any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and subject to the provisions of subsections (a) and (b) of this rule, by tendering to him the fee for one day's attendance and the mileage allowed by law or by rule.

(e) Place of Service. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the State of Alaska.

(f) For Taking Deposition - Place of Examination.

(1) Issuance. An order to take a deposition authorizes the issuance by the clerk of the court or a magistrate of subpoenas for the persons named or described therein.

(2) Place. A witness may be required to attend an examination only within 100 miles of the place wherein he resides or is employed or transacts his business in person.

(g) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued.

PART V VENUE, PRE-TRIAL

Rule 18. Venue: Place of Trial.

All prosecutions for crimes or offenses within the State of Alaska shall be had within the judicial district of said state where the same were committed, unless the court or the judge thereof, upon the application of the defendant, shall order the cause to be transferred for prosecution to another judicial district of said state.

Rule 19. Change of Venue; Application to Court.

All applications for change of place of trial in the cases provided by Sec. 17 (3) Ch. 50, SLA 1959 shall be made by motion, supported by affidavit, upon five days' notice to the other party. In the event that a change of place of trial shall be ordered, the clerk of the court in which the case is pending shall transmit to the clerk of the court to which the proceeding is transferred all papers in the proceeding, or duplicates thereof, and the prosecution shall continue in that court.

Rule 20. Transfer from the District for Plea and Sentence.

(a) Pleas of Guilty or Nolo Contendere. A defendant arrested in a judicial district other than that in which the indictment or information is pending against him may state in writing, after receiving a copy of the indictment or information, that he wishes to plead guilty or nolo contendere, to waive trial in the judicial district in which the indictment or information is pending and to consent to disposition of the case in the judicial district in which he was arrested, subject to the approval of the prosecuting attorney for each judicial district. Upon receipt of the defendant's statement and of the written approval of the prosecuting attorneys, the clerk of the court in which the indictment or information is pending shall transmit the papers in the proceeding or certified copies thereof to the clerk of the court for the judicial district in which the defendant is held and the prosecution shall continue in that judicial district. If after the proceeding has been transferred the defendant pleads not guilty, the clerk shall return the papers to the court in which the prosecution was commenced and the proceeding shall be restored to the docket of that court. The defendant's statement shall not be used against him unless he was represented by counsel when it was made.

(b) Pleas of Not Guilty. Whenever a defendant is arrested in a judicial district other than that in which the indictment or information is pending and desires to plead not guilty, the court may, at his request or the request of the prosecuting attorney, transfer the proceeding to the judicial district in which he is arrested for the purpose of arraignment and plea,

where the court finds that the defendant will be put to unnecessary expense and inconvenience to require his appearance for arraignment and plea in the district where the action is pending. After such plea has been entered the court to which the action is transferred shall return all papers to the court in which the prosecution was commenced.

Rule 21. Time of Motion to Transfer.

A motion to transfer under these rules may be made at or before arraignment or at such other time as the court or these rules may prescribe.

Rule 22. Pretrial Procedure.

(a) At any time after the return of the indictment or the filing of the information the court may invite the attorneys to appear before it for a conference in open court, at which the defendant shall have the right to be present, to consider:

(1) The simplification of the issues;

(2) The possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;

(3) The number of expert witnesses or character witnesses or other witnesses who are to give testimony of a cumulative nature;

(4) Such other matters as may aid in the disposition of the proceeding.

(b) The court shall make an order reciting the agreements made by the parties as to any of the matters considered, which shall be signed by the court and the attorneys for the

parties, and when entered shall control the subsequent course of the proceedings, unless modified at the trial to prevent manifest injustice.

(c) This rule shall not be invoked in the case of any defendant who is not represented by counsel.

PART VI. TRIAL

Rule 23. Trial by Jury or by the Court.

(a) Trial by Jury. Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial in writing with the approval of the court and the consent of the state.

(b) Jury of Less than Twelve. Juries shall be of 12 persons but at any time before verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number less than 12.

