

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

LOCAL CRIMINAL RULES

[EFFECTIVE OCTOBER 1, 2002]

WITH AMENDMENTS THROUGH *DECEMBER 1, 2009*

[TO GO TO DESIRED RULE, CLICK ON RULE NUMBER IN TABLE OF CONTENTS]

SUMMARY OF DECEMBER 1, 2009 AMENDMENTS

TIME

The December 1, 2009, amendment to Fed. R. Crim. P. Rule 45(a) eliminated the exclusion of intervening weekends and holidays for short time periods. In general, for times of less than 30 days, the national rules adopted a protocol measuring times in increments of 7 days (7, 14, 21, or 28). For most rules: 5 days becomes 7; 10 and 15 days become 14; 20 days becomes 21; and 25 days becomes 28. The local rules adopted the same protocol.

Local Criminal Rules affected: 11.1; 32.1; 32.1.1; 32.2; 44.2; 46.1; 46.2; 47.1; and 58.1.

DEVIATIONS

Rule 11.1 “Change of Plea” – The time for filing a notice of change of plea changed from 3 to 5 days. The time in ¶ (b)(2) to arrange a pre-sentence report interview remains unchanged as 3 business days.

Rule 32.1 “Sentencing Procedures” – Time in ¶ (d)(1) for filing sentencing memoranda unchanged as 7 days preceding hearing.

Rule 32.1.1 “Revocation of Probation or Supervised Releases” – Time in subparagraph (e)(2)[B] for filing with the court changed from 2 days to 2 business days.

Rule 46.1 “Bail Hearings, Pretrial Release – Times in subparagraph (e)(1) for making a request for special pretrial services and ¶ (f)(3) for completing the application forms changed from 16 working hours to 48 hours. Time in hours is now determined as provided in Fed. R. Crim. P. 45(a)(2). This change will not result in any change to when the respective materials are due.

Rule 47.2(b) “Criminal Motion Practice” – Opposition to the motion is due 7 days after service or 2 business days before the hearing, whichever is earlier.

OTHER AMENDMENTS

Rule 32.1 "Sentencing Procedure" – Subsection (d) has been amended to make explicit that either the existence or nonexistence of cooperation agreements between the defendant and the government are not to be directly or indirectly referred to in sentencing memoranda.

Subsection (e) [new] requires a supplement to the sentencing memorandum be filed in each case under seal in conjunction with every Sentencing Memorandum. If a criminal defendant has agreed to cooperate, the Sentencing Memorandum Supplement must contain the cooperation agreement. If the criminal defendant and the United States have not entered into a cooperation agreement, the Sentencing Memorandum Supplement will indicate that no such agreement exists.

Subparagraph (f)(2)[A] (currently (e)(2)[A]) amended to provide that a substantial assistance motion is to be included in the Sentencing Memorandum Supplement filed under seal. Departures for substantial assistance are no longer filed as a separate motion as such. To the extent that the government moves for a substantial assistance departure and any pertinent argument by the defendant in respect thereto, are to be included in the "Supplemental Sentencing Memoranda."

Current subsections (e), (f), and (g) have been re-designated (f), (g), and (h) without change except as noted above.

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Rule 1.1 Scope

(a) Scope.

(1) These rules:

[A] apply to all criminal actions and proceedings before this court; and

[B] supplement the Federal Rules of Criminal Procedure and federal statutory law.

(2) The court, on its own motion or the motion of any party, for cause and in the interests of justice, may modify or dispense with any of these rules in a particular case.

(b) **District of Alaska Local Rules Applicable.** The District of Alaska Local Rules and District of Alaska Local Magistrate Judge Rules apply to criminal proceedings where appropriate.

(c) **Effective Date of Amendments.** All amendments or additions to these rules will apply to:

(1) all proceedings brought in this district on or after the effective date of the amendments; and

(2) except to the extent that the rights of any party are prejudiced, to all proceedings pending in this court on the effective date.

Related Provisions:

D.Ak. LR 3.3	Venue; Place of Trial; and Filing in Satellite Offices
D.Ak. LR 5.1	Filing and Proof of Service When Service is Required by Rule 5, Federal Rules of Civil Procedure
D.Ak. LR 5.2	Service on Parties by the Court
D.Ak. LR 5.3	Electronic Case Filing
D.Ak. LR 5.4	Filing Documents Under Seal, <i>Ex Parte</i> or <i>In Camera</i>
D.Ak. LR 5.5	Service Prior to an Event
D.Ak. LR 7.1	Motion Practice
D.Ak. LR 7.2	Hearings
D.Ak. LR 7.4	Proposed Orders
D.Ak. LR 9.2	Request for a Three-Judge Court
D.Ak. LR 10.1	Form of Pleadings and Other Papers
D.Ak. LR 11.1	Appearances, Substitution and Withdrawal
D.Ak. LR 39.3	Exhibits
D.Ak. LR 39.5	Courtroom Conduct
D.Ak. LR 43.1	Examination of Witnesses
D.Ak. LR 47.1	Voir Dire
D.Ak. LR 51.1	Jury Instructions
D.Ak. LR 79.1	Court Record; Notice of Electronic Filing; Docketing
D.Ak. LR 79.2	Books and records of the Clerk; Access and Copies
D.Ak. LR 81.1	Applicability
D.Ak. LR 83.1	Attorneys
D.Ak. LCrR 2.1	Purpose and Construction
D.Ak. LCrR 61.1	Title and Citation
D.Ak. LMR 2	Authority of Magistrate Judges
D.Ak. LMR 3	Criminal Matters Routinely Assigned to Magistrate Judges
D.Ak. LMR 6	Objections to Dispositive Matters Under 28 U.S.C. § 636(b)(1)(B) in Criminal Matters

Rule 2.1 Purpose and Construction

(1) These rules will be administered and construed to secure the just, speedy, and inexpensive determination of every criminal action or proceeding; and

(2) in any matter not covered by these rules, the court may regulate its practice in any manner not inconsistent with the Federal Rules of Criminal Procedure, the District of Alaska Local Rules and these rules.

Related Provision:

F.R.Cr.P. 57 Rules by District Courts

Rule 5.1 Initial Appearance by Video Teleconferencing

Appearance by the accused by video teleconferencing at the initial appearance under Rule 5, Federal Rules of Criminal Procedure, is governed by D.Ak LCrR 10.1.

