



Alaskans for Transparent Government
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April 3, 2026

Court Rule Change Public Comments
c/o Stacy Steinberg
Alaska Court System
820 West 4th Avenue
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Via email: RuleComments@akcourts.gov

Subject: Comments of Alaskans for Transparent Government on Proposed Amendments to Alaska Criminal Rules 6 and 6.1 (Request for Comments, due April 6, 2026)

Dear Justices of the Alaska Supreme Court and Rules Committee:

Alaskans for Transparent Government (AFTG) is a 501(c)(3) nonprofit organization dedicated to promoting transparency, accountability, and integrity in Alaska state government. AFTG submits these comments in response to the request for public input on the proposed amendments to Criminal Rule 6 (The Grand Jury) and Criminal Rule 6.1 (Grand Jury Reports — Public Welfare or Safety).

Our position is grounded in Article I, Section 8 of the Alaska Constitution: “The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended.” This anti-suspension clause is a clear constitutional command.

We recognize that the Alaska Supreme Court, in *O'Leary v. Superior Court*, 816 P.2d 163 (Alaska 1991), upheld the constitutionality of an earlier version of Criminal Rule 6.1 by a narrow majority, concluding that limited judicial review to protect constitutional rights (such as due process, privacy, or fair trial interests) of identifiable persons does not violate the anti-suspension clause, as it serves as a procedural safeguard rather than a wholesale

deprivation of grand jury authority. We also recognize the minority position in O’Leary and believe the minority arguments have more merit than the majority acknowledged. In the interest of providing constructive feedback to the courts as requested, we maintain that the constitutionality of O’Leary is a conversation for another day as this isn’t the venue for that discussion.

We respectfully submit, however, that the proposed amendments expand beyond the narrow scope addressed in O’Leary. We agree that judicial review needs to be addressed and the objection-driven process is better. However, the shift now includes governmental agencies and subdivisions as “persons” entitled to object and submit evidence. This risks broader pre-publication intervention, potential delays, and redactions that could suppress portions of the grand jury’s recommendations. The overhaul as drafted rearranges the words but retains judicial review and the power to censor the grand jury report. This would chill investigations and undermine public confidence in the process.

The current withholding of a grand jury report on matters of public welfare and safety by the Kenai Superior Court illustrates the real-world risks of such mechanisms leading to indefinite non-release.

AFTG Supports Proposed Changes That Enhance Independence

We support aspects of the proposal that reduce improper gatekeeping and empower citizens and grand jurors:

1. Citizen-Initiated Requests (Proposed Rule 6.1(c)): Allowing a resident to file a sealed request directly with the superior court, transmitted to a seated grand jury for majority-vote decision on whether to investigate, eliminates prior executive screening and aligns with the grand jury’s constitutional role. We endorse the provision permitting the grand jury to summon the requester for testimony if a majority so decides.
2. Grand Juror-Initiated Investigations (Proposed Rule 6.1(b)): Enabling individual grand jurors to propose investigations, decided by majority vote, affirms their independent authority.

These provisions are consistent with AS 12.40.070, which requires the prosecuting attorney to provide advice and assistance, including preparing indictments or presentments at the grand jury’s direction when required (AS 12.40.070(3)). The assigned attorney’s advisory role is acceptable provided it remains advisory and does not extend to controlling investigation scope or overriding grand jury directives.

AFTG Opposes Retained Controls That Risk Overreach

We oppose elements that preserve or introduce mechanisms allowing unconstitutional or unlawful judicial or executive branch influence over grand jury outcomes:

1. **Prosecutorial Oversight:** While AS 12.40.070 mandates advice and assistance, proposed changes to Rule 6.1 enabling the assigned attorney to screen proposals, direct scope, or seek judicial quashing of grand jury-directed subpoenas encroach on independence. The grand jury must retain ultimate control, including directing the preparation of indictments or presentments authorized under AS 12.40.070(3). In the statutorily created relationship, there is no formal supervisory or oversight power of the prosecutor over the grand jury. Grand juries are independent bodies and are not subordinate to the district attorney. Grand juries play an equally important and skeptical role to the discretion and power of the prosecutor. Providing “oversight,” or supervision, in the plain meaning of the word, is the incorrect role for court rules to grant to the district attorney. It is appropriate for the district attorney to provide grand jury members greater education on their authority and constitutional responsibilities in the judicial process. However, it is not appropriate to grant control or “oversight” to the district attorney as an alternative to an educated grand jury.
2. **Judicial Review and Potential Redactions:** The objection-driven process permits notifications, objections (including from governmental entities), and judicial rulings on redactions, withholding, revisions, or release. While O'Leary recognized limited review to protect constitutional rights of individuals (e.g., reputational harm or due process), the expanded scope here—including agencies as objectors—could lead to more extensive suppression.