(c) Trial Without a Jury. In a case tried without a jury the court shall make a general finding and shall, in addition, on request, find the facts specially.

Rule 24. Trial Jurors.

(a) Examination. The court may permit the defendant or his attorney and the prosecuting attorney to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event the court shall permit the defendant or his attorney and the prosecuting attorney to

supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions by the parties or their attorneys as it deems proper.

(b) Peremptory Challenges. If the offense is punishable by imprisonment for more than one year, the state is entitled to 6 peremptory challenges and the defendant or defendants jointly to 10 peremptory challenges. If the offense charged is punishable by imprisonment for not more than one year, or by fine or both, each side is entitled to 3 peremptory challenges. If there is more than one defendant, the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly.

(c) Alternate Jurors. The court may direct that not more than 4 jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to 1 peremptory challenge in addition to those otherwise allowed by law if 1 or 2 alternate jurors are to be impanelled, and 2 peremptory challenges if 3 or 4 alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by these rules may not be used against an alternate juror.

(d) Selection of Foreman. When the jury has retired to consider their verdict, they shall elect one of their number foreman, who shall preside over their deliberations, sign the verdict unanimously agreed upon, and speak for them on the return of their verdict in open court.

Rule 25. Judge, Disqualification or Disability.

(a) Before Trial. Where a judge of the superior court is disqualified or for any other reason is unable to sit in the trial or hearing of any pending matter, the presiding judge or the chief justice of the supreme court shall designate another judge of the judicial district in which the matter is pending, or a judge temporarily assigned thereto, to hear the matter.

(b) During Trial. If a judge holding superior court be prevented during a trial from continuing to preside therein, the presiding judge or the chief justice of the supreme court shall designate another judge of the superior court to sit in such court to complete such trial, as if such other judge had been present and presiding from the commencement of such trial, provided, however, that from the beginning of the taking of testimony at such trial a stenographic or electronic record of such trial shall have been made so that the judge so continuing may familiarize himself with the previous proceedings at such trial.

(c) After Verdict. If by reason of absence from the district, death, sickness or other disability, the judge before whom the action has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge regularly sitting in or assigned to

the court may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

Rule 26. Evidence.

(a) In General. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by statutes or by these rules. The admissibility of evidence and the competency and privileges of witnesses shall be governed, except when statute or these rules otherwise provide, by the principles of the common law as they may be interpreted by the courts of this state in the light of reason and experience.

(b) Proof of Official Record. An official record or an entry therein or the lack of such a record or entry may be proved in the same manner as in civil actions.

Rule 27. Proceedings upon Trial.

(a) Order of Proceedings. After a jury is impanelled and sworn, the trial shall proceed in the following order:

First. The prosecuting attorney must state the case of the prosecution, and may briefly state the evidence by which he expects to sustain it.

Second. The defendant, or his counsel, may then state his defense, and may briefly state the evidence he expects to offer in support of it; provided, that after the state has produced its evidence and presented its case in chief,

the defendant, or his counsel, if he intends to produce evidence, must then state his defense, and may briefly state the evidence he expects to offer in support of it.

Third. The state must first produce its evidence; and the defendant may then produce his evidence. The state will then be confined to rebutting evidence unless the court for good reason, in furtherance of justice, shall permit it to offer evidence in chief.

Fourth. Unless the case be submitted without argument, counsel for the state shall commence, the defendant or his counsel shall follow and counsel for the state conclude the arguments to the jury. The court may, in its discretion, limit the time of such arguments.

Fifth. At the conclusion of the arguments the court shall charge the jury; provided that requested instructions may be offered by either party and objections thereto heard and considered by the court in accordance with Rule 30.

(b) Record of Proceedings. In trials in the superior court all proceedings, including the testimony of witnesses and the opening and closing statements to the jury, shall be stenographically or electronically recorded.

Rule 28. Expert Witnesses.