Related Provisions:

F.R.Cr.P. 5 Initial Appearances
D.Ak. LCrR 10.2 Arraignment by Video Teleconferencing

Rule 10.1 Arraignments

(a) **Before Magistrate Judge.** At all arraignment proceedings held before a magistrate judge:

(1) prior to the arraignment, the district judge, or designee, will provide a trial date consistent with the Speedy Trial Act; or

(2) if no trial date is provided by the district judge, the parties will advise the magistrate judge of any date or dates on which the party will be unavailable for trial within the Speedy Trial time.

(b) **Continuance to Obtain Counsel.** The court will grant a reasonable continuance for arraignment when a defendant appears without counsel in a criminal proceeding and desires to retain counsel.

Related Provisions:

F.R.Cr.P. 10 Arraignment
D.Ak. LCrR 10.2 Arraignment by Video Teleconferencing
D.Ak.LMR 2 Criminal Matters Routinely Assigned to Magistrate Judges
Plan for Prompt Disposition of Criminal Cases adopted by the District Court, Alaska

Rule 10.2 Arraignment by Video Teleconferencing

(a) **Request for Appearance by Video Teleconferencing.**

(1) An appearance by the accused at an arraignment under Rule 10, Federal Rules of Criminal Procedure, by video teleconferencing is subject to approval by the presiding judicial officer.

(2) A request that the accused appear by video teleconferencing should be filed with the court not later than the close of the second business day preceding the appearance.

(b) **Consent.** Consent to an initial appearance by video teleconferencing may be given:

(1) in writing executed by the accused prior to the hearing and filed with the court as soon as practicable; or

(2) on the record at the beginning of the hearing.

(c) **Unrepresented Defendants.** If the accused is not represented by counsel, before accepting a consent to video conferencing, the judicial officer will advise the accused that the accused has the right to appear in person before the court.

(d) **Facilities.**

(1) The facilities from which the accused may appear by video conferencing may be located within or without the district and may be facilities owned, operated or maintained by the United States, any state, territory, the District of Columbia, any political subdivision of a state, or any agency thereof.

(2) Appearances by video conferencing may be originated solely from facilities that have been approved by the Chief Judge or a majority of the judges of this court.

(3) In addition to having the technological capability for the accused and the judicial officer to simultaneously see and hear each other, facilities must, at a minimum:

[A] permit the accused to be seated when the accused would otherwise be seated if appearing in the courtroom;

[B] have the capability to increase or decrease the area of coverage to permit the judge to simultaneously see the accused and, if represented, counsel for the accused;

[C] not require the accused to be shackled or otherwise restrained to an extent greater than would be permitted if the accused were appearing in the courtroom;

[D] permit the accused to privately confer with counsel; and

[E] prevent persons who are not participants in the proceeding from being seen or heard, or otherwise, directly or indirectly, interfering in the proceedings.

(4) The Clerk of the Court will maintain and make available to the public a list of approved facilities.

Related Provisions:

F.R.Cr.P. 10 Arraignments

Rule 11.1 Change of Plea

(a) **Scheduling.** Unless otherwise ordered by the court, counsel for a defendant who enters a change of plea from not guilty to guilty must file a Notice of Change of Plea not less than five (5) days before the date set for trial.

(b) **Duties of Defense Counsel.** Defense counsel must:

(1) discuss all applicable Sentencing Guidelines with the defendant prior to a change of plea hearing; and

(2) prior to the entry of the change of plea, contact the U.S. Probation Office and arrange for a pre-sentence report interview, which should be held no later than three (3) business days following the entry of the change of plea.

Related Provisions:

Sentencing Guidelines

F.R.Cr.P. 11 Pleas

D.Ak.LCrR 11.2 Plea Agreements

D.Ak.LCrR 32.1 Sentencing Procedure

Rule 11.2 Plea Agreements

(a) **Felony and Class A Misdemeanor Pleas.** Plea agreements in felony and Class A misdemeanor cases must be:

- (1) reduced to a writing approved by—
 - [A] the United States Attorney or his designee,
 - [B] counsel for the defendant, and
 - [C] the defendant; and

- (2) filed with the court by noon of the court day preceding the change of plea hearing.

(b) **Misdemeanor Pleas.** The court may require a plea agreement in a Class B or Class C misdemeanor case to conform to this rule.

(c) **Superseding Charging Documents.** Any superseding charging documents associated with a change of plea must be lodged with the court by noon of the court day preceding the change of plea hearing.

(d) **Plea Agreement.** The plea agreement must contain the following, but must not include any reference, direct or indirect, to either the existence or nonexistence of a cooperation agreement, if any, between the defendant and the government:

- (1) the charge or charges to which a plea of guilty will be entered and the disposition to be made of other charges;

- (2) the subparagraph of Rule 11(e)(1), Federal Rules of Criminal Procedure, under which the agreement has been entered;

- (3) all maximum and mandatory minimum statutory penalties applicable to a count of conviction;

- (4) agreements of the parties as to disposition of the counts of conviction, including specific references to United States Sentencing Guidelines;

- (5) the elements of each count of conviction;

- (6) facts that demonstrate, independent of the indictment or information, the factual basis for each count to which a plea of guilty is entered;

- (7) if dismissal of counts under Rule 11(e)(1)[A], Federal Rules of Criminal Procedure, is proposed, contain a statement demonstrating—

- [A] the remaining charges adequately reflect the seriousness of the actual offense behavior, and

- [B] that acceptance of the agreement will not undermine the statutory purposes of sentencing;

- (8) if a non-binding sentencing recommendation under Rule 11(e)(1)[B], Federal Rules of Criminal Procedure, is proposed, contain a statement demonstrating—

- [A] that the recommended sentence is within the applicable guideline range, or

- [B] set forth facts and authorities consistent with 18 U.S.C. § 3553(b), as amended, justifying departure from the applicable guideline range;

- (9) if a specific sentence under Rule 11(e)(1)[C], Federal Rules of Criminal Procedure is proposed to be binding upon the court, contain a statement demonstrating that—

- [A] the agreed sentence is within the applicable guideline range, or

- [B] set forth facts and authorities consistent with 18 U.S.C. § 3553(b), as amended, justifying departure from the applicable guideline range;

- (10) if restitution is not proposed where there is an identifiable loss and victim, contain a statement of facts demonstrating that restitution is not warranted;

- (11) if a fine within the applicable guideline range is not proposed, contain a statement—

- [A] justifying a lesser fine or waiver of fine; and

- [B] demonstrating that the sentence proposed is punitive;

(12) any provision for forfeiture of assets; and

(13) an acknowledgment of defendant's waiver of rights with respect to trial.

