

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1794

Rescinding the current District Court Criminal Rule 8 and adopting a new District Court Criminal Rule 8 concerning Minor Offenses

IT IS ORDERED:

The current District Court Criminal Rule 8 is rescinded and a new District Court Criminal Rule 8 adopted to read as follows:

Rule 8. Minor Offenses

(a) **Scope, Purpose, and Construction.** This rule governs the procedure in cases involving minor offenses, except as provided in (q) and (r) of this rule. It is intended to provide for the just determination of these cases and to that effect shall be construed to secure simplicity and uniformity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

(b) **Minor Offense Defined.** Any offense that meets one of the definitions below is a minor offense, including an offense that is classified as a misdemeanor by statute, regulation or ordinance. An offense is not a minor offense under this rule if the only penalty is a civil penalty. As used in this rule, "minor offense" means

- (1) an offense classified by statute as an infraction or a violation; or
- (2) any offense for which a bail forfeiture amount has been authorized by statute and established by supreme court order; or

(3) any municipal motor vehicle or traffic offense for which a fine amount has been established in a fine schedule adopted by municipal ordinance under AS 28.05.151; or

(4) any offense under a municipal ordinance for which a conviction cannot result in incarceration or the loss of a valuable license and for which a fine schedule has been established under AS 29.25.070(a); or

(5) any offense under statute or municipal ordinance for which a conviction cannot result in incarceration, a fine greater than \$500, or the loss of a valuable license; or

(6) any fish and game offense in 5 AAC charged as a strict liability offense; or

(7) any commercial fishing offense listed in AS 16.05.722 or 5 AAC charged as a strict liability offense (classified in AS 16.05.722 as a violation).

(c) **Citation.**

(1) The charging document for a minor offense may be in the form of a citation. Each citation may name only one defendant and only one offense. Except as provided in (8) below, a citation must name an individual as the defendant.

(2) The citation must include the statute, regulation or ordinance that the defendant is alleged to have violated as identified in the uniform table of minor offenses maintained by the court system.

(3) The administrative director shall establish content and format requirements for minor offense citations by administrative bulletin, including requirements that the citations include:

(A) the essential facts constituting the offense charged,

(B) notice of the defendant's rights listed in AS 12.25.200,

(C) the procedure for responding to the citation,

(D) the consequences of a failure to respond, and

(E) if forfeiture of seized items is authorized by statute or ordinance, the citation must list the seized items and state that they will be forfeited if defendant waives appearance by entering a no contest plea or if a default judgment is entered.

(4) If a citation meets the requirements set forth in the bulletin, it is presumed to provide adequate notice of the charges, the defendant's rights listed in AS 12.25.200, the procedure for responding to the citation, the consequences of failure to respond, and the potential for forfeiture. In addition, all citations filed with the court must comply with any standards adopted by the Department of Public Safety under AS 12.25.175.

(5) The defendant's social security number may not appear on a citation. This paragraph applies to citations issued on or after April 15, 2013.

(6) The officer must state on the citation that the officer has probable cause to believe the defendant committed the offense but need not state the grounds for the probable cause determination beyond the essential facts. The officer must certify, under penalty of perjury, that the information in the citation is true and that the officer personally served the citation on the defendant.

(7) In this rule, personal service means the officer must deliver the citation to the defendant personally in accordance with AS 12.25.175-190.

(8) *Corporations, Limited Liability Companies and Other Entities.* A citation issued to a corporation or limited liability company must name the corporation or company as the defendant. The officer must

personally serve the citation on the on-site manager, a managing member, an officer, a managing or general agent, or on any other agent authorized by appointment or by law to receive service of process. If personal service cannot be made on one of the above in Alaska, service may be made as provided in AS 10.06.175(b) or 10.50.065(b). A citation issued to a sole proprietorship must name the owner of the business as the defendant and must be served on that person. A citation issued to a partnership, unincorporated association or other entity must name the entity as the defendant and must be served on a person designated for that entity in Civil Rule 4.

(9) *Authority of Clerk.* The clerk shall return any citation for correction if the citation is deficient because

(A) the offense listed on the citation is not in the court system's uniform table of minor offenses; or

(B) the citation does not include a certification by the officer, made under penalty of perjury, that the information in the citation is true and that the officer personally served the citation on the defendant.

(d) **Minor Offenses Not Charged on a Citation.** This subsection applies to minor offenses charged on an information or complaint without any related criminal charges.