The court may order the defendant or the state or both to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint witnesses of its own selection. An expert

witness shall not be appointed by the court unless he consents to act. A witness so appointed shall be informed of his duties by the court at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his findings, if any, and may thereafter be called to testify by the court or by any party. He shall be subject to cross-examination by each party. The court may, unless otherwise provided for by rule, determine the reasonable compensation of such witness and direct its payment out of such funds as may be provided by law. The parties also may call expert witnesses of their own selection.

Rule 29. Motion for Acquittal.

(a) Motion for Judgment of Acquittal. Motions for directed verdict shall not be used and motions for judgment of acquittal shall be used in their place. The court, on motion of a defendant or of its own motion, shall order the entry of judgment of acquittal of one or more offenses charged in the indictment or information after the evidence on either side is closed, if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the state's case is not granted, the defendant may offer evidence without having reserved the right.

(b) Reservation of Decision on Motion. If a motion for judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict. If the motion is

denied and the case is submitted to the jury, the motion may be renewed within 5 days after the jury is discharged and may include in the alternative a motion for a new trial. If a verdict of guilty is returned the court may on such motion set aside the verdict and order a new trial or enter judgment of acquittal. If no verdict is returned the court may order a new trial or enter judgment of acquittal.

Rule 30. Requested Instructions; Objections.

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objections. Opportunity shall be given to make the objection out of the hearing of the jury by excusing the jury or hearing objections in chambers.

Rule 31. Verdict.

(a) Return. The verdict shall be unanimous. It shall be returned by the jury to the judge in open court.

(b) Poll of Jury. When a verdict is returned and before it is recorded the jury shall be polled at the request of

any party or upon the court's own motion. If, upon the poll, there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

PART VII. JUDGMENT

Rule 32. Sentence and Judgment.

(a) Sentence. Sentence shall be imposed without unreasonable delay. Pending sentence the court may commit the defendant or continue or alter the bail. Before imposing sentence the court shall afford the defendant an opportunity to make a statement in his own behalf and to present any information in mitigation of punishment. If the defendant is being sentenced following a plea of guilty or nolo contendere the court shall question the defendant to ascertain that he understood the meaning of his plea, and that it was freely and voluntarily entered.

(b) Judgment. A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.

(c) Presentence Investigation.

(1) When Made. The probation service of the court shall make a presentence investigation and report to the court before the imposition of sentence or the granting of probation unless the court otherwise directs. The report shall

not to be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or has been found guilty.

(2) Report. The report of the presentence in vestigation shall contain any prior criminal record of the defendant and such information about his characteristics, his financial condition, and the circumstances affecting his behav ior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court.

(d) Withdrawal of Plea of Guilty or Nolo Contendere. A motion to withdraw a plea of guilty or of nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice, the court, after sentence, may set aside the judgment of convictic and permit the defendant to withdraw his plea.

(e) Conviction of a Corporation. If a corporation shall be convicted of any criminal offense the court may give judgment thereon and shall cause such judgment to be enforced in the same manner as a judgment in a civil action, or as othe wise provided by law.

Rule 33. New Trial.

The court may grant a new trial to a defendant if required in the interest of justice. If trial was by the court without a jury the court may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial based on the ground of newly-discovered evidence may be made only before or within two years after final judgment, but if an appeal is pending the

court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within 5 days after verdict or finding of guilty, or within such further time as the court may fix during the 5-day period.

Rule 34. Arrest of Judgment.

A motion in arrest of judgment following a plea or verdict of guilty may be founded on one or more of the following grounds, and not otherwise:

First. That the grand jury by which the indictment was found had no legal authority to inquire into the crime charged, or that the court was without jurisdiction of the offense charged.

Second. That the facts stated in the indictment or information do not constitute a crime.

Third. That the defendant has been formerly convicted or acquitted of the same offense.

The motion shall be made within five days after verdict or finding of guilt, or within such further time as the court may fix during the 5-day period.

Rule 35. Reduction or Correction of Sentence.