(e) **Plea Agreement Supplement.** In each case, a "Plea Agreement Supplement" must be filed under seal in conjunction with every Plea Agreement.

(1) If a criminal defendant has agreed to cooperate, the Plea Agreement Supplement must contain the cooperation agreement.

(2) If the criminal defendant and the United States have not entered into a cooperation agreement, the Plea Agreement Supplement must indicate that no such agreement exists.

Related Provisions:

18 U.S.C. § 3553 Imposition of a sentence

United States Sentencing Guidelines

F.R.Cr.P. 11 Pleas

D.Ak. LCrR 11.1 Change of Plea

D.Ak. LCrR 32.1 Sentencing Procedure

Rule 16.1 Omnibus Discovery in Criminal Cases

(a) **Pretrial Discovery Conference.** In every criminal case in which the defendant is represented by counsel and enters a plea of not guilty — other than a misdemeanor or petty offense for which no sentence of imprisonment will be imposed — the prosecutor and counsel for the defendant must confer regarding pretrial discovery.

(b) **Stipulation.** The parties may execute standing form USDC-48, Stipulation Pursuant to Discovery Conference then in use in this district.

(1) The executed stipulation is in lieu of motion practice as to matters addressed therein; and

(2) unless the court orders otherwise, the government must file the stipulation no later than 10 days after execution by the parties.

(c) **Enforcement.** Parties may seek enforcement of the stipulation by filing a motion to compel.

(d) **Discovery Motions.** Any motion for discovery must contain a certification that the parties have met and conferred and that the issues set out for decision in the motion are genuinely in dispute between the parties.

Related Provisions:

F.R.Cr.P. 16 Discovery and Inspection

Rule 32.1 Sentencing Procedure

(a) **Scheduling.** Unless otherwise ordered by the court, imposition of sentence will be scheduled no earlier than seventy-two (72) days after conviction.

(b) **Confidential Recommendation.** Unless otherwise ordered by the court, the confidential sentencing recommendation accompanying the presentence report is to be disclosed to counsel concurrently with the disclosure of the final presentence report..

(c) **Final Presentence Report.** Not less than fourteen (14) days prior to the sentencing date, the final presentence report will be disclosed to counsel.

(d) **Sentencing Memoranda.**

(1) Not less than seven (7) days before the sentencing hearing, all counsel in the case must file with the court and serve on opposing counsel and the probation officer a sentencing memorandum.

(2) The sentencing memorandum must contain, but must not include any reference, direct or indirect, to either the existence or nonexistence of a cooperation agreement, if any, between the defendant and the government:

[A] indicate if there is no disagreement with the presentence report;

[B] indicate whether or not it is contended that a sentence within the Sentencing Guideline range is reasonable;

[C] cite all controlling authority relevant to disputed guideline issues; and

[D] may be supported by affidavits, statements, and records as appropriate.

(e) **Sentencing Memorandum Supplement.** In each case in which a sentencing memorandum is filed, a "Sentencing Memorandum Supplement" must be filed under seal.

(1) If the criminal defendant has agreed to cooperate, the Sentencing Memorandum Supplement must include any relevant or pertinent discussion of the cooperation agreement, including its affect on the sentence to be imposed.

(2) If the criminal defendant and the United States have not entered into a cooperation agreement, the Sentencing Memorandum Supplement must indicate that there is no cooperation agreement.

(f) **Sentencing Factors.**

(1) If counsel intends to argue that the court depart from the sentencing guidelines, the sentencing memorandum must:

[A] identify the grounds for departure;

[B] cite the statute and guideline permitting the departure; and

[C] justify the recommended departure.

(2) If the Government moves to depart on the basis that the defendant has provided substantial assistance to the Government in an investigation or prosecution, the government's motion:

[A] is to be included in the Supplemental Sentencing Memoranda; and

[B] the government must make a specific recommendation of the extent to which departure should be made and the reasons that justify the departure.

(3) If counsel intends to argue that a factor enumerated in 18 U.S.C. § 3553(a), other than paragraphs (4) and (5), is relevant to the imposition of sentence:

[A] identify the factor by reference to the paragraph of § 3553(a);

[B] cite all controlling authority relevant to the factor, if any;

[C] briefly state the facts in support of the contention, including reference to any evidence supporting the existence of the fact; and

[D] state with particularity the effect contended the application of that factor should have on the sentence imposed.

(g) **Evidentiary Hearing.** If a party deems an evidentiary hearing to be necessary, not later than concurrently with the filing of the Sentencing Memorandum under subsection (d), but as a separate document:

(1) a motion for an evidentiary hearing is to be served and filed on shortened time; and

(2) the court advised of—

[A] the nature and extent of the evidence, and

[B] an estimate of time necessary for the hearing.

(h) **Duties of Counsel.** Defense counsel must review both the draft presentence report and the final presentence report with the defendant(s).

Related Provisions:

18 U.S.C. § 3143	Release or detention of a defendant pending sentence or appeal
18 U.S.C. § 3551	Authorized sentences
18 U.S.C. § 3552	Presentence reports
18 U.S.C. § 3553	Imposition of a sentence
18 U.S.C. § 3559	Sentencing classification of offenses
18 U.S.C. § 3561	Sentence of probation
18 U.S.C. § 3571	Sentence of fine
18 U.S.C. § 3581	Sentence of imprisonment
18 U.S.C. § 3583	Inclusion of a term of supervised release after imprisonment
United States Sentencing Guidelines	
F.R.Cr.P. 32	Sentence and Judgment
F.R.Cr.P. 46	Release From Custody

Rule 32.1.1 Revocation of Probation or Supervised Release

(a) Initial Appearance.

(1) Upon the filing of a petition alleging a violation of the conditions of probation or supervised release supervision, an initial appearance will be held before a magistrate judge.

(2) If the person is in custody:

[A] the initial appearance will be scheduled within fourteen (14) days after the petition is filed; and

[B] the hearing on a motion for release pending the revocation hearing may be combined with the initial appearance.

