

**IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE**

**ANCHORAGE DISTRICT COURT  
CRIMINAL MISDEMEANOR PRE-TRIAL ORDER**

**Effective: May 17, 2021<sup>1</sup>**

The goal of this Pre-Trial Order is to, (1) fulfill the Court's obligation to all parties to resume jury trials, while (2) following all necessary safety protocols of the Alaska Court System due to the COVID-19 pandemic, and (3) to ensure an efficient Pre-Trial process so trials are not unnecessarily delayed. This Pre-Trial Order will be strictly enforced, despite any prior agreements between agencies, subject to constitutional limitations.

**1. Mandatory Deadlines.**

The following deadlines are mandatory: No deviations from this Pre-Trial Order shall be granted except for good cause shown. Failure to comply with these deadlines may result in the imposition of sanctions pursuant to Civil Rule 95, as incorporated by Criminal Rule 50, and as otherwise provided by law.

**2. Discovery.**

a) Police reports and other items within the prosecutor's possession and control required to be disclosed to the defendant pursuant to Criminal Rule 16 shall be made available for inspection and copying by the 14<sup>th</sup> day after arraignment for police reports and the 21<sup>st</sup> day after arraignment for all other discovery.

b) Discovery to the prosecutor is governed by Criminal Rule 16(c), and the Court will enforce the deadlines set forth in that rule.

c) Parties shall disclose any subsequently obtained discovery material promptly without the necessity of further request or order.

d) If the parties cannot resolve a discovery dispute, a party may raise the issue at the Pre-Trial Conference after the dispute is known or file a motion pursuant to timelines established below.

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<sup>1</sup> This Order replaces the previous Standing Order issued on March 24, 2014.

### **3. Parties to Confer.**

The prosecutor and defense counsel shall confer with each other prior to the Pre-Trial Conference to review the status of discovery and other potential issues including resolution short of trial. The best practice is for counsel to meet in person, within the guidelines relating to COVID-19. Active discussions are to be ongoing and counsel should respond to electronic requests within **five (5) days**.

### **4. Pre-Trial Motions and Motion Call.**

a) At the Pre-Trial Conference, counsel shall announce if they intend to file a motion in a case. If a motion is to be filed, the Court will schedule a Motion Call date.

b) Motion Call will be held Mondays at 1:00 p.m. or Tuesday when Monday is a Court holiday.

c) Judicial assignments for motion hearings will be made at Motion Call. Peremptory challenge of the judge assigned, pursuant to Criminal Rule 25(d), shall be exercised on the record at the time the assignment is made or the parties are deemed to have accepted the assignment. The judge assigned to the case at Motion Call shall be a permanent assignment of that judge for purposes of Criminal Rule 25(d), although the case may be reassigned to another judge for trial if judicial availability necessitates. If the defendant is not present counsel shall be prepared to accept a judicial assignment without the defendant present.

d) Attorneys assigned to cases scheduled for Motion Call shall be present. Assigned attorneys unable to appear shall have a substitute attorney present, who is authorized to substantively address Motion Call issues, accept an evidentiary hearing date, and a judicial assignment.

### **5. Trial Motions.**

Due to Alaska Court System safety protocols regarding social distancing, the Court System shall make every effort to avoid having jurors, witnesses and parties unnecessarily convening for extended periods of time while pretrial issues are being discussed and resolved. Trials must be conducted in an effective and safe manner. Accordingly:

a) **Motions *in Limine* and Protective Orders.** Motions *in limine* and motions for trial protective orders must be filed at least **five (5) days** in advance of Trial Call. The Court may schedule an expedited evidentiary hearing if needed and time is available. Failure to timely raise motions *in limine* or protective orders will constitute a waiver of such issue unless the party can demonstrate due diligence.

**b) Evidence Rule 404.** The proponent of evidence subject to Evidence Rule 404 must file any motion to allow the introduction of that evidence at least **five (5) days** in advance of Trial Call. The proponent must identify the specific conduct sought to be admitted and the theory of admissibility. Failure to timely raise any 404 motion will constitute a waiver of such issue and prohibition of the use of that evidence during trial unless the party can demonstrate due diligence.