(a) Reduction of Sentence. The court may reduce a sentence within 60 days after the sentence is imposed, or within 60 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 60 days after receipt of an order of the supreme court of the state or of the United States denying an application

for relief.

(b) Illegal Sentence. The court may correct an illegal sentence at any time. Where a prisoner is in custody under sentence and claims that the sentence imposed was illegal, he shall file his application to vacate, set aside or correct the sentence with the clerk of the superior court in the judicial district where the sentence was imposed. The clerk shall forthwith docket the application and forward it to the presiding judge who may assign the application to any superior court judge thereof. Whenever practicable such assignment shall be made to the judge who presided at the trial. An appeal from the determination of such application may be taken in the same manner as from other final judgments.

(c) Suspension of Sentence and Probation after Judgment. Within sixty days after judgment of conviction of any offense, the court may entertain an application for suspension of sentence or probation in the cases prescribed by law.

Rule 36. Clerical Mistakes.

Clerical mistakes in judgments, orders or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the court at any time and after such notice, if any, as the court orders.

PART VIII. SPECIAL PROCEEDINGS

Rule 37. Search and Seizure.

(a) Search Warrant; Issuance and Contents. A search

warrant authorized by law shall issue only on affidavit sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The warrant shall be directed to a peace officer of the state authorized to enforce or assist in enforcing any law thereof. It shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search forthwith the person or place named for the property specified. The warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time. It shall designate the superior court judge or the magistrate to whom it shall be returned.

(b) Execution and Return with Inventory. The warrant may be executed and returned only within 10 days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person

from whose possession or premises the property was taken, and shall be verified by the officer. The judge or magistrate shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(c) Motion for Return of Property and to Suppress Evidence. A person aggrieved by an unlawful search and seizure may move the judge or magistrate in the judicial district in which the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that

(1) the property was illegally seized without warrant, or

(2) the warrant is insufficient on its face, or

(3) the property seized is not that described in the warrant, or

(4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or

(5) the warrant was illegally executed.

The judge or magistrate shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the judicial district where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its

discretion may entertain the motion at the trial or hearing.

(d) Return of Papers to Clerk. The judge or magistrate who has issued a search warrant shall attach to the warrant a copy of the return, inventory and all other papers in connection therewith and shall file them with the clerk of the superior court in the judicial district in which the property was taken.

PART IX. GENERAL PROVISIONS

Rule 38. Presence of the Defendant.

The defendant shall be present at the arraignment, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by these rules. In prosecutions for any offense, the defendant's voluntary absence after the trial has been commenced in his presence shall not prevent continuing the trial to and including the return of the verdict. A corporation may appear by counsel for all purposes. In prosecutions for offenses punishable by fine or by imprisonment for not more than one year or both, the court, with the written consent of the defendant, may permit arraignment, plea, trial and imposition of sentence in the defendant's absence. The defendant's presence is not required at any hearing for reduction or correction of sentence under Rule 35.

Rule 39. Appearance by Counsel.

(a) Informing Defendant of Right to Counsel. If the

defendant appear for arraignment or trial without counsel, the court shall advise him of his right to have counsel, and he must be asked if he desires the aid of counsel.

(b) Assignment of Counsel. If the defendant states that he desires the aid of counsel and is unable to employ counsel, and upon his making affidavit that he is without sufficient funds to employ counsel, the court shall assign counsel to represent him at every stage of the proceedings, who shall be allowed such fee for his services as may be fixed by the supreme court, to be paid by the state on approval by the administrative director.

Rule 40. Time.

(a) Computation. In computing any period of time the day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday. When a period of time prescribed or allowed is less than 7 days, intermediate Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

(b) Enlargement. When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if application thereo is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion

permit the act to be done after the expiration of the specified period if the failure to act was the result of excusable neglect; but the court may not enlarge the period for taking any action under Rules 33, 34, and 35 except as otherwise provided in those rules, or the period for taking an appeal.

