

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1914

Rescinding and readopting Criminal Rule 38 concerning when defendants are required to be present and when that presence must be in person.

IT IS ORDERED:

Criminal Rule 38 is rescinded and readopted to read as follows:

Rule 38. Presence of the Defendant.

(a) **Presence Required.** A defendant charged with a felony offense shall be present at a felony first appearance, an arraignment, any hearing where evidence will be presented, a change of plea hearing, at every stage of trial, including the impaneling of the jury and return of the verdict, at a sentencing hearing, and at a hearing on an adjudication or disposition for a petition to revoke probation.

(1) The defendant shall be physically present for every hearing at which evidence will be presented and all stages of the trial including the impaneling of the jury and return of the verdict; but

(2) The defendant may elect to be present by telephone or by videoconference at any other proceeding, subject to the approval of the court.

(b) **Presence Not Required.** A defendant need not be present in the following situations:

(1) In felony prosecutions, the court may, with the written consent of the defendant, permit the absence of the defendant for all hearings not listed in subsection (a) of this rule;

(2) In prosecutions for minor offenses or misdemeanors, the court may, with the written consent of the defendant, conduct all hearings, including arraignment, plea, trial, and imposition of sentence, in the defendant's absence. A defendant's consent to allow the entry of a guilty or no contest plea, trial, or sentencing to proceed in the defendant's absence must be approved by the court in advance of the proceeding;

(3) An organization as defined in AS 11.81.900(b) may appear by counsel for all purposes; and

(4) The defendant's presence is not required at a hearing on reduction of sentence under Rule 35(a).

(c) **Continued Presence Not Required.** A trial may continue without the presence of a defendant if the defendant is voluntarily absent after the start of the trial or the defendant has engaged in conduct during the trial justifying exclusion from the courtroom.

DATED: July 12, 2017

EFFECTIVE DATE: October 16, 2017

/s/
Chief Justice Stowers

/s/
Justice Winfree

/s/
Justice Maassen

/s/
Justice Bolger

/s/
Justice Carney