(b) Agreed Modification.

(1) If the parties agree upon a modification of the condition(s) or term of probation or supervision in lieu of revocation, the probation officer will prepare a Petition to Modify the Conditions of Supervision and a Waiver of Hearing and Consent to Modify for the parties approval.

(2) The petition and waiver will be forwarded to the appropriate judicial officer for approval or rejection.

(3) If modification is approved by the court, unless further action by the court is required, the government must move the court to dismiss the petition with or without prejudice.

(c) **Evidentiary Hearings.** If the defendant denies the allegations of violation(s) of the conditions of probation or supervised release, an evidentiary hearing on the merits of the petition will be scheduled without undue delay.

(1) Evidentiary hearings will be heard by a magistrate judge if:

[A] sentence was imposed by a magistrate judge; or

[B] referred by a district judge when sentence was imposed by a district judge.

(2) Upon conclusion of an evidentiary hearing referred to a magistrate judge under subparagraph (c)(1)(B), a report and recommendation(s) regarding the violation(s) will be filed and distributed to the government, defense counsel or defendant if not represented by counsel, and the probation officer.

[A] Any objection to the report and recommendation(s) must be:

(i) filed within fourteen (14) days of the date distributed; and

(ii) is governed by D.Ak. LMR 6.

[B] If no objection is timely filed, the court may adopt the report and recommendations(s) without further hearing or notice to the parties.

(d) **Disposition Hearing.** Upon the entry of an order finding a violation, unless the court finds that there is sufficient information in the record to enable the meaningful exercise of sentencing authority under 18 U.S.C. §§ 3553, 3565, or 3583, the court will set the matter of a disposition hearing.

(e) **Disposition Reports.**

(1) The court may order the Probation Office to conduct a disposition investigation and prepare a disposition report.

(2) Unless otherwise ordered by the court:

[A] Not less than seven (7) days prior to the disposition hearing the disposition report must be disclosed to counsel of record. A disposition report is presumed to have been disclosed—

(i) when a copy of the report is physically delivered, or

(ii) three (3) days after a copy of the report is sent electronically or mailed; and

[B] Not less than two (2) business days prior to the disposition hearing—

(i) the probation officer must furnish the court with a copy of the disposition report, addendum, and a confidential sentencing recommendation, and

(ii) any objections to the disposition report must be filed with the court and served on opposing counsel and the probation officer.

(3) Defense counsel must review the disposition report with the defendant.

(4) Unless otherwise ordered by the court, the confidential recommendation accompanying the disposition report will be disclosed to counsel concurrent with disclosure of the disposition report.

(f) **Hearing on Disposition Report.** If either party deems an evidentiary hearing on the disposition report is necessary, a Motion for an Evidentiary Hearing may be filed on shortened time.

(1) The motion must advise the court of:

[A] the nature and extent of the evidence; and

[B] counsel's estimate of time necessary to offer the evidence.

(2) At the hearing the court may:

[A] consider material submitted by the parties without regard to admissibility at trial, provided that the material submitted is deemed credible by the court; and

[B] in appropriate cases, consider testimony.

(g) **Disposition Agreements.** Any revocation disposition agreement must be either:

(1) placed on the record in open court; or

(2) reduced to writing and contain written approval by the United States Attorney or designee, counsel for the defendant, and the defendant.

Related Provisions:

18 U.S.C. § 3143	Release or detention of a defendant pending sentence or appeal
18 U.S.C. § 3401	Misdemeanors; application of probation laws
18 U.S.C. § 3553	Imposition of a sentence
18 U.S.C. § 3565	Revocation of Probation
18 U.S.C. § 3583	Inclusion of a term of supervised release after imprisonment
United States Sentencing Guidelines	
F.R.Cr.P. 32.1	Revocation or Modification of Probation or Supervised Release
F.R.Cr.P. 45	Computing and Extending Time
F.R.Cr.P. 46	Release From Custody
D.AK. LCrR 46.1	Bail Hearings; Pretrial Release

Rule 32.1.2 Disclosure of Disposition Reports

(a) **General Rule of Confidentiality.** Disposition reports prepared by the U.S. Probation and Pretrial Office under D.Ak. LCrR 32.1.1, including the notes, recordings, memoranda, interviews, and statements, maintained by the probation and pretrial services office of this Court, and correspondence to the United States Probation and Pretrial Services Office or to the Court, relative to a charged defendant are hereby declared to be confidential records of the Court.

(b) **Disclosure.**

(1) Unless otherwise ordered by the court, except as otherwise provided in this rule or D.Ak. LCrR 32.1.1, disposition reports prepared by the U.S. Probation and Pretrial Services Office may not be released or otherwise disclosed to any entity.

(2) D.Ak. LCrR 32.2 applies to the release or disclosure of the materials described in subsection (a).

Related Provisions:

D.Ak. LCrR 32.1.1 Revocation of Probation or Supervised Release

D.Ak. LCrR 32.2 Disclosure of Pretrial Services and Presentence Reports

Rule 32.2 Disclosure of Pretrial Services and Presentence Reports

(a) **General Rule of Confidentiality.**

(1) The pretrial services, presentence and probation reports and records, including the notes, recordings, memoranda, interviews, and statements, maintained by the probation and pretrial services office of this court, and correspondence to the United States Probation and Pretrial Services Office for the District of Alaska or to the court, relative to a charged defendant, are hereby declared to be confidential records of the court.

(2) Except as otherwise ordered by the court to serve the interests of justice, or as specifically provided in this rule, 18 U.S.C. §§ 3153(c)(1), 3552(d), 3553(c), and 4042(b) and (c), F.R.Cr.P. 32, D.Ak. LCrR 32.1 and 46.1, Guide to Judiciary Policies and Procedures, Volume X, Probation Manual, Chapter III (Sentencing Options) and Chapter IV (Supervision Services), and Volume XII, Pre-Trial Services Manual, Chapter III (Confidentiality), the materials described in paragraph (a)(1) may not be released or otherwise disclosed to any entity.

(b) **Continuing Confidentiality.**

(1) Except as otherwise ordered by the court or provided by law, any entity to whom a presentence report, or any portion thereof is disclosed, must not reproduce, copy, or make further release or disclosure of the information contained in the presentence report.

