

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 821

Amending Criminal Rule 41(d)  
concerning forfeiture of bail

IT IS ORDERED:

Criminal Rule 41(d) is amended to provide:

(d) Forfeiture.

(1) Judgment of Forfeiture. If the person released on bail on the giving or pledging of security fails to appear before a court or a judicial officer as required, the judge or magistrate before whom the person released was to appear shall forfeit the security. However, the judgment of forfeiture may not be enforced until a hearing is held pursuant to subparagraph (d)(3) or, if no hearing is requested, until 30 days after the date of notice of the judgment of forfeiture. Nothing in this subparagraph shall interfere with the issuance of a summons or bench warrant for a person who fails to appear as required before a court or judicial officer.

(2) Notice of Forfeiture. The clerk shall send notice of the judgment of forfeiture to the defendant, defendant's attorney and the person pledging the security at their last known addresses. The notice must state that a hearing will be held on the forfeiture if timely requested pursuant to subparagraph (d)(3).

(3) Hearing. If requested by the defendant or person giving or pledging the security within 30 days of the date of notice of the forfeiture, the court shall hold a hearing to determine whether the defendant's failure to appear was willful. The state, the defendant, the defense attorney, and the person giving or pledging the security have the right to be heard at this hearing. The court shall set aside the judgment of forfeiture if it is proven by a preponderance of the evidence that the failure to appear was not willful. The court may set aside the judgment of forfeiture if the court concludes that justice does not require the enforcement of the judgment. An appeal may be taken from the judgment of forfeiture in the manner of other appeals.

(4) Remission. Within one year after entry of judgment of forfeiture, a person who has given or pledged security may apply to the court for a remission,

either in whole or in part, based on the return of the defendant with the assistance of the person who gave or pledged security or upon such other extraordinary circumstances as justice requires. The conditions of remission may include payment of expenses incurred for enforcement of the forfeiture and for securing the return of the defendant to custody.

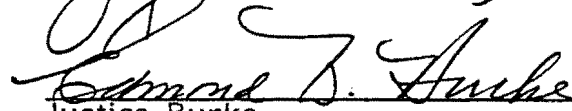
(5) Exoneration. When the condition of the bond has been satisfied or the forfeiture thereof has been remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.

(6) Enforcement. Execution shall issue on judgments of forfeiture in the same manner as on other judgments for the payment of money.

DATED: April 22, 1987

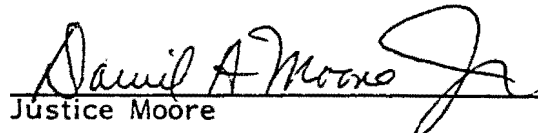
EFFECTIVE DATE: August 1, 1987

  
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Chief Justice Rabinowitz

  
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Justice Burke

  
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Justice Matthews

  
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Justice Compton

  
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Justice Moore