**c) Any Other Motions.** Subject to constitutional limitations, motions other than those discussed above, including a *Daubert-Coon* motion, must be filed no later than **five (5) days** in advance of Trial Call. Failure to timely raise such a motion will constitute a waiver of such issue unless the party can demonstrate due diligence, which does not include a high volume of work.

#### **6. Experts and Affirmative Defenses.**

a) Parties shall file a notice with the Court and opposing parties of any expert witnesses performing work in connection with the case or whom the party is likely to call at trial pursuant to Criminal Rule 16. Failure to provide timely disclosure may result in court-imposed sanctions, including prohibiting the party from calling the expert at trial.

b) Notices of affirmative defenses, statutory justification or excuse shall be governed and enforced under the applicable criminal rules.

#### **7. Trial Call.**

a) In all misdemeanor cases, Trial Call will be held Wednesdays at 3:00 p.m. Trials begin on the following Tuesday morning. Date certain trials may be requested at Trial Call for unusual witness or other circumstances and will be considered on a case-by-case basis.

b) Unless a judicial assignment has previously been made, a judicial assignment for trial will be made at Trial Call. Peremptory challenge of the judge assigned, pursuant to Criminal Rule 25(d), shall be exercised on the record at the time the assignment is made or the parties are deemed to have accepted the assignment.

c) Defendants shall be present at Trial Call, unless good cause is shown why they cannot be present. A COVID-19 related reason for non-appearance is good cause so long as there has been recent contact with counsel. If the defendant is not present counsel shall be prepared to accept a judicial assignment without the defendant present.

d) Attorneys assigned to cases scheduled for Trial Call shall be present. Assigned attorneys unable to be present shall have a substitute attorney present who is authorized to substantively address Trial Call issues, accept a trial date, and a judicial assignment.

e) Prosecutors shall be prepared to inform the Court of their Criminal Rule 45 calculations in each case at Trial Call. A party must file any written objection to a Rule 45 calculation within **five (5) days** or the objection will be waived.

f) Prosecutorial motions to continue Trial Call and toll Criminal Rule 45 for unavailability of material evidence or witnesses, will not be ruled on at Pre-Trial Conference or Trial Call unless there is no objection to the continuance. Otherwise, to receive a ruling on the tolling of Criminal Rule 45, prosecutors must file, in writing, the facts and law to support their request. After Opposition and Reply, these motions will be assigned to a judge for a ruling on the pleadings. If either party believes an evidentiary hearing is needed, that party may notify the Court when their motion or opposition is filed.

### **8. Trial.**

a) Trials will be prioritized after considering the factors outlined in Alaska Supreme Court Order 8242.<sup>2</sup> The Court expects the number of trials initially to be limited while following the necessary safety protocols of the Alaska Court System due to the pandemic.

b) Trials begin on the Tuesday morning following Trial Call unless a different start day is necessary. All defendants scheduled for trial must be present for trial. Defense counsel shall assure that defendants are dressed appropriately for trial.

c) Multiple trials may be scheduled at Trial Call before each judge in a trial-trailing system. The parties should expect that trailing cases may be called up for trial throughout the week and sometimes reassigned among judges as cases are disposed of and attorneys become available to begin trial. Prosecutors should be prepared to reassign less involved cases so that trials may proceed without delay. The Court will hear any objections by the prosecutor on a case-by-case basis.