(2) [A] Paragraph (b)(1) notwithstanding, except as otherwise ordered by the court, nothing herein precludes or prevents an entity to whom the presentence report is released or disclosed from contacting or examining the source of any information contained therein for the purpose of verifying that information.

[B] Unless otherwise ordered by the court, information obtained under subparagraph (b)(2)[A] is not subject to the confidentiality requirement of paragraph (b)(1).

(3) Any entity, other than the Federal Bureau of Prisons, U.S. Parole Commission, or U.S. Sentencing Commission to whom the presentence report, or any portion thereof, is released or disclosed must sign a Confidentiality Agreement in the form provided by the U.S. Probation and Pretrial Services Office.

(c) **Bureau of Prisons/U.S. Parole Commission/U.S. Sentencing Commission.**

(1) [A] Any copy of a presentence report the court makes available, or has made available, to the Federal Bureau of Prisons, U.S. Parole Commission or U.S. Sentencing Commission:

(i) Constitutes a confidential court document and is presumed to remain under the continuing control of the court during the time it is in the temporary custody of these agencies;

(ii) Is lent to the Federal Bureau of Prisons, U.S. Parole Commission or U.S. Sentencing Commission solely for the purpose of enabling those agencies to carry out their official functions, including classification and treatment of prisoners under 18 U.S.C. § 4081, release under 18 U.S.C. § 4042, and supervision; and

(iii) Must be returned to the court upon request.

[B] Further disclosure of a report made available to the Federal Bureau of Prisons, U.S. Parole Commission, or U.S. Sentencing Commission is authorized only so far as necessary for the agency to comply with applicable statutes and established case law.

(2) Any copy of a presentence report made available to the Federal Bureau of Prisons, U.S. Parole Commission or U.S. Sentencing Commission is to be marked prominently and distinctly on the cover sheet and the first and last pages of the report as follows: **CONFIDENTIAL PROPERTY OF U. S. COURT SUBMITTED FOR OFFICIAL USE OF THE U.S. SENTENCING COMMISSION, U. S. PAROLE COMMISSION AND FEDERAL BUREAU OF PRISONS, TO BE RETURNED UPON REQUEST. FURTHER DISCLOSURE OR RE-DISCLOSURE IS AUTHORIZED ONLY TO THE EXTENT NECESSARY TO COMPLY WITH APPLICABLE STATUTES AND ESTABLISHED CASE LAW.**

(d) **Additional Authorized Disclosures.** Unless otherwise ordered by the court, except to the extent that release of the information would violate a promise of confidentiality made to the source of the information, upon written request, the U.S. Probation and Pretrial Services Office may disclose the presentence report, or portions thereof as provided in this subsection.

(1) *State Probation Office.* The presentence report may be disclosed to the State of Alaska, Department of Corrections.

[A] Any copy of a presentence report the court makes available, or has made available, to the State of Alaska, Department of Corrections:

(i) Constitutes a confidential court document and is presumed to remain under the continuing control of the court during the time it is in the temporary custody of the State of Alaska, Department of Corrections;

(ii) Is lent to the State of Alaska, Department of Corrections solely for the purpose of enabling that agency to carry out its official function of preparing a presentencing report in accordance with Rule 32.1, Alaska Rules of Criminal Procedure; and

(iii) Must be returned to the court upon request.

[B] Any report made available to the State of Alaska, Department of Corrections is to bear a legend similar in form to that prescribed in paragraph (c)(2).

[C] Further disclosure of any report made available to the State of Alaska, Department of Corrections may be made only as provided in this rule.

(2) *Health and Drug Treatment Professionals.* Information concerning substance use, diagnosis, diagnostic test results (physical, psychological, vocational, *etc.*), type, frequency and effectiveness of therapy, general adjustment to program rules, type and dosage of medication, response to treatment, prior treatment programs, including attendance and evaluation data, prognosis, recommended course of treatment, or other evaluation of suitability or amenability to treatment of the defendant, may be extracted from and released to licensed health and substance abuse treatment professionals actively providing care or treatment to the defendant, if:

[A] treatment is in accordance with an order of the court; or

[B] disclosure is authorized by the defendant.

(3) *Mental Health Treatment Professionals.* The presentence report may be disclosed to licensed mental health treatment professionals actively providing assessment, care or treatment of the defendant.

[A] Any copy of a presentence report the court makes available, or has made available, to a mental health treatment professional:

(i) constitutes a confidential court document and is presumed to remain under the continuing control of the court during the time it is in the temporary custody of the State of Alaska, Department of Corrections;

(ii) is lent to the mental health professional solely for the purpose of enabling the professional to treat the defendant; and

(iii) must be returned to the court upon request.

[B] Any report made available to a mental health professional is to bear a legend similar in form to that prescribed in paragraph (c)(2).

[C] Further disclosure of any report made available to a mental health professional may be made only as provided in this rule.

(4) *Law Enforcement/Correctional Officials.* The following information may be extracted from and released or disclosed to federal, state, or local law enforcement or correctional officials and probation officers with respect to an individual awaiting sentencing or under a criminal justice sentence including imprisonment, parole, probation, supervised or work release, or has absconded from supervision.

[A] Identifying information, including:

(i) name;

(ii) date and place of birth;

(iii) race, color or complexion;

(iv) identifying marks (tattoos, scars, deformities, etc);

(v) social security number, any local or federal identification number; and

(vi) photographs.

[B] Current or last known address and telephone number.

[C] Former addresses and telephone numbers.

[D] Current and last known addresses of all known relatives.

[E] Names, aliases and addresses of all known co-defendants and associates.

[F] Areas that the defendant may be known to frequent or have frequented.

[G] Occupation and name, address, and telephone number of last known employer.

[H] Date, place, and nature of last known arrest.

[I] Automobile make, model, color and license number.

[J] The defendant's criminal history including a description of the offense(s) of conviction in federal court..

(e) **Motion to Authorize Disclosure.**

(1) Any entity requesting release or disclosure of any presentence report other than as specified in this rule may do so by filing a written motion in the case in which the sentence was imposed.