(c) Unaffected by Expiration of Term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the expiration of a term of court. The expiration of a term of court in no way affects the power of a court to do any act in a criminal proceeding.

(d) For Motions - Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown, such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not less than 1 day before the hearing unless the court permits them to be served at a later time.

(e) Additional Time after Service by Mail. Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon him and the notice or other paper is served upon him by mail, 3 days shall be added to the prescribed period.

Rule 41. Bail.

(a) Admission to Bail. Except as is otherwise

provided by these rules, admission to and taking of bail, surrender of defendant, and procedure for forfeiture of undertaking of bail or deposit, shall be as provided by existing law.

(b) Upon Appeal or Review. Bail may be allowed pending appeal or review unless it appears that the appeal is frivolous or taken for delay. Pending appeal or petition for review to the supreme court, bail may be allowed by the trial judge, by the supreme court, or by any judge or justice thereof, to run until final termination of the proceedings in all courts. Any court or judge or justice authorized to grant bail may at any time revoke the order admitting the defendant to bail.

(c) Bail for Witness. If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure his presence by subpoena, the court or magistrate may require him to give bail for his appearance as a witness, in an amount fixed by the court or magistrate. If the person fails to give bail the court or magistrate may commit him to the custody of a peace officer pending final disposition of the proceeding in which the testimony is needed, or may order his release if he has been detained for an unreasonable length of time and may modify at any time the requirement as to bail.

(d) Amount. If the defendant is admitted to bail, the amount thereof shall be such as in the judgment of the magistrate or court or judge or justice will insure the presence of the defendant, having regard to the nature and circumstances of the offense charged, the weight of the evidence against him, the financial ability of the defendant to give

bail and the character of the defendant.

(e) Forfeiture.

(1) Declaration. If there is a breach of condition of a bond, the judge or magistrate having jurisdiction shall declare a forfeiture of the bail.

(2) Setting Aside. The court may direct that a forfeiture be set aside upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.

(3) Enforcement. When a forfeiture has not been set aside, the court shall on motion enter a judgment of default and execution may issue thereon. By entering into a bond the obligors submit to the jurisdiction of the court and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the obligors to their last known addresses. The written undertaking shall provide for enforcement in accordance with this rule.

(4) Remission. After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in paragraph (2) of this subdivision.

(f) Exoneration. When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and

release any bail. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.

Rule 42. Motions.

An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit.

Rule 43. Dismissal.

(a) By Prosecuting Attorney. The prosecuting attorney may by leave of court file a dismissal of an indictment, information or complaint and the prosecution shall thereupon terminate. Such a dismissal may not be filed during the trial without the consent of the defendant.

(b) By Court. If there is unnecessary delay in presenting the charge to a grand jury or in filing an information against a defendant who has been held to answer to the superior court, or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the indictment, information or complaint.

Rule 44. Service and Filing of Papers.

(a) Service - When Required. Written motions other than those which are heard ex parte, written notices, and similar papers shall be served upon the adverse parties.

(b) Service - How Made. Whenever under these rules or by an order of the court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions.

(c) Notice of Orders. Immediately upon the entry of an order made on a written motion subsequent to arraignment, the clerk shall mail to or otherwise serve on each party affected thereby a notice thereof and shall make a note in the docket of the mailing or other service.

(d) Filing. Papers required to be served shall be filed with the court. Papers shall be filed in the manner provided in civil actions.

(e) Proof of Service. Proof of service of all papers required by law or these rules to be served shall be filed in the clerk's office promptly and in any event before action is to be taken therein by the court or the parties. The proof shall show the day and manner of service, and may be by written acknowledgment of service, by certificate of a member of the Alaska Bar, by return of any peace officer, or by affidavit of any other person who served the papers.

Rule 45. Calendars.

The superior court shall provide for placing criminal proceedings upon appropriate calendars. Preference shall be given to criminal proceedings as far as practicable.

Rule 46. Exceptions Unnecessary.

Exceptions to rulings or orders of the court are unnecessary. It is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and the grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him.