(1) The charging document must include the information required by (c)(2) and the administrative bulletin issued under (c)(3) of this rule. The defendant's social security number may not appear on an information or complaint. Each defendant joined in an information or complaint must be assigned a separate case number. The prosecuting authority must provide the court with an additional copy of the charging document for each defendant's case file. Except as provided in (2)

below, an information or complaint must name an individual or individuals as the defendant.

(2) An information or complaint charging a corporation, limited liability company, or other entity must name the defendant as provided in (c)(8). The summons must be served on a person listed in (c)(8).

(3) A summons shall be issued by a judge or magistrate only if probable cause has been established as provided in Criminal Rule 4(a)(1). The summons must be on a form approved by the administrative director. The prosecuting authority shall furnish the court with a copy of the summons and charging document to be served on the defendant.

(4) The summons and charging document shall be served together. They may be served upon the defendant by any peace officer or by any other person authorized to serve a summons in a civil action, within this state or the United States or any of its possessions, by delivering a copy to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by certified mail as provided in Civil Rule 4(h). Proof of service must be filed with the court. If requesting service by certified mail, the prosecuting authority shall give the court an addressed envelope, adequate postage, and appropriate completed postal forms and must address the delivery receipt so it is returned to the court.

(5) If the offense charged is on a bail forfeiture schedule or fine schedule, the defendant must, within 30 days after being served with the summons, respond to the summons using one of the options provided in subsection (e).

(e) Optional Court Appearance.

(1) A defendant charged with a minor offense for which a bail forfeiture amount has been established by supreme court order or for which a scheduled fine amount has been established by statute or ordinance must within 30 days after the citation was issued:

(A) appear for arraignment at the time and place indicated on the citation. Arraignment must be conducted in accordance with District Court Criminal Rule 1; or

(B) enter a plea of not guilty and request trial by mailing or delivering a signed plea as directed on the citation; or

(C) enter a plea of no contest and submit payment of the citation, plus any surcharge established by statute, as directed on the citation; or

(D) provide proof of compliance to a law enforcement agency if a statute, regulation, or ordinance permits dismissal of the citation upon a showing of compliance, except that proof of compliance also may be made to the court for violation of AS 28.15.131 (failure to carry or exhibit license) or AS 28.22.019 (proof of insurance). The court or municipality shall dismiss the citation upon notification from the agency or proof of compliance.

(2) A defendant who mails or delivers an unsigned copy of the citation with the defendant's payment will be deemed to have entered a plea of no contest unless the defendant designates otherwise.

(f) Mandatory Court Appearance. A defendant charged with a minor offense for which no bail forfeiture amount has been established by supreme court order and for which no scheduled fine amount has been established by statute or ordinance must:

(1) appear for arraignment at the time and place indicated on the citation or summons. Arraignment must be conducted in accordance with District Court Criminal Rule 1; or

(2) provide proof of compliance to a law enforcement agency if a statute, regulation, or ordinance permits dismissal of the citation upon a showing of compliance. The court or municipality shall dismiss the citation upon notification from the agency.

(g) **Pleas.**

(1) When a no contest plea is entered, a judgment of conviction will be entered.

(2) When a plea of not guilty is entered, the defendant is not required to post bail pending trial. When trial is requested, the case will be set on the calendar and notice sent to the parties.

(h) **Defendants Under 18.** A defendant under 18 years of age at the time of the offense must be accompanied by a parent, guardian, or legal custodian at any court appearance for a minor offense until the defendant reaches age 18.

(i) **Failure to Respond or to Appear.**

(1) *Failure to Respond to Citation.*

(A) *Default Judgment.* If a defendant fails to respond as provided in (e) or (f) of this rule, the court may, without finding probable cause to believe the defendant committed the offense, enter a default judgment of conviction as provided in (j).

(B) *Warning Notice Requirement.* At least 15 days before default judgment is entered, a notice advising the defendant of the consequences of a failure to respond must be sent to the defendant at

the address on record with the Division of Motor Vehicles or the address shown on the citation.

(C) *Citations Filed With Municipalities.* If the citation is initially filed with a municipality as provided in Administrative Bulletin 39, the municipality may request a default judgment by filing with the court the citation and an affidavit from a municipal employee stating that the municipality sent the defendant the warning notice required in (B) above and the defendant failed to respond. If the municipality has entered into an agreement to file citations electronically under District Court Criminal Rule 8.2, the agreement must include procedures for verifying that the defendant was sent the warning notice and failed to respond. Requests for default judgment must be filed within six months after the citation was issued.