(2) The motion must:

[A] include—

(i) the nature of the information requested,

(ii) reason(s) release is requested,

(iii) intended use of the information, and

- (iv) any relevant or pertinent authority authorizing the release;
- [B] state —
 - (i) whether the requesting party has met and conferred with the U.S. Probation and Pretrial Services Office and the subject of the presentence report and/or the subject's counsel if represented, and
 - (ii) if so, the position of the U.S. Probation and Pretrial Services Office and/or subject of the report on the requested release; and
- [C] be served on—
 - (i) the subject of the report,
 - (ii) if represented, counsel for the subject of the report,
 - (iii) U.S. Attorney, and
 - (iv) U.S. Probation and Pretrial Services Office.

(3) Within fourteen (14) days of the date the petition is served and filed any interested party may file and serve on all other parties an opposition to the release or disclosure of the presentence report

(f) Procedure for Subpoenas.

(1) The party at whose request a subpoena is issued must, concurrently with or before service of the subpoena on the U.S. Probation and Pretrial Services office, serve and file a motion under subsection (e).

(2) In addition to the requirements of subsection (e), the motion must include a copy of the subpoena.

(3) Unless otherwise ordered by the court as provided in this subsection, the U.S. Probation and Pretrial Services Office may not release, furnish, or otherwise disclose the presentence report or its contents in response to a subpoena.

(g) Unauthorized Disclosure. Any unauthorized reproduction or copying, in whole or in part, or disclosure or dissemination of the information described in paragraph (a)(1) may be treated as a contempt of court and punished accordingly.

Related Provisions:

- 18 U.S.C. § 3153 Organization and administration of pretrial services
- 18 U.S.C. § 3552 Presentence reports
- 18 U.S.C. § 3553 Imposition of a sentence
- 18 U.S.C. § 4042 Duties of Bureau of Prisons
- F.R.Cr.P. 32 Sentence and Judgment
- F.R.Cr.P. 46 Release from Custody
- D.Ak. LCrR 32.1 Sentencing Procedure
- D.Ak. LCrR 46.1 Bail Hearings, Pretrial Release
- X *Guide to Judiciary Policies and Procedures, Probation Manual, Ch. III (Sentencing Options)*
- X *Guide to Judiciary Policies and Procedures, Probation Manual, Ch. IV (Supervision Services)*
- XII *Guide to Judiciary Policies and Procedures, Pretrial Services Manual, Ch. III (Confidentiality)*

Rule 44.1 Appearances and Withdrawal of Retained Counsel

(a) Appearances. In all criminal actions, counsel retained to represent the accused and appearing in a criminal case must promptly file with the clerk a formal written appearance.

(b) Substitution or Withdrawal.

(1) D.Ak. LR 83.1 relating to the withdrawal or substitution of an attorney for a party in a civil action applies to any attorney in a criminal action.

(2) An attorney who has appeared in the matter may withdraw only upon:

[A] notice to the defendant and all parties; and

[B] upon an order of court finding that good cause exists and granting leave to withdraw.

(c) **Continued Representation Pending Court Approval of Withdrawal.** Until leave to withdraw is granted, the retained attorney must continue to represent the defendant until:

(1) the case is dismissed;

(2) the defendant is acquitted; or

(3) if convicted, the time for making post-trial motions and for filing notice of appeal, as specified in Rule 4(b) of the Federal Rules of Appellate procedure, has expired and until counsel has satisfied the requirements of § 3(d) of the Federal Rules of Appellate Procedure, Appendix.

Rule 44.2 Appointed Counsel

(a) Right to and Appointment of Counsel.

(1) If the defendant requests appointment of counsel by the court, or retained counsel has not entered an appearance within fourteen (14) days of arraignment, the court will, when the defendant is eligible under the Criminal Justice Act, appoint counsel, unless the defendant:

[A] elects to proceed without counsel; and

[B] signs and files the court-approved form of waiver of right to counsel.

(2) In an appropriate case, the court may designate counsel to advise and assist a defendant who elects to proceed without counsel to the extent the defendant might thereafter desire.

(b) **Application of Other Rules.** Appointment of counsel will be made in accordance with the plan of this court adopted pursuant to the Criminal Justice Act of 1964 on file with the clerk.

Related Provisions:

18 U.S.C. § 3006A Adequate representation of defendants

F.R.Cr.P. 44 Right to and Assignment of Counsel

Rule 46.1 Bail Hearings, Pretrial Release

(a) **Hearings.** Bail review hearings will not be set before a District Judge until there has been an initial bail hearing before a Magistrate Judge, unless a Magistrate Judge is unavailable.

(b) **Pretrial Services.** The United States Probation Office for the District of Alaska is authorized to conduct all pretrial services provided for in 18 U.S.C. §§ 3151-3156.

(c) Pretrial Services Interview.

(1) Upon notification that a defendant has been arrested or summoned, the pretrial service officer must:

[A] conduct an interview; and

[B] prepare a written report addressing the statutory factors governing release and detention.

(2) The judicial officer setting or reviewing bail must consider all applicable reports submitted by pretrial service officers.

(d) **Pretrial Services Reports.** 18 U.S.C. § 3153(c)(1) governs the availability of the pre-trial services report to counsel for the accused and for the government prior to any bail hearing.

(1) Pretrial services will allow counsel for any party to retain copies of pretrial services reports provided counsel first signs a written acknowledgment stating familiarity with the confidentiality requirements set forth in 18 U.S.C. § 3153(c)(1).

(2) [A] Counsel must not disclose the pretrial services report to any other party; and

[B] pretrial services reports may be used solely for bail determination purposes.

(3) This rule does not authorize counsel to photocopy or otherwise reproduce or duplicate the pretrial services report and photocopying, reproduction, or duplication of the pretrial report is expressly forbidden.

(e) **Special Release Services.** In addition to the usual pretrial services furnished under 18 U.S.C. § 3152, *et seq.*, counsel for a defendant may request special release services from the court's pretrial services office.

(1) If a request for special release services is made, counsel must provide pretrial services and opposing counsel, with a written request no less than forty-eight (48) hours prior to any court hearing at which the results of that service are to be considered. Examples of special services that require this notice include—

- ▶ request for third-party investigations;
- ▶ home confinement and electronic investigations;
- ▶ residential treatment program investigations;
- ▶ halfway house placement investigations; and
- ▶ any other non-routine investigations deemed necessary by the court.

(2) Counsel requesting special release pretrial service is also responsible for requesting that any bail review hearing on the service be set on the court's calendar.