Defining governmental entities as “persons” for objection purposes appears inconsistent with precedent focused on individual constitutional rights (such as privacy under Article I, Section 22, which protects “the people” and has been applied to personal interests rather than institutional or governmental ones). The Alaska Constitution's right to privacy (Article I, Section 22) does not extend to government agencies in this context, as it safeguards individual privacy against government infringement, not agency reputational or institutional interests.

Public employees may have some protections against unfair reputational harm in personal capacities, but these are narrower than for private citizens, particularly when criticism stems from official performance or agency actions subject to public scrutiny. It is this risk of deserved, even anticipated, public criticism that should properly influence bureaucratic organizations for the betterment of the government.

Returning a report to the grand jury to address legitimate concerns of abuse or overreach is preferable to redactions, which reduce transparency, limit the public's access to the full recommendations, and may increase distrust in the process. Allowing named or affected individuals to submit rebuttals or responses appended to the report provides fuller context and additional information without censoring the grand jury's conclusions.

3. **Prohibition on Indictments and Evidentiary Restrictions:** Prohibiting indictments in matters under investigation lacks support in AS 12.40.070, which imposes no such separation of powers. Grand juries historically exercise both investigative and accusatory functions, indicting on probable cause even when relying on evidence that may be inadmissible at trial. The apparent concern—preventing influence from inadmissible evidence—misplaces authority: only trial judges determine admissibility in proceedings.

Reports serve distinct public-information purposes and are not trial evidence; requiring them to rest on admissible evidence (preponderance standard) while barring their admission creates inconsistency. If a report becomes relevant in a proceeding, judges can exclude inadmissible portions while admitting admissible ones. Imposing such limits risks artificially dividing the grand jury's unified powers without constitutional or statutory basis.

Recommended Revisions To better align with Article I, Section 8, AS 12.40.070, and the principles in O'Leary:

1. Preserve citizen and grand juror initiation mechanisms and the advisory prosecutor's role, but eliminate prosecutorial control over scope or subpoenas.
2. Eliminate judicial objection/redaction/withholding authority beyond limited, time-bound delay for collection of rebuttals; require immediate public release of reports as approved by the grand jury (subject only to statutory secrecy for active criminal matters), with rebuttals appended for context. If concerns arise under O'Leary-like protections for individual rights, return the report to the grand jury for consideration rather than judicial editing.
3. Remove the prohibition on indictments in investigative matters.
4. Affirm the grand jury's unrestricted authority to investigate, indict where probable cause exists, report, and recommend.
5. Unrelated to the proposed court rules changes, revise the grand jury handbook to better reflect the duties and responsibilities of the grand juror, consistent with their

constitutional authority. Use the Grand Jury Handbook published in 1960 following statehood and eliminate subsequent iterations.

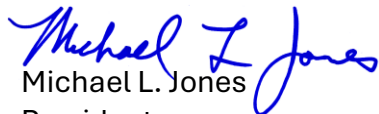
“The Grand Jury is both a sword and a shield of Justice — a sword, because it is the terror of criminals, a shield, because it is the protection of the innocent against unjust prosecution. These important powers obviously create equally grave responsibilities to see that such powers are in nowise perverted or abused.”

-1960 Grand Jury Handbook

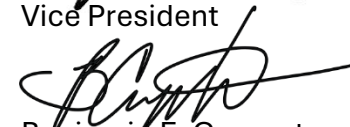
Alaska's grand juries serve as an essential constitutional, statutory, and independent check on government. The investigative role does not diminish, nor should it be diminished by its equally important prosecutorial role. Likewise, coordination between the legislative, executive, and judicial branches to empower the grand jury must not diminish the independence of the grand jury or either constitutional role. Court rules and judicial discretion that result in the protection of government entities from grand jury scrutiny diminish this constitutional check on government. Therefore, we urge revisions that minimize discretionary judicial vetoes while respecting legitimate constitutional safeguards for individuals, thereby enhancing public trust and transparency.


Thank you for considering these comments. AFTG is available to provide further information or testimony.

Respectfully submitted,


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cc: AFTG Board of Directors