IN THE SUPREME COURT OF THE STATE OF ALASKA

SPECIAL ORDER OF THE CHIEF JUSTICE

ORDER NO. 8194

Update regarding COVID-19 and Jury Trials

COVID-19 case counts have remained high since the last order suspending jury trials on August 6, 2020. This continued suspension affects the interests of criminal defendants, victims, and the general public in prompt disposition of criminal charges. In the meantime, judges and court staff have developed procedures designed to reduce the risk of exposure for grand jury proceedings and other hearings. Misdemeanor trials offer an opportunity to use the same procedures in cases that present the lowest risk of exposure. Therefore, under the authority of Supreme Court Order No. 1957,

IT IS ORDERED:

A. Jury Trials and Other Proceedings

1. Misdemeanor trials may resume on November 2, 2020 under the direction of the presiding judge.

2. All other jury trials remain suspended until at least January 4, 2021. This suspension does not apply to proceedings (such as presumptive death trials) in which videoconference trials have been approved. The continuation of this suspension will be reviewed on or shortly after November 20, 2020.

3. A presiding judge may allow a felony or civil jury trial to proceed in exceptional circumstances.

4. For all criminal cases, the period of delay from March 16, 2020 through January 4, 2021 is excluded in computing the time for trial under Alaska Criminal Rule 45(d). After January 4, the time for trial will continue to be tolled for the time necessary to permit an orderly transition and scheduling.

5. For the Second and Third Judicial Districts, the time limit for preliminary examination under Alaska Criminal Rule 5(e) is extended through November 28, 2020. This time limit may be extended thereafter only as provided in that rule.

B. Misdemeanor Jury Trial Sites

1. Some presumptive district court trial sites do not have a courtroom large enough to accommodate a misdemeanor jury trial with appropriate social distancing. In locations where the courtroom is too small to accommodate a misdemeanor trial, court administration shall attempt to locate an alternate local facility.

2. Jury trials assigned to the following presumptive district court trial sites will be temporarily relocated unless court administration can obtain an alternate local facility large enough to accommodate a misdemeanor jury trial:

   a. Angoon trials will be held in Sitka;
   b. Hoonah and Yakutat trials will be held in Juneau;
   c. Kake trials will be held in Petersburg;
   d. Unalakleet trials will be held in Nome;
   e. St. Paul and Sand Point trials will be held in Anchorage;
   f. Naknek trials will be held in Dillingham;
   g. Fort Yukon trials will be held in Fairbanks.

3. The locations listed in Administrative Bulletin 27 will not be available as additional trial sites for six-person juries (Kake and Point Hope).

4. The trial judge may expand the selection area to provide a representative cross-section of the appropriate community as provided in Administrative Rule 15(h)(3).

C. Jury Selection Procedures

1. Clerks should issue an advance demographic questionnaire to identify qualification, hardship, and some cause challenges. The trial judge should consider a second case-specific questionnaire to assist with additional challenges.

2. Multi-judge court locations will identify a judge to rule on all online, email, or written hardship requests so that those potential jurors will not be required to come to the courtroom to make their requests. This position may rotate as determined by the presiding judge.

3. Trial judges may use a teleconference or Zoom videoconference to identify jurors who are clearly subject to challenge for cause; the parties will have the right to question in person those who are not excused.

4. Jurors will generally be summoned to the courtroom rather than another assembly area.

5. Jurors who are excused from a case for cause are eligible to serve on other cases that begin within their term. Jurors who are excused for hardship, including COVID-19 excusals, may be excused from other cases.

6. The trial judge shall use an efficient jury selection method to avoid undue delay and exposure consistent with the interests of justice:

   a. The judge may conduct the examination using the procedure described in Criminal Rule 24(a);

   b. The judge may require the parties to question the panel as a whole and impose a reasonable time limit;

   c. The judge may allow individual voir dire, setting a time limit on questioning of individual jurors;

   d. The judge may conduct the entire voir dire by Zoom videoconference by agreement of the parties;

   e. The judge may set efficient procedures for the exercise of both cause and peremptory challenges and for the replacement of challenged jurors without requiring unnecessary assembly.

   f. *For example*: If a judge allows individual voir dire, then jurors could be numbered and summoned at five to ten minute intervals with cause and peremptory challenges exercised after each juror.

   g. *Another example*: The judge could allow each side a reasonable time to examine a panel that will fit in the courtroom with social distancing, then require cause and peremptory challenges for that panel at the end of the examination.

7. The selection of additional alternate jurors for a longer trials is subject to social distancing considerations.

D. Trial Procedures

1. All trial participants shall be required to answer health screening questions and have temperature checks each day of the trial. The trial judge shall deal with screening failures on a case by case basis.

2. The trial judge shall require all participants to wear a mask or face covering except those speaking behind a Plexiglas barrier or transparent face shield or those exempted from wearing face coverings for health reasons or for being under age two. *See* Presiding Judges' Statewide COVID-19 Precautions Order (June 1, 2020).

3. During courtroom proceedings, the judge may authorize removal of masks or face coverings as necessary, including for purposes of witness testimony, defendant identification, or making an appropriate record, provided that appropriate social distancing or other protective measures are followed.

4. The judge shall generally require six-foot social distancing between all trial participants. With the consent of the affected participants, the judge may authorize participants who have an ongoing professional relationship to sit or confer without maintaining the usual social distancing. This includes criminal defendants and their attorneys and prosecutors and their case officers. But the participants shall continue to wear their masks or face coverings unless the judge authorizes removal for purposes of witness testimony, defendant identification, making an appropriate record, or similar necessity.

5. The trial judge shall direct a witness, attorney, or court staff to wipe down the microphone and surfaces in the witness area between witnesses.

6. Attorneys shall generally stay at counsel table during the trial unless the court allows them to move for another purpose.

7. Attorneys should make most objections and arguments from counsel table. Sidebars should be avoided. If the judge desires argument outside the presence of the jury, then the judge, attorneys, and defendant(s) should go to another room where the argument can be recorded.

8. Exhibits must be digitized for electronic display if possible. If the exhibits cannot be digitized then the judge may require other measures to reduce the risk of transmission such as requiring counsel to provide multiple copies of the exhibits or providing rubber gloves for those participants who must handle the exhibits.

9. The court will provide separate sets of jury instructions and verdict forms for each juror.

10. The media and the public may be required to participate by videoconference with a livestream to another courtroom, to another location, or to Youtube. Individual members of the public and media may be allowed to participate by teleconference on request.

11. To maintain social distancing, the trial judge may exclude participants who are not legally or practically essential to the trial.

DATED: September 24, 2020

Joel H. Bolger
Chief Justice

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