Rule 47. Harmless Error and Plain Error.

(a) Harmless Error. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) Plain Error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

Rule 48. Regulation of Conduct in the Court Room.

The taking of photographs in the court room during the progress of judicial proceedings, or radio or television broadcasting of judicial proceedings from the court room, shall not be permitted by the court.

Rule 49. Records.

The clerks of the superior court and district magistrate courts shall keep such records in criminal proceedings as may be prescribed by rule or order of the supreme court or

by the administrative director with the approval of the chief justice.

Rule 50. Attorneys.

(a) Appearances by Counsel; Withdrawal. In all criminal actions, counsel retained to represent the accused shall, immediately after being retained as such, file with the clerk a formal written appearance upon a form to be provided by the court. The Rules of Civil Procedure relating to the withdrawal of an attorney for a party shall apply with equal force with respect to any attorney retained to represent the accused in criminal actions.

(b) Civil Rules to Apply. All other provisions of the Rules of Civil Procedure relating to attorneys, regarding applications to the court, stipulations, examining witnesses, counsel as a witness, arguments on motions or hearings, non-resident attorneys, and disbarment and discipline, shall apply to practice in criminal actions in the courts of the state.

Rule 51. Procedure not Otherwise Specified; Construction of Statutes.

These rules are designed to provide for the efficient operation of the courts of the State of Alaska, supplementing the Code of Criminal Procedure. If no specific procedure is prescribed by rule or statute, the court may proceed in any lawful manner not inconsistent with these rules, the constitution, and the common law. Where official designations or titles are used or functions prescribed by statutes in force at the time of adoption of these rules, they shall be construed to

relate to corresponding state titles, designations and functions existing after the transition of Alaska from the status of a territory to that of a state.

Rule 52. <u>Legal Effect of Rules; Statutes Superseded.</u>

These rules are prumulgated pursuant to constitutional authority granting rule-making power to the supreme court, and to the extent that they are inconsistent with any procedural statute in effect shall supersede such statute to the extent of such inconsistency. The statutes designated in Appendix A to these rules are considered superseded by these rules and no longer applicable. The designation in Appendix A is not exclusive, and where there may be a conflict between a statute and a rule, the applicable rule governs to the extent of such conflict.

Rule 53. <u>Relaxation of Rules.</u>

These rules are designed to facilitate business and advance justice. They may be relaxed or dispensed with by the court in any case where it shall be manifest to the court that a strict adherance to them will work injustice.

Rule 54. <u>Process.</u>

Process issued in all criminal actions in the superior court shall be issued, and return thereon made, in the manner prescribed by Rule 4, Rules of Civil Procedure.

Rule 55. <u>Forms.</u>

The forms contained in the Appendix of Forms are

illustrative and not mandatory.

Rule 56. Definitions.

As used in these rules, unless the context otherwise requires:

(a) "Prosecuting Attorney" shall include the attorney general, assistant attorney general, deputy attorneys general and any attorneys, legal officers and assistants charged by law with the duty of prosecuting the violation of any law, statute or ordinance.

(b) "Magistrate" shall include district magistrates, deputy magistrates, superior court judges and any other judicial officer authorized by law to conduct a preliminary examination of a person accused of a crime.

(c) "Presiding Judge" shall include the duly-designated presiding judge of the superior court in each judicial district or, in his absence, the person designated presiding judge pro tem.

(d) "Offense" means a crime as that term is defined in Sections 65-2-1 and 65-2-2, ACLA Cum. Supp.

(e) "Peace Officer" shall include any officer of the state police, members of the police force of any incorporated city or village, U. S. Marshals and their deputies, and other officers whose duty is to enforce and preserve the public peace.

Rule 57. Effective Date.

These rules become effective on the date to be established by order of the supreme court. They shall govern all criminal proceedings thereafter commenced and so far as just and practicable all proceedings then pending.

Rule 58. Title.

These rules may be known and cited as the Rules of Criminal Procedure.