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<sup>2</sup> a. The requests of the parties and victim(s);  
b. The age of the case;  
c. Whether the defendant is in custody;  
d. The classification of any charged offense(s);  
e. The number of other required participants, including victims, custodial officers, interpreters, investigators, or other lawyers;  
f. The facilities available for the trial or proceeding;  
g. The prejudice suffered by any party;  
h. The defendant's access to counsel;  
i. Any special transportation requirements;  
j. Any local quarantine requirements or other health mandates;  
k. The COVID-19 case counts and risk levels for the area or location; and  
l. Any special health considerations for the trial participants.

d) By 1:00 p.m. on the day before trial is scheduled to begin the parties shall submit by email to the judicial assistant of the assigned judge a Notice of Status of Case Scheduled for Trial on the Court form for all cases not ready for trial.<sup>3</sup> This is required so the Court does not unnecessarily incur the costs of calling a jury panel and for trial management and scheduling purposes. A \$300.00 sanction (which is the approximate amount of what a misdemeanor jury panel costs) may be imposed on a party who fails to file a timely Notice of Status of Case Scheduled for Trial as required and the Court incurs the expenses associated with a jury panel arriving for a trial when the trial has to be continued.

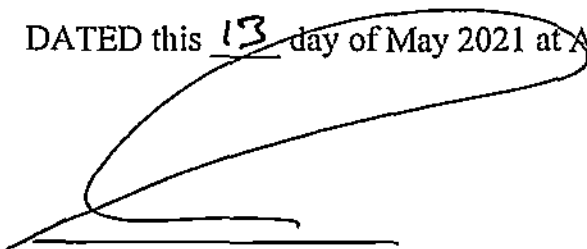
#### 9. Jury Instructions.

Unless otherwise ordered, the prosecutor shall provide one set of the most current Criminal Pattern Jury Instructions to the court and to opposing counsel at the beginning of the second day of trial. Any defense jury instructions shall be provided at the close of the prosecution's evidence. No citations to authority need be provided for instructions approved by the Alaska Criminal Pattern Jury Instruction Committee. All other instructions must have a duplicate instruction, with a citation to authority.

#### 10. Continuances.

Continuances may not be granted to any party on the day of trial unless there is a showing that despite due diligence factors that could not have been ascertained at the time of announcement of ready for trial necessitate a continuance in the interest of justice.

DATED this 13 day of May 2021 at Anchorage, Alaska.



William F. Morse  
Presiding Judge  
Third Judicial District



David R. Wallace  
Deputy Presiding Judge  
Anchorage District Court

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<sup>3</sup> The Notice of Status of Case Scheduled for Trial court form may be found at:  
<http://www.courts.alaska.gov/trialcourts/ancdist.htm>

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Denali Law Group

Alaska Association of Criminal Defense Lawyers

IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

\_\_ State of Alaska )  
\_\_ Municipality of Anchorage )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
\_\_\_\_\_ ) Case No. 3AN-\_\_\_\_\_ Cr  
 )  
Defendant. )  
\_\_\_\_\_ )

**NOTICE OF STATUS OF CASE SCHEDULED FOR TRIAL**

The plaintiff/defendant hereby notifies the court that the above case scheduled for trial on \_\_\_\_\_:

1. Will be resolved through Change of Plea scheduled for \_\_\_\_\_ or to occur at the time scheduled for trial; or
2. Will be resolved by Dismissal filed or to be filed on \_\_\_\_\_; or
3. May be continued – see the attached Motion for Continuance. The undersigned understands that no continuance will be granted without good cause. Convenience of the parties is not good cause; compelling reasons must be shown. **Opposition or Non-opposition must be included with the Motion.**

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Signature, Prosecutor

\_\_\_\_\_  
Signature, Defense Counsel

I certify this was emailed to Judge \_\_\_\_\_  
Chambers and \_\_\_\_\_  
on \_\_\_\_\_ at \_\_\_\_\_ am/pm.

JA Norma Kincheloe at [nkincheloe@akcourts.gov](mailto:nkincheloe@akcourts.gov) for Judges Chung & McCrea  
JA Debbie Ruckle at [druckle@akcourts.gov](mailto:druckle@akcourts.gov) for Judges Clark, Dickson & Hanley  
JA Breanna Hardy at [bhardy@akcourts.gov](mailto:bhardy@akcourts.gov) for Judges Logue & Washington  
JA Aurora Palmer at [apalmer@akcourts.gov](mailto:apalmer@akcourts.gov) for Judges Franciosi, Nesbett & Wallace