

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1939

Amending Criminal Rule 38 and adding a Note to implement the direct court rule amendment made by Chapter 36 SLA 2016 (SB 91);

Adding Notes to Civil Rules 4, 5, 54, 65, and 90, and Appellate Rule 602, concerning indirect rule amendments made by Chapter 65 SLA 2018 (HB 170);

Adding a Note to Criminal Rule 41 concerning an indirect rule amendment made by Chapter 22 SLA 2018 (HB 312);

Adding a Note to Evidence Rule 402 concerning an indirect rule amendment made by Chapter 108 SLA 2018 (HB 336); and

Adding Notes to Adoption Rules 1 and 6 and Civil Rule 90.3 concerning an indirect rule amendment made by Chapter 24 SLA 2018 (SB 134).

IT IS ORDERED:

1. Criminal Rule 38 is amended, *effective January 1, 2019*, to read as follows:

Rule 38. Presence of the Defendant.

* * * *

(d) **Hearing Notice.** The court shall provide a notice to a defendant of the date, time, and place of a scheduled hearing at which the

defendant is required to appear, in a form and manner established by the court.

(e) **Hearing Reminder.** In addition to the notice required under (d) of this rule, the court shall provide a reminder notification to a defendant who is not in custody and to the Department of Corrections at least 48 hours prior to a scheduled hearing at which the defendant is required to appear regarding the date, time, and place of the scheduled hearing and the potential consequences of failure to appear, in a form and manner established by the court.

2. The following note is added to the end of Criminal Rule 38, *effective January 1, 2019*:

Note: Chapter 36, SLA 2016 (SB 91) enacted a number of changes relating to criminal procedure. Section 178 of the Act added a new subsection (d) requiring the court to notify the defendant of the hearing date, time, and place for a required appearance. Section 178 of the Act requires the court to also send a reminder notice for that hearing, at least 48 hours in advance, to a defendant not in custody and to the Department of Corrections and include the potential consequences of failure to appear. This rule change is adopted for the sole reason that the legislature has mandated the amendment.

3. The following note is added to the end of Civil Rules 4 and 5, *effective January 1, 2019*:

Note: Chapter 65, SLA 2018 (HB 170) enacted comprehensive changes to securities laws. According to section 30(a) of the Act, AS 45.56.630(c) - (e), enacted by section 25 of the Act, have the effect of changing Civil Rules 4 and 5, effective January 1, 2019, by allowing service on the administrator (in the Department of Commerce, Community, and Economic Development) in certain cases.

4. The following note is added to the end of Civil Rule 54, *effective January 1, 2019*:

Note: Chapter 65, SLA 2018 (HB 170) enacted comprehensive changes to securities laws. According to section 30(b) of the Act, AS 45.56.650(f), enacted by section 25 of the Act, have the effect of changing Civil Rule 54, effective January 1, 2019, by expanding the definition of judgments to include final judgments of the administrator (in the Department of Commerce, Community, and Economic Development) issued under AS 45.56.650.

5. The following note is added to the end of Civil Rule 65, *effective January 1, 2019*:

Note: Chapter 65, SLA 2018 (HB 170) enacted comprehensive changes to securities laws. According to section 30(d) of the Act, AS 45.56.655(c), enacted by section 25 of the Act, have the effect of changing Civil Rule 65, effective January 1, 2019, by changing the procedure for injunctions in certain cases and by prohibiting requiring the administrator (in the Department of Commerce, Community, and Economic Development) to post a bond.

6. The following note is added to the end of Civil Rule 90, *effective January 1, 2019*:

Note: Chapter 65, SLA 2018 (HB 170) enacted comprehensive changes to securities laws. According to section 30(c) of the Act, AS 45.56.650(g), enacted by section 25 of the Act, have the effect of changing Civil Rule 90, effective January 1, 2019, by changing the contempt procedure in certain cases.

7. The following note is added to the end of Appellate Rule 602, *effective January 1, 2019*:

Note: Chapter 65, SLA 2018 (HB 170) enacted comprehensive changes to securities laws. According to section 30(e) of the Act, AS 45.56.675(a), enacted by section 25 of the Act, have the effect of changing Appellate Rule 602, effective January 1, 2019, by changing the time for filing a notice of appeal in certain cases.

8. The following note is added to the end of Criminal Rule 41, *effective nunc pro tunc June 15, 2018*:

Note: Chapter 22, SLA 2018 (HB 312) enacted a number of changes to criminal laws, including laws affecting bail. According to section 29 of the Act, AS 12.30.011, as amended by sections 11 - 15 of the Act, have the effect of changing Criminal Rule 41, effective June 15, 2018, by changing the conditions of release for certain defendants.

9. The following note is added to the end of Evidence Rule 402, *effective December 26, 2018*:

Note: Chapter 108, SLA 2018 (HB 336) enacted a new chapter authorizing Supported Decision-Making Agreements for certain purposes. According to section 2 of the Act, AS 13.56.150(c), added by section 1 of the Act, has the effect of changing Evidence Rule 402 by prohibiting the execution of a supported decision-making agreement from being used as evidence of a principal's incapacity (see definitions in AS 13.56.190, added by section 1 of the Act).

10. The following note is added to the end of Civil Rule 90.3, *effective nunc pro tunc September 13, 2018*:

Note: Chapter 24 SLA 2018 (SB 134) concerned actions for termination of parental rights. According to section 19(a) of the Act, AS 25.23.130(f), enacted by section 6 of the Act, has the effect of amending Civil Rule 90.3 by providing that a termination of parental rights under AS 25.23.180(c)(2), as amended by section 12 of the Act,

does not relieve a biological parent of an obligation to pay child support unless the decree specifically provides for the termination of the obligation to pay child support.

11. The following note is added to the end of Adoption Rules 1 and 6, *effective nunc pro tunc September 13, 2018*:

Note: Chapter 24, SLA 2018 (SB 134) concerned actions for termination of parental rights. According to section 19(b) of the Act, AS 25.23.180(c), as amended by section 12 of the Act, and AS 25.23.180(o), enacted by section 17 of the Act, have the effect of amending Adoption Rules 1 and 6 by clarifying that a petition for involuntary termination of parental rights may be filed in a proceeding that is independent from an adoption or a proceeding under AS 47.10 and by restructuring AS 25.23.180(c), which eliminates AS 25.23.180(c)(3).

DATED: November 15, 2018

EFFECTIVE DATE: As provided in the Order

/S/
Chief Justice Bolger

/S/
Justice Winfree

/S/
Justice Stowers

/S/
Justice Maassen

/S/
Justice Carney