PART X. PROCEDURES FOR THE TRIAL OF CASES BEFORE MAGISTRATES, AND FOR TAKING AND HEARING APPEALS THEREFROM.

Rule 59. Applicability of Rules; Special Provisions.

Wherever practicable these Rules of Criminal Procedure shall apply to criminal actions in district magistrate courts within their jurisdiction, including deputy magistrates, except as follows:

(a) Commencement of Actions. A criminal action is commenced by the filing of a complaint, verified by the oath of the officer or other person commencing the action, and the issuance of a warrant or summons, in the manner provided by Rules 3 and 4. In the event that a complaint is made by any other person other than a peace officer, no judgment of conviction may be given except upon a plea of guilty unless the person making the complaint, or the person or persons injured by the offense charged, appear at the trial as a witness.

(b) Arraignment and Plea. When the defendant is

brought before the magistrate the complaint must be read to him, and he shall be furnished a copy of the complaint upon request. The magistrate shall inform the defendant of his right to counsel, to be admitted to bail, that he is not required to make a statement, and that any statement made by him may be used against him. If the defendant does not desire the aid of counsel he shall be called upon to plead to the complaint; if counsel is requested, a reasonable time shall be allowed for appearance of counsel and plea. Pleas shall be oral, in open court. The defendant may plead either guilty or not guilty, but if he refuse to plead the magistrate must enter the fact, together with a plea of not guilty on his behalf.

(c) Trial. The date of trial shall be fixed by the magistrate at such time as will afford the defendant a reasonable opportunity for preparation and for representation by counsel. The trial shall be conducted as are trials in criminal cases in the superior court, except that the court shall not instruct the jury other than to define the nature of the offense charged and the statute or regulation upon which the complaint is based.

(d) Trial by Jury; Waiver. The manner of drawing juries shall be as provided by Section 68-6-8, ACLA 1949. Waiver by the defendant of jury trial or agreement by the parties for trial by a jury of less than twelve need not be in writing, but shall be made in open court, and the magistrate shall make a proper notation thereof in the record of the proceedings.

(e) Change of Venue. All applications for change of place of trial in the cases provided by Section 6, Chapter 184, SLA 1959, shall be by motion, either orally or in writing, specifying the particular grounds therefor, made to the magistrate prior to the date of trial, and upon such notice to the prosecuting attorney as the court finds necessary. In the event that a change of place of trial is ordered, the magistrate shall transmit to the magistrate in whose district the proceeding is transferred all papers in the proceeding, and the prosecution shall continue in that court.

(f) Proceedings before Deputy Magistrate. If the defendant does not consent in writing to trial before a deputy magistrate the deputy shall hold the proceeding in abeyance until the magistrate shall appear in his district to try the case. The deputy magistrate shall admit the defendant to bail, or he may release the defendant upon his own recognizance, pending trial.

(g) Process; Return. Process shall be issued as provided by Section 10, Chapter 184 SLA 1959. A person serving any process of the magistrate courts shall make proof thereof to the court promptly, and in any event at or within the time during which the person served must respond to the process. If service is made by other than a peace officer, the person serving such process shall make affidavit thereof. Failure to make proof of service shall not effect the validity of the service.

(h) Record of Proceedings; Docket. The magistrate court shall not be considered a court of record, and no stenographic or electronic record need be taken of the proceedings.

The magistrate shall keep a docket of all cases filed before him, which shall show: (1) the date of the complaint; (2) the nature of the offense charged, and a reference to the statute or regulation upon which the complaint is based; (3) the date of issuance and service of the warrant of arrest or summons; (4) the date of arraignment and plea; (5) the plea entered; (6) the defendant's written consent to be tried before a deputy magistrate, if such be the case; (7) the date of trial; (8) the verdict of the jury; (9) the judgment and sentence; (10) the names of the witnesses for the state and the defendant; (11) a notation of any documentary evidence or other exhibits received; and (12) a record of all other orders and proceedings in the case.