(2) *Failure to Appear After Summons.* If a defendant who has been served a summons issued under (d) of this rule fails to appear, the court may enter a default judgment of conviction as provided in (j).

(3) *Failure to Appear for Trial.* If a defendant has been sent notice of a trial date and then fails to appear on the scheduled date, the court may, without finding probable cause to believe the defendant committed the offense, enter a default judgment of conviction as provided in (j). The notice of a trial date must advise the defendant of the consequences if the defendant fails to appear.

(4) *Bench Warrants Prohibited.* The court shall not issue a bench warrant for failure to respond or appear or for failure to satisfy the judgment in a minor offense case. This provision does not apply to minor offenses filed in criminal cases as provided in (q) and (r) of this rule.

(j) **Judgment, Costs, Fees, and Relief from Default Judgment.**

(1) *Fine.* A judgment of conviction must order payment of the fine as follows:

(A) *After Plea or Trial.*

(i) Pursuant to AS 12.25.230(c), the fine may not exceed the amount listed on the bail forfeiture or fine schedule. A scheduled fine amount may not be reduced if a municipal ordinance prohibits reduction of the fine amount.

(ii) For offenses that require a mandatory court appearance, the court may impose a fine up to the maximum authorized by statute or ordinance.

(B) *Default Judgment.* A default judgment entered under (i) must require the defendant to pay the scheduled bail or fine amount if the offense is an optional court appearance offense or the maximum penalty if the offense is a mandatory court appearance offense.

(2) *Surcharge.* All judgments must order payment of any applicable surcharge.

(3) *Forfeiture.*

(A) A default judgment or a judgment entered on a no contest plea must order forfeiture of any seized items listed on the citation or other charging document.

(B) All other judgments of conviction must order forfeiture of:

(i) all fish and game seized under AS 16.05.190 and listed on the citation or other charging document,

(ii) all fish, or its fair market value, taken or retained as a result of a strict liability commercial fishing violation as provided in AS 16.05.722(b),

(iii) any seized items listed on the citation or other charging document if a statute or ordinance requires the item to be forfeited upon conviction, and

(iv) any other items ordered by the court to be forfeited when forfeiture is authorized by statute or ordinance.

(C) Forfeited items shall be disposed of at the discretion of the prosecuting authority, unless otherwise ordered by the court.

(4) *Restitution.* If the offense is a mandatory appearance offense, the court may order restitution as provided in AS 16.05.925(b) or any other statute or ordinance authorizing restitution. If the offense is a mandatory appearance offense, any default judgment entered must order payment of any applicable restitution listed in AS 16.05.925(b). As provided in AS 16.05.165(d), restitution under AS 16.05.925(b) may not be ordered for offenses for which bail has been forfeited under AS 16.05.165(c).

(5) *Court Costs for Default Judgments.* A default judgment entered under (i) must require the defendant to pay court costs in the amount of \$25. Court costs imposed under this rule must be deposited in the state general fund.

(6) *Collection Costs - All Judgments.*

(A) The defendant will be assessed \$25 in collection costs if the judgment is transferred for collection against the defendant's Alaska Permanent Fund Dividend as provided in Administrative Bulletin 43. The court may waive this collection cost upon a showing of good cause. Collection costs imposed under this subparagraph belong to the political entity that prosecuted the offense.

(B) For execution procedures not covered under (A), the defendant will be assessed collection costs in the amount authorized

by Civil Rule 69 and Administrative Rule 11.

(7) *Relief from Default Judgment.*

(A) Upon a motion filed within one year after entry of a default judgment under (j)(1), (2) or (3), the court may vacate the judgment if the defendant shows that either

(i) there is a good reason for the failure to respond or appear and the defendant has a meritorious defense to the offense charged, or

(ii) the proceedings were not fair to the defendant because the defendant did not receive notice of the charge or the procedure for responding to the charge or that a default judgment would be entered if defendant did not respond to the charge.

(B) If the judgment is vacated, the case must be set for trial unless the prosecution dismisses the case or, if the offense is correctable, the defendant shows proof of compliance with the law.

(8) *Authority of Clerk.* The clerk is authorized to enter judgments of conviction when a defendant mails or delivers to the clerk a plea of no contest, fails to respond to a citation or summons, or fails to appear for trial.