(f) **Third Party Request.** No person will be considered for approval as a third-party custodian unless:

(1) proposing counsel certifies that the proposed custodian has been interviewed by Pretrial Services;

(2) the proposed third-party custodian has completed a third-party application form and questionnaire as provided by the Pretrial Services Office; and

(3) the completed application and questionnaire forms have been served on Pretrial Services and opposing counsel not less than forty-eight (48) hours prior to the hearing at which the matter is addressed.

(g) **Supervision.** Pretrial service officers will supervise persons released on bail at the discretion of the judicial officer granting the release or modification of the release.

Related Provisions:

18 U.S.C. § 3041	Power of courts and magistrates
18 U.S.C. §§ 3141–3156	Release and Detention Pending Judicial Proceedings
F.R.Cr.P. 5	Initial Appearance Before the Magistrate Judge
F.R.Cr.P. 46	Release From Custody

Rule 46.2 Non-custodial Transportation of Defendant(s) and Witnesses

Any request for non-custodial travel of a federal defendant or a defense witness must be filed with the clerk at least seven (7) days in advance of the intended travel except upon showing of good cause justifying shorter notice.

Rule 47.1 Criminal Motion Practice

(a) **General.** Except as otherwise ordered by the court or as specified in these rules, written motions in criminal proceedings are governed by D.Ak. LR 5.1, LR 7.1, and LR 7.2.

(b) **Time for Opposition.** Unless otherwise ordered by the court, oppositions to motions in criminal cases must be served and filed within seven (7) days of service of the motion, or two (2) business days before the hearing, whichever is earlier.

(c) **Reply.** Unless otherwise ordered by the court, no reply memorandum will be filed.

Related Provisions:

F.R.Cr.P. 45	Time
D.Ak. LR 5.1	Filing and Proof of Service When Service is Required by Rule 5, Federal Rules of Civil Procedure
D.Ak. LR 5.4	Filing Documents Under Seal, <i>Ex Parte</i> , or <i>In Camera</i>
D.Ak. LR 5.5	Service Prior to an Event
D.Ak. LR 7.1	Motion Practice
D.Ak. LR 7.2	Hearings
D.Ak. LR 10.1	Form of Pleadings and Other Papers

Rule 49.1 Electronic Case Filing

(a) Cases Assigned to CM/ECF System.

(1) Except as otherwise provided by this rule or order of the court, all pleadings, papers, and documents filed in all criminal cases in this district on or after January 3, 2006, must be filed electronically utilizing the CM/ECF System.

(2) In CVB cases, pleadings and documents are filed conventionally.

(b) Procedures. Except as otherwise provided in this rule, the filing of documents in electronic format will be in accordance with D.Ak. LR 5.3.

(c) Special Filing Requirements for Criminal Cases.

(1) Indictments.

[A] Indictments must be presented to the court in conventional (paper) format; and

[B] On a disk in electronic (.pdf) format as follows—

(i) the entire indictment with the name and/or signature of the jury foreperson redacted, and

(ii) as a separate document, the signature page bearing the digitally imaged (“scanned”) signature of the jury foreperson.

(2) Warrants and Summonses.

[A] Warrants and summonses may be filed conventionally or electronically in accordance with the CM/ECF administrative procedures promulgated by the Clerk of the Court.

[B] Warrants and summonses may be issued electronically.

(3) CJA Documents. CJA Documents will be filed as provided in the CJA Plan and CJA Compensation Policy Manual adopted by the court and the CM/ECF Procedures promulgated by the Clerk of the Court.

Related Provisions:

F.R.Cr.P. 49.1	Privacy Protection for Filings Made with the Court
D.Ak. LR 3.3	Venue; Place of Trial; Filings in Satellite Offices
D.Ak. LR 5.2	Service on Parties by the Court
D.Ak. LR 5.3	Electronic Case Filing
D.Ak. LR 10.1	Form of Pleadings and Other Papers
D.Ak. LR 79.1	Court Record; Notice of Filing; Docketing
D.Ak. LR 79.2	Books and Records of the Clerk; Access and Copies

Rule 49.1.1 Privacy Protection For Filings Made with the Court [*Abrogated*. Subject matter now covered by Fed. R. Crim. P. 49.1]

Related Provisions:

E-Government Act of 2002, Pub. Law 107-347, § 205 “Federal Courts”

Rule 50.1 Assignments; Calendars

(a) Assignment of Cases. Upon the return of an indictment or the filing of an information, all criminal cases when filed will be numbered consecutively by the Clerk and immediately assigned as follows:

(1) *Felony and Class A Misdemeanor Cases.*

[A] Felony and Class A misdemeanor cases will be assigned by the clerk to a district judge in a manner that distributes a substantially equal number of cases to each district judge; and

[B] unless otherwise ordered by a district judge, referred to a magistrate judge in a manner that distributes a substantially equal number of cases to each magistrate judge for conducting:

- (i) an arraignment;
- (ii) such pretrial conferences as are necessary; and
- (iii) hearing and administration of all pretrial, procedural, and discovery motions.

(2) *Misdemeanor Cases.* Class B and Class C misdemeanor cases will be assigned to a magistrate judge in a manner that distributes a substantially equal number of cases to each magistrate judge.

(3) *Misdemeanor Appeals.* The appeal of a misdemeanor case will be assigned by the clerk to a district judge in the same manner as felony cases are assigned under paragraph (a) (1)

(4) *Retention by District Judge.*

[A] Nothing in these rules precludes the district judge from retaining any criminal matter or motion for disposition.

[B] The Court may modify the method of assigning proceedings to magistrate judges as changing conditions may warrant.

(b) Calendars. In accordance with the Speedy Trial Act and the Speedy Trial Plan for this district, priority will be given to the calendaring of criminal matters for hearing or trial.

Related Provisions:

18 U.S.C. §§ 3161–3174	Speedy Trials
18 U.S.C. § 3401	Misdemeanors; application of probation laws
18 U.S.C. § 3402	Rules of procedure, practice and appeal
R.R.Cr.P. 10	Arraignments
F.R.Cr.P. 50	Calendars; Plans for Prompt Disposition
F.R.Cr.P. 58	Procedure for Misdemeanors and Other Petty Offenses
D.Ak. LCrR 10.1	Arraignments
D.Ak. LCrR 46.1	Bail Hearings; Pretrial Release
D.Ak. LCrR 58.1	Appeals From Magistrate Judge
D.Ak. LMR 2	Authority of Magistrate Judges
D.Ak. LMR 3	Criminal Matters Routinely Assigned to Magistrate Judge

Rule 50.2 Continuances; Excludable Time

(a) Continuances.