The magistrate shall also, in every case except when a plea of guilty is entered, make and preserve in the record of the case a condensed summary of the testimony of all witnesses for the state and the defendant.

(i) Other Rules Inapplicable. The provisions of Rule 5, relating to preliminary examination, Rule 32(c), relating to pre-sentence investigation, Rules 39(b) and 15(c) with respect to appointment of counsel for indigent defendants, and of Rule 50(a) relating to written appearance and withdrawal of counsel, shall not apply.

Rule 60. Appeals to Superior Court.

(a) How Taken. An appeal from a judgment of conviction in a magistrate court, as provided by Section 20, Chapter 184, SLA 1959, shall be taken by filing with the magistrate a notice in duplicate stating that the defendant appeals from the judgment. The notice of appeal shall set

forth the title of the case, the names and addresses of the appellant and the appellant's attorney, if any, a general statement of the nature of the offense, the date of the judgment, the sentence imposed, and if the defendant is in custody the place where he is confined. The notice shall also contain a concise statement of the grounds of appeal. In lieu of written notice, a defendant may give oral notice of appeal in open court, immediately following the imposition of sentence, which shall be entered by the magistrate in the docket.

(b) Proceedings on Appeal. The magistrate shall promptly forward to the clerk of the superior court of the district the duplicate notice of appeal, together with a copy of all of his docket entries and the originals or copies of the complaint, the warrant, all orders and judgments entered by him, and the originals of all exhibits received in evidence, certified under his hand and seal. He shall also serve upon or mail to the prosecuting attorney a copy of the notice of appeal, or if oral notice be given in open court he shall inform the prosecuting attorney accordingly; and shall also furnish the prosecuting attorney copies of his docket entries and other records upon request. From the time of the filing of the magistrate's record the superior court shall have supervision and control of the proceedings on appeal, and may at any time, upon five days' notice, entertain appropriate motions, including motions to dismiss, for directions to the magistrate, or to vacate or modify any order of the magistrate in relation to the appeal, including any order for admission to bail.

(c) Bail. Admission to bail upon appeal shall be allowed in all cases.

(d) Stay of Execution. A sentence of imprisonment

shall be stayed if an appeal is taken and the defendant elects not to commence service of the sentence or is admitted to bail. A sentence to pay a fine or a fine and costs may be stayed, if an appeal is taken, by the magistrate or by the superior court upon such terms as the court deems proper. The court may require the defendant during appeal to deposit the whole or any part of the fine and costs in the registry of the superior court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make an appropriate order to restrain the defendant from dissipating his assets. An order placing the defendant on probation shall be stayed if an appeal is taken.

Rule 61. Review of Judgment and Sentence other than Appeal from Final Judgments.

Petitions for review of any judgment and sentence claimed to be illegal for any cause, or for errors at law appearing upon the face of the judgment or the proceedings in connection therewith, shall be filed with the superior court in accordance with Rule 35(b), and shall thereafter be under the supervision and control of such court. The court, or a judge thereof, may require of the magistrate such records, as provided in Rule 59(h), as will enable the court to determine the matter.

An aggrieved party may also petition the superior court for review of any order or decision of a magistrate court where there is no appeal or other plain, speedy or adequate remedy, in the manner provided by Part XIV of the Rules of Civil Procedure.

Hearings on petitions for review shall be upon the record, unless otherwise ordered by the court.

Rule 62. Title.

These rules may be known and cited as the "Rules of Criminal Procedure."

ORDER ADOPTING RULES

It is hereby ordered:

That the foregoing rules, numbered 1 to 62, inclusive, be and the same are hereby adopted as the Rules of Criminal Procedure governing the superior court and the magistrate courts of the State of Alaska effective at a date to be determined by further order of the court.

Dated at Juneau, Alaska, this 9th day of October, 1959.

/s/ Buell A. Nesbett
Chief Justice

/s/ Walter H. Hodge
Associate Justice

/s/ John H. Dimond
Associate Justice