(9) *Disposition of Records of Conviction.* The court system must transmit notice of conviction to the following agencies:

(A) In the case of a motor vehicle offense, the conviction will be transmitted to the Department of Administration, Division of Motor Vehicles.

(B) In the case of a fish and game violation, the conviction will be transmitted to the Department of Public Safety.

(C) In the case of a commercial fishing violation, the conviction and sentence will be transmitted to the Commercial Fisheries Entry Commission as required by AS 16.43.880 and AS 16.43.970.

(k) Dismissal and Deferred Prosecution.

(1) *By Prosecuting Attorney.* The prosecuting attorney may file a dismissal of a minor offense citation or information.

(2) *By Court.* The court may dismiss a citation or information if

(A) there is unnecessary delay in bringing a defendant to trial pursuant to (o) of this rule;

(B) the prosecution or the prosecution's representative under (l) of this rule fails to appear for trial; or

(C) dismissal is in furtherance of justice. The reasons for the dismissal shall be set forth in the order or on the record.

(3) *Identity Error in Charging Document.* If the prosecution initiates or concurs with the dismissal of charges against a defendant because the named defendant was not the person whom the prosecution intended to charge with the offense, the court shall enter a written order of dismissal clearly stating that this is the reason for the dismissal.

(4) *Deferred Prosecution.* When a citation has been filed with the court and the prosecutor enters into an agreement with the defendant to defer prosecution based on the defendant's agreement to complete a defensive driving course or on other conditions, the prosecutor must file the agreement with the court. The agreement must include the date by which the defendant must complete the defensive driving course or other conditions and the date by which the prosecutor will file a dismissal. If the agreement is conditioned upon payment of a fee or costs, payment may not be made to the court. Upon satisfactory

completion of the agreement, the prosecutor must file a notice of dismissal with the court. If a notice of dismissal is not filed by the date stated in the agreement, the court may enter a judgment of conviction.

(l) Non-Attorney Representation.

(1) *Representation of State or Municipality by Non-Attorney.* A municipal corporation or the State of Alaska may be represented by an employee of the state, the municipality, or other political subdivision of the state for the prosecution of minor offenses under this rule. The representative may give testimony, offer exhibits, and call witnesses for examination by the court, but may not examine witnesses, make opening and closing arguments, or otherwise act as an attorney. The representative need not be employed by the same government entity represented, but must be authorized by the entity to represent it.

(2) *Corporations.* A corporation or other public or private organization may be represented in any stage of a minor offense proceeding including an appeal by any officer or employee authorized in writing to represent it.

(m) Temporary Transfer of Minor Offense Cases.

(1) For purposes of this rule, the term "original court" means the court in which a minor offense case is pending. The term "second court" means the court to which the defendant requests that the case be temporarily transferred.

(2) A minor offense case may be temporarily transferred from the original court to a second court for purposes of arraignment under the circumstances described below:

(A) If there is a mandatory court appearance for the minor offense, the defendant may request a temporary transfer from the

original court to the court nearest the place where the defendant resides or is employed; or

(B) If a warrant relating to the minor offense is outstanding, the defendant may request a temporary transfer from the original court to the nearest court; or

(C) If the defendant is arrested on a bench warrant relating to the minor offense, the defendant may request a temporary transfer from the original court to the court where the defendant was arrested.

(3) The request for temporary transfer may be made in writing or in person to the clerk of court in the original court or to the clerk of court in the second court.

(4) If the requirements of subparagraph (2) are satisfied, the clerk shall grant the request for temporary transfer. Approval of the prosecuting authority at the original court is not required.

(5) The clerk who grants the request shall immediately notify the other court of the temporary transfer. Following notification, the clerk in the original court shall quash any outstanding warrants relating to the minor offense. If the request is granted by the second court and the original court cannot immediately be contacted, the clerk in the second court shall quash any outstanding warrants relating to the minor offense.

(6) The defendant may be arraigned in the second court on a copy or facsimile of the citation.

(7) If the defendant enters a plea of guilty or no contest in the second court, the defendant shall be sentenced in the second court. If the defendant enters a plea of not guilty, the second court shall return the case to the original court for trial setting.

(8) After the plea has been entered, the second court shall, within 10 working days, return all papers to the original court.

