

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1806

Adding Notes to Civil Rule 79, Appellate Rule 602, and Appellate Rule 605.5 concerning indirect rule amendments made by Chapter 60 SLA 2013 (HB 57);

Amending Criminal Rules 16(b), 32.1(b)(1), 32.2(a), and Evidence Rule 404(b)(2), adding Notes to implement the direct court rule amendments, and adding a Note to Evidence Rule 404(a) concerning the indirect rule amendment made by Chapter 43 SLA 2013 (SB 22); and

Adding Notes to Civil Rule 64 and Evidence Rule 301(a) concerning indirect amendments made by Chapter 45 SLA 2013 (SB 65).

IT IS ORDERED:

1. The following Note is added to the end of Civil Rule 79, *effective July 1, 2014*:

Note: Chapter 60, SLA 2013 (HB 57), effective July 1, 2014, adopted the Alaska Entity Transactions Act, effective July 1, 2014. According to section 30 of the Act,

AS 10.55.603(a), enacted by section 10 of the Act, has the effect of amending Alaska Rule of Civil Procedure 79, directing that the process service fee be allowed to a prevailing party, whether or not the fee amount exceeds the amount allowed by Rule 11, Alaska Rules of Administration.

2. The following Note is added to the end of Appellate Rule 602, *effective July 1, 2014*:

Note: Chapter 60, SLA 2013 (HB 57), effective July 1, 2014, adopted the Alaska Entity Transactions Act, effective July 1, 2014. According to section 30 of the Act, AS 10.55.607(a), enacted by section 10 of the Act, has the effect of amending: Alaska Rule of Appellate Procedure 602(b)(2), by establishing special venue rules for appealing the refusal of the Department of Commerce, Community, and Economic Development to file a document; and Alaska Rule of Appellate Procedure 602(c), by requiring that certain documents be filed with a petition appealing the refusal of the Department of Commerce, Community, and Economic Development to file a document.

3. The following Note is added to the end of Appellate Rule 605.5, *effective July 1, 2014*:

Note: Chapter 60, SLA 2013 (HB 57), effective July 1, 2014, adopted the Alaska Entity Transactions Act, effective July 1, 2014. According to section 30 of the Act, AS 10.55.607(b), enacted by section 10 of the Act, has the effect of amending Alaska Rule of Appellate Procedure

605.5, by allowing the superior court to summarily order the filing, because a summary order may not allow for oral argument.

4. Criminal Rule 16(b) is amended by adding a new paragraph to read as follows, *effective nunc pro tunc July 1, 2013*:

Rule 16. Discovery.

* * * *

(b) Disclosure to the Accused.

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(9) *Restriction on Availability of Certain Material.* Notwithstanding (b)(1)(A)(iv) of this rule, the court shall deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any material prohibited under AS 11.41.455(a) or defined as “child pornography” under 18 U.S.C. 2256, if the prosecuting attorney makes the material reasonably available for inspection by the defendant and defense counsel. The material shall be considered to be made reasonably available to the defendant or defense counsel if the prosecuting attorney provides, at a law enforcement or prosecution facility, ample opportunity for inspection, viewing, and examination of the material by the defendant and the defendant's attorney. If the defendant is not represented by counsel and demonstrates a need to view the material, the court shall make arrangements for the defendant to be supervised while viewing the material. If the defendant or

the defendant's attorney identifies an expert who must view the material, the court shall make arrangements for the court or the law enforcement agency that possesses it to send the material directly to the expert.

5. The following Note is added to the end of Criminal Rule 16, *effective nunc pro tunc July 1, 2013*:

Note: Chapter 43, SLA 2013 (SB 22), effective *nunc pro tunc* to July 1, 2013, amended Criminal Rule 16(b) by adding a new paragraph (9) relating to requests by defendants to copy, photograph, duplicate, or otherwise reproduce certain prohibited material. This rule change is adopted for the sole reason that the legislature has mandated the amendment.

6. Criminal Rule 32.1(b)(1) is amended to read as follows, *effective nunc pro tunc July 1, 2013*:

Rule 32.1. Presentence Procedure for Felony Sentencings.

* * * *

(b) Presentence Investigation and Report.

(1) *Contents and Filing.* If the court directs the Department of Corrections to prepare a presentence report, the report shall be filed with the court and served on counsel at least 30 days before the sentencing hearing, or 30 days before the presentencing hearing, if one is scheduled. The report shall contain all of the defendant's prior criminal convictions and findings of delinquency and any other

information about the defendant's characteristics, financial condition, and the circumstances affecting the defendant's behavior that may be helpful in fashioning the defendant's sentence, a victim impact statement, and any other information required by the judge. If the crime involved a victim, the court may not accept a presentence report that does not include a victim's impact statement, unless the presentence report explains the reason why the victim or the victim's representative could not be interviewed. The presentence report shall comply with the Victims' Rights Act, AS 12.61.100 - 12.61.150 and AS 12.55.022.

