2009 Alaska Bar Convention



Federal Criminal Law in a Nutshell

ANSWERS

Thursday, May 7, 2009 3:15 - 4:30 p.m. Centennial Hall Juneau, Alaska

TO BE OR NOT TO BE A CJA ATTORNEY



- 1. How do I gain admission to the Criminal Justice Act panel?
- A. Take the District of Alaska Federal practice bar exam.
- B. File an application through the CJA Administrator at the Federal Public Defender office.
- C. Hang around the federal courtrooms and hope the judge appoints you.

Answer: B

Source: Plan for Implementing the Criminal Justice Act of 1964 (as amended) 18 U.S.C. § 3006A.

HOW DOES IT ALL

- 2. A person charged with a federal criminal offense may appear before a judicial officer for an Initial Appearance or an Arraignment . . .
- A. Only in person.
- B. By video teleconferencing if the defendant consents.
- C. Only if the volcanoes are quiet.

Answer: B

<u>Source</u>: The Local Criminal Rules – Rules 5.1 and 10.2 – now provide for initial appearances and arraignments via video teleconferencing if the defendant consents and other conditions are met.

AT THE PRELIMINARY HEARING

- 5. At the preliminary hearing...
- A. A defendant may not object to evidence on the ground that it was unlawfully acquired.
- B. A defendant can request the Government produce any statement of the witness that relates to the subject matter of the witness' testimony.
- C. The Federal Rules of Evidence do not apply.

Answer: All of the above.

Source: Fed. R. Crim. P. 5.1; Fed. R. Evid. 1101(d)(



SCOPE OF CRIMINAL DISCOVERY



- In Federal Court, the Office of the United States Attorney will provide as discovery . . .
- Copies of everything the prosecutor has in connection with the investigation.
- B. Everything that is required to be disclosed under Rule 16 of the Federal Rules of Criminal Procedure.
- C. Whatever you ask for in your motion to compel discovery.

Answer: B

Source: Fed. R. Crim. P. 16(a).

<u>Commentary</u>: There is no general constitutional right to discovery in criminal proceedings. See *Weatherford v. Bursey*, 429 U.S. 545, 559 (1977). However, Supreme Court precedent has set forth rules requiring disclosure of certain evidence when necessary to protect a defendant's federal due process rights. See e.g., *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972).



GETTING TO THE COURT ON TIME: MOTION PRACTICE

- 7. In Federal Court, once you have met with the Assistant United States Attorney and received discovery, you will have to file pretrial motions...
- A.On a time schedule established at the pretrial conference by agreement of the parties.
- B. By the deadline established, usually at arraignment, repeated in the Order for Progression of a Criminal Case typically three weeks after arraignment.

C.Any time prior to trial.

Answer: B

Source: Standard Order for Progression of a Criminal Case.

WHERE DOES IT ALL GO? ELECTRONIC COURT



- 8. In Federal Court, all pleadings...
- A.Must be filed in hard copy with the Clerk of Court, with copies served on other parties by mail or courier.
- B.Must be filed electronically by computer with automatic electronic service to the parties.

C.Are ejected into cyberspace.

Answer: B

Source: D. Ak. L. Crim. R. 49.1.

MUST YOU GET IT IN WRITING?

- 11. In Federal Court, in cases in which there is a change of plea and a plea agreement...
- A. The agreement of the parties can be stated orally on the record at the time of the change of plea.
- B. The agreement of the parties must be set forth in writing, signed by the parties and counsel, and filed with the court by noon prior to a change of plea hearing.
- C. The defendant must waive any right to a trial.
- D. The Court expects all change of plea hearings to be effected no later than 7 days before trial.

Answer: B, C and D

<u>Sources</u>: Fed. R. Crim. P. 11; D. Ak. L. Crim. R. 11.1 and 11.2; Standard Order for the Progression of a Criminal Case.

TRIAL ESSENTIALS

- 12. In a federal criminal case, a trial memorandum, proposed jury instructions, and proposed voir dire questions are . . .
- A. Required to be filed at least 7 days before trial.
- B. Optional filings.
- C. A waste of time because nobody will ever read them.

Answer: A

<u>Source</u>: The Court's standard Order for Progression of a Criminal Case says that a trial brief, jury instructions and voir dire are required to be filed – they are not optional filings; they must be filed 7 days before trial.

YOU'VE HEARD THE VERDICT...

13a. After the verdict is delivered, is it alright to talk with jurors?

- A. Feel free to talk to them and record their statements.
- B. It's okay to talk with them, but you cannot record them or repeat their comments without their written permission.
- C. You cannot talk with them unless the trial judge has authorized it.
- D. You can never speak with them, no way, no how. Don't even smile in the hallway.

Answer: C

Source: D. Ak. L. R. 83.1(h), D. Ak. L. Crim. R. 1.1(b)

IMPOSING THE SENTENCE

- 14. In Federal Court, at sentencing . . .
- A. The attorneys can argue aggravating and mitigating factors without filing a sentencing memorandum.
- B.The attorneys review a draft presentence report, file objections to the PSR with the probation office, and file a sentencing memorandum with the court a week before sentencing.
- C.The United States Sentencing Commission has already predetermined the sentence, so it doesn't matter what you do.
- D.The Judge applies the sentencing factors of 18 U.S.C. § 3553(a) and considers the U.S. Sentencing Guidelines.

Answer: B and D

Sources: D. Ak. L. Crim. R. 32.1; D. Ak. L. Crim. R. 32.2; 18 U.S.C. § 3553, Imposition of Sentence; United States Sentencing Guidelines.



Solutions

The actual cost of storing documents will vary from business to business. However, for businesses that use off site storage, the cost of transporting documents back and forth must be considered. And don't forget the time lost in the transfer or the time spent in finding the proper documents. Every minute you spend searching for



a document is a minute you could spend doing something more productive, even if your documents are stored onsite. If your business produces a large amount of papers you are not currently scanning – the annual cost of storage can climb fairly high.

On the other hand, while scanning documents for electronic storage comes with a price tag, the cost is known upfront. Also, the benefits are massive. What are the benefits? You'll be able to access your documents from your computer in mere seconds. How much time, and therefore payroll, will you save yearly?

Another consideration is that with electronic storage, you'll be able to handle your retrieval needs and requests quicker which results in even more money saved.

Small businesses that don't produce a large amount of paperwork might find it beneficial to continue to store their documents, but for most businesses – scanning and electronic storage will almost always win out on a financial level. It's critical to think about the long term benefits and cost of how you store your documents before deciding



which choice is right for your business. It might not be as black and white as you think.

Services

Paper is the encounter in reducing costs, improving service and increasing productivity. Companies around the world have realized that manual and paper-based processes for managing mission critical documents are inefficient and expensive. This is why ARBOR Imaging can help your organization.

We understand the importance of quality, accuracy and consistency for your document conversion project. We have the capacity to index and scan any volume of documents in a timely manner, at a reasonable price. Our team of professionals have many years experience with database solutions to help streamline your document retrevial requests. Our approach is built around educating our clients and through the years, we found that our clients have gained confidence in understanding how easy electronic document management can be. Scanning can be done at your location or ours.



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