(n) **Change of Venue.** A request to change the place of trial in a minor offense case may be made for the reasons stated in AS 22.15.080. It must be made by motion and must be supported by affidavit. The opposing party has five days from the date of service to file a response. If the court grants the motion, the clerk in the court where the case is filed must transmit the file to the new court.

(o) **Speedy Trial - When Time Commences to Run.** The right to speedy trial on minor offenses is governed by Criminal Rule 45. A defendant charged with a minor offense must be tried within 120 days from the date the defendant's request for trial is received by the court or the municipality, whichever occurs first. If the defendant is to be tried after a judgment is vacated, a mistrial, an order for a new trial, or an appeal, the time for trial shall run from the date the judgment was vacated, the date of mistrial or order granting a new trial, or the remand date.

(p) **Peremptory Challenges.** A judge in a minor offense case may not be peremptorily challenged under either Criminal Rule 25(d) or AS 22.20.022.

(q) **Minor Offense Joined with Related Criminal Offense.**

(1) A prosecutor may join a minor offense with a related criminal offense under the circumstances described in Criminal Rule 8(a).

(2) Except as provided in (r), a minor offense citation may not be filed in a criminal case.

(3) The minor offense joined with a criminal offense must be charged in a separate count in the criminal complaint, information or indictment. The minor offense count must include the arrest tracking number (ATN)

and charge tracking number (CTN) as required by Criminal Rule 3(c) or 7(c). It must also include the statute, regulation or ordinance as identified in the uniform table of minor offenses required in (c)(2).

(4) If a citation is issued for a minor offense and the prosecutor wishes to join that offense with a criminal offense, the prosecutor must file a "Notice Joining Minor Offense with Criminal Offense" in the minor offense case. This notice will close the minor offense case. The prosecutor must list the minor offense as a count in the criminal charging document as provided in (3).

(5) Criminal procedures rather than minor offense procedures apply to minor offenses joined with related criminal offenses.

(6) If the minor offense joined with a related criminal charge is listed on a bail forfeiture schedule or municipal fine schedule, the fine may not exceed the amount listed on the schedule. A scheduled fine amount may not be reduced if a municipal ordinance prohibits reduction of the fine amount.

(r) **Minor Offenses that Must be Filed as Criminal Cases.** The offenses listed as exceptions to the minor offense case numbering policy in Administrative Bulletin 7 must be filed as criminal cases and must be assigned criminal case numbers, even though these offenses are not classified by statute as criminal offenses. Criminal procedures rather than minor offense procedures apply to these offenses.

(s) **Telephonic Participation in Minor Offense Cases.** In any proceeding the defendant may waive the right to be present and request to participate by telephone. The defendant's waiver of the right to be physically present may be obtained orally on the record or in writing. The court may allow telephonic participation of one or more parties, witnesses, counsel or the judge at trial or any other proceeding

unless good cause or due process requires otherwise. The responsibility for the cost of a telephonic hearing is governed by Administrative Rule 48(b).

Note: Subsection (c)(3) refers to Administrative Bulletin 83 “Form of Citation” available on the court system website at <http://www.courts.alaska.gov/adminbullpublic.htm>.

Note: The personal service requirement in (c)(6), (c)(7), and (c)(8) is based on AS 12.25.180 and .190 which contemplate that the citation will be issued when “a peace officer stops or contacts a person for the commission of an infraction or a violation...” Alaska Statute 12.25.175(a)(2) requires that the citation state that the citation “was personally served on the person charged.”

Note: Subsection (k)(4) clarifies that defensive driving course dismissals are within the jurisdiction of the prosecuting authority as a form of deferred prosecution.

Note to (r): Under Administrative Bulletin 7, available on the court system website at <http://www.courts.alaska.gov/adminbullpublic.htm>, the following offenses must be filed as a criminal case:

AS 04.16.050(b) Minor Consuming Alcohol;

AS 04.16.050(c) Repeat Minor Consuming;

AS 28.35.280 Minor Operating Vehicle after Consuming;

AS 28.35.285 Minor Refusing To Submit to Chemical Test, and

AS 28.35.290 Minor Operating Vehicle Within 24 Hours of Being Cited for Offenses Under AS 28.35.280 or 285.

DATED: December 6, 2012

EFFECTIVE DATE: April 15, 2013

/s/
Chief Justice Fabe

/s/
Justice Carpeneti

/s/
Justice Winfree

/s/
Justice Stowers

/s/
Justice Maassen