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7. The following Note is added to the end of Criminal Rule 32.1, *effective nunc pro tunc July 1, 2013*:

Note: Chapter 43, SLA 2013 (SB 22), effective *nunc pro tunc* to July 1, 2013, amended Criminal Rule 32.1(b)(1) relating to victim's impact statements. This rule change is adopted for the sole reason that the legislature has mandated the amendment.

8. Criminal Rule 32.2(a) is amended to read as follows, *effective nunc pro tunc July 1, 2013*:

Rule 32.2 Sentencing Hearing.

(a) **Consideration of Victim's Statement.** If a victim as defined in AS 12.55.185 prepares and submits a written statement, gives sworn testimony or makes an unsworn oral presentation under AS 12.55.023, the court shall take

the content of the statement, testimony, or presentation into consideration when preparing those elements of the sentencing report required by AS 12.55.025 that relate to the effect of the offense on the victim, and when considering the need for restitution under AS 12.55.045. The court shall also take the content of the victim's impact statement in the presentence report into consideration in preparing the sentencing report required under AS 12.55.025. The court also may take the content of the statement, testimony, the victim's impact statement, or presentation into consideration for any other appropriate purpose.

9. The following Note is added to the end of Criminal Rule 32.2, *effective nunc pro tunc July 1, 2013*:

Note: Chapter 43, SLA 2013 (SB 22), effective *nunc pro tunc* to July 1, 2013, amended Criminal Rule 32.2(a) relating to consideration of crime victim's impact statements. The changes to Criminal Rule 32.2(a) are adopted for the sole reason that the legislature has mandated the amendments.

10. Evidence Rule 404(b)(2) is amended to read as follows, *effective nunc pro tunc July 1, 2013*:

Rule 404. Character Evidence Not Admissible to Prove Conduct--Exceptions--Other Crimes.

* * * *

(b) Other Crimes, Wrongs, or Acts.

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(2) In a prosecution for a crime involving a physical or sexual assault or abuse of a minor, evidence of other acts by the defendant toward the same or another child is admissible if admission of the evidence is not precluded by another rule of evidence and if the prior offenses

~~(i) occurred within the 10 years preceding the date of the offense charged;~~

~~(ii) are similar to the offense charged; and~~

~~(ii)(iii) were committed upon persons similar to the prosecuting witness.~~

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11. The following Notes are added to the end of Evidence Rule 404, *effective nunc pro tunc July 1, 2013*:

Note: Chapter 43, SLA 2013 (SB 22), effective *nunc pro tunc* to July 1, 2013, amended Evidence Rule 404(b)(2) relating to the admissibility of evidence, in prosecutions of crimes involving physical or sexual assault of a minor, of similar acts by the defendant toward the same or another child. The changes to Evidence Rule 404(b)(2) are adopted for the sole reason that the legislature has mandated the amendments.

Note: Chapter 43, SLA 2013 (SB 22) enacted a number of changes relating to criminal procedure effective *nunc pro*

tunc to July 1, 2013. According to section 45 of the Act, AS 12.45.045(a), as amended by section 16 of the Act, has the effect of amending Alaska Rule of Evidence 404(a) by providing, with some exceptions, that a defendant must request admission of certain evidence about the complaining witness five days before trial and by applying the rule to the conduct of the complaining witness after the alleged offense.

12. The following Note is added to the end of Civil Rule 64, *effective September 9, 2013*:

Note: Chapter 45, SLA 2013 (HB 65) enacted various changes, including a new section AS 34.40.113 related to discretionary interests in irrevocable trusts, effective September 9, 2013. According to section 47 of the Act, AS 34.40.113(f), enacted by section 40 of the Act, has the effect of amending Alaska Rule of Civil Procedure 64 by prohibiting a creditor or beneficiary from obtaining an order of attachment or similar relief in certain cases.

13. The following Note is added to the end of Evidence Rule 301, *effective September 9, 2013*:

Note: Chapter 45, SLA 2013 (HB 65) enacted various changes, including amendments to AS 34.77.110 relating to community property, effective September 9, 2013. According to section 47 of the Act, AS 34.77.110(i), enacted by section 43 of the Act, has the effect of amending Alaska Rule of Evidence 301 by specifying the

evidence that is sufficient to rebut a presumption under
AS 34.77.110(i).

DATED: July 18, 2013

EFFECTIVE DATE: As provided in the order.

/s/
Chief Justice Fabe

/s/
Justice Winfree

/s/
Justice Stowers

/s/
Justice Maassen

/s/
Justice Bolger