

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1732

Amending Criminal Rule 41(a), (b), and (c) and adding a Note to implement direct court rule amendments made by chapter 19 SLA 2010 (HB 324);

Amending Appellate Rule 206(b) and adding a Note to implement direct court rule amendments made by chapter 19 SLA 2010 (HB 324); and

Amending Appellate Rule 603(b) and adding a Note to implement direct court rule amendments made by chapter 19 SLA 2010 (HB 324).

IT IS ORDERED:

1. Criminal Rule 41(a), (b), and (c) are amended to read as follows:

Rule 41. Bail.

(a) **Admission to Bail.** The defendant in a criminal proceeding is entitled to be admitted to bail pursuant to AS 12.30.006 – 12.30.080.

(b) **Types of Bonds.** The court may require:

(1) the execution of an unsecured appearance bond in an amount specified, under the criteria set forth in AS 12.30.011;

(2) the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash, of a sum not to exceed 10 percent of the amount of the bond;

(3) the execution of a bail bond with sufficient solvent sureties or the deposit of cash; or

(4) the execution of a performance bond in a specified amount and the deposit in the registry of the court of cash.

(c) **Separate Bonds.**

(1) If a performance bond is required, it must be enforced separately from any appearance or bail bond. Appearance in court may not be a condition of a performance bond. A court may not order that an appearance bond be concurrent with an appearance bond in a pending case unless the surety who posted the first appearance bond approves.

(2) The court may not change a performance or appearance bail requirement without agreement by the surety, unless

(A) the surety waives the requirement for agreement in advance and in writing; or

(B) the court, in writing, finds that the change in the condition of bail poses no increase in risk of loss to the surety and the court sets out in writing the reason for finding that there is no increase in the risk of loss to the surety.

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2. The following note is added to the end of Criminal Rule 41:

Note: Chapter 19, sections 25, 26, and 27, SLA 2010 (HB 324), effective July 1, 2010, amended Criminal Rule 41(a), (b), and (c) relating to release before trial, before sentence, and pending appeal, as reflected in section 1 of this Order. The changes to

Criminal Rule 41 are adopted for the sole reason that the legislature has mandated the amendments.

3. Appellate Rule 206(b) is amended to read as follows:

Rule 206. Stay of Execution and Release Pending Appeal in Criminal Cases.

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(b) **Release Pending Appeal.** When an appeal on the merits is pending, an appeal under AS 12.30.030 from an order refusing bail pending appeal or imposing conditions of release pending appeal shall be in the form of a motion filed in the merit appeal. The motion must be filed with the clerk of the appellate courts within 30 days after the date of the notice of the order from which review is sought. Date of notice is defined in Civil Rule 58.1(c) and Criminal Rule 32.3(c). The motion shall comply with Rule 503, and shall contain specific factual information relevant to the factors set forth in AS 12.30.011(c), including but not limited to the following:

* * * *

(8) Criminal history: criminal convictions within ten years prior to the present arrest; if the appellant has ever forfeited bail, or had release, probation, or parole revoked, the date, the name and location of the court, and a brief description of the circumstances; whether the present offense was committed while the appellant was on bail or other release or on probation or parole; any other criminal charges pending against the appellant at the time the motion is filed.

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4. The following note is added to the end of Appellate Rule 206:

Note: Chapter 19, section 28, SLA 2010 (HB 324), effective July 1, 2010, amended Appellate Rule 206(b) relating to release before trial, before sentence, and pending appeal, as reflected in section 3 of this Order. The changes to Appellate Rule 206 are adopted for the sole reason that the legislature has mandated the amendments.

5. Appellate Rule 603(b) is amended to read as follows:

Rule 603. Stays.

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(b) **Criminal Appeals.** If a sentence of imprisonment is imposed, the court may admit the defendant to bail and stay the sentence as provided by law and by these rules, pending appeal. A sentence to pay a fine or a fine and costs may be stayed, if an appeal is taken, by the district judge or magistrate or by the superior court upon such terms as the court deems proper. During appeal the court may require the defendant to deposit the whole or any part of the fine and costs in the registry of the superior court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make an appropriate order to restrain the defendant from dissipating his or her assets. An order placing the defendant on probation will be stayed if an appeal is taken.

6. The following note is added to the end of Appellate Rule 603:

Note: Chapter 19, section 29, SLA 2010 (HB 324), effective July 1, 2010, amended Appellate Rule 603(b) relating to release before trial, before sentence, and pending appeal, as reflected in section 5 of this Order. The changes to Appellate Rule 603 are adopted for the sole reason that the legislature has mandated the amendments.

DATED: July 13, 2010

EFFECTIVE DATE: *nunc pro tunc* to July 1, 2010

/s/
Chief Justice Carpeneti

/s/
Justice Fabe

/s/
Justice Winfree

/s/
Justice Christen

/s/
Justice Stowers