(1) A motion for continuance of trial in a criminal case must:

[A] address the application of the Speedy Trial Act, 18 U.S.C. § 3161 *et seq.*, and the Speedy Trial Plan for this District; and

[B] contain a statement of the basis for computing excludable delay under the pertinent provisions of 18 U.S.C. § 3161(h) that may occur as a result of granting or denying the motion.

(2) Motions for trial continuance presented for filing by defendants appearing without counsel must be referred by the Clerk to a judicial officer for a determination whether the provision of this rule should be waived and the motion filed.

(b) Records of Excludable Time.

(1) The Clerk of Court will enter on the docket, in the form prescribed by the Administrative Office of the United States Courts, information with respect to excludable periods of time for each criminal defendant.

(2) With respect to proceedings prior to the filing of an indictment or information, excludable time must be reported to the clerk by the United States Attorney.

(c) Stipulations as to Time. Counsel may at any time enter into stipulation with respect to the accuracy of the docket entries recording excludable time to the extent that the amount of time stipulated by the parties does not exceed the amount recorded on the docket for the particular case.

Related Provisions:

18 U.S.C. §§ 3161–3174 Speedy Trials

Rule 56.1 Release of Information in Criminal Cases

(a) Court Support Personnel. All Court-supporting personnel, including but not limited to, marshals, deputy marshals, court clerks, court reporters, and employees or subcontractors retained by the Clerk are prohibited, from disclosing to any person, without authorization by the Court:

(1) any information relating to pending grand jury proceedings or a criminal case that is not part of the public records of the Court and that may be prejudicial to the right of the prosecution or the defense to a fair trial; or

(2) any information concerning grand jury proceedings or in camera arguments and hearings held in chambers or otherwise outside the presence of the public.

(b) Parties and Witnesses. In any criminal proceeding the Court, on motion of either party or on its own motion, may issue a special order governing:

(1) extrajudicial statements by parties and witnesses substantially likely to interfere with the fairness of the trial;

(2) the seating and conduct in the courtroom of spectators and news media representatives;

(3) the management and sequestering of jurors and witnesses; and

(4) any other matters that the Court may deem appropriate for inclusion in the order.

(c) Special Orders to Ensure Fair Trial. The Court on motion of either party or its own motion, may enter special orders relating to any matter that the court deems necessary to insure a fair trial by an impartial jury.

(d) Public Records. Unless otherwise provided by law, all criminal proceedings, including related documents and exhibits, and any record made thereof, not otherwise required to remain confidential, are accessible to the public.

Rule 58.1 Misdemeanor Appeals from Magistrate Judge

In an appeal from a judgment of a magistrate judge under Rule 58, Federal Rules of Criminal Procedure.

(1) [A] Appellant's opening brief must be served and filed within thirty (30) days after the date the certificate of the record is filed;

[B] appellee must serve and file a brief within thirty (30) days after service of a copy of appellant's brief, and

[C] appellant may serve and file a reply brief within fourteen (14) days after service of a copy of appellee's brief.

(2) Unless otherwise ordered by the court, seventy (70) days after the certificate of record is filed, the appeal will be set for hearing by the court, if a hearing is deemed required.

Related Provisions:

F.R.Cr.P 58(g) Appeal

F.R.A.P 28 Briefs

Rule 58.2 Payment of Fixed Sum in Lieu of Appearance

(a) Bail Forfeiture.

(1) A person who is charged with a petty offense as defined in 18 U.S.C. §3559(a)(6)–(9), may, in lieu of appearance, pay to the United States the amount indicated for the offense, thereby waiving appearance and forfeiting the amount so paid.

(2) Forfeiture of the specified amount constitutes an admission of guilt.

(3) The Clerk of Court will maintain available for the public a copy of the bail forfeiture schedule.

(b) **Failure to Pay or Appear.** If a person charged with an offense listed for which a fixed amount may be paid fails to pay the amount or otherwise appear, any punishment including fine, imprisonment or probation, may be imposed within the limits established by law upon conviction by plea or after trial.

(c) **Traffic Violations.** The record of any conviction of a traffic violation as may be required by state statute will be certified by the Clerk of Court to the appropriate state authority.

(d) **Exception.** Nothing contained in this rule prohibits a law enforcement officer from:

(1) requiring a person charged with the commission of any offense described in subsection

(a) to appear before a magistrate judge; or

(2) arresting a person for commission of the offense and taking the person immediately before a magistrate judge or other judicial officer.

(e) **Assimilated Offenses.**

(1) The bail forfeiture schedule adopted by the State of Alaska under Alaska Administrative Rule 43 applies to any offense assimilated by the Federal Assimilated Crimes Act (18 U.S.C. §13).

(2) Except as otherwise provided in the regulation, the bail forfeiture schedule adopted by the State of Alaska under Alaska Administrative Rule 43 applies to any offense adopted or incorporated by a regulation promulgated by a Federal agency.

Related Provisions

18 U.S.C. § 13 Laws of States adopted for areas within Federal jurisdiction

18 U.S.C. § 3559 Sentencing classification of offenses

18 U.S.C. § 3571 Sentence of fine

40 U.S.C. § 1315	Law enforcement authority of Secretary of Homeland Security for protection of Public Property
Ak.AdminR 43	Bail Forfeiture Schedules
Ak AdminR 43.1	Traffic Bail Forfeiture Schedule
Ak AdminR 43.2	Fish and Game Bail Forfeiture Schedule
Ak AdminR 43.3	Parks Bail Forfeiture Schedule
Ak AdminR 43.4	Smoking Bail Forfeiture Schedule
Ak AdminR 43.5	Alcohol Bail Forfeiture Schedule
Ak AdminR 43.6	Oversize Vehicle Bail Forfeiture Schedule
Ak AdminR 43.7	Warning Signs Bail Forfeiture Schedule
Ak AdminR 43.8	Watercraft Bail Forfeiture Schedule

Rule 59.1 Effective Date [*Abrogated*]

Rule 60.1 Title and Citation

These rules constitute the Local Criminal Rules of Practice for the United States District Court for the District of Alaska and may be cited as "D.Ak. LCrR.____"