

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1886

Adding Notes to Criminal Rules 32, 32.1, and 43 concerning indirect rule amendments made by Chapter 36 SLA 2016 (SB 91);

Amending Minor Offense Rule 17 and adding a Note to implement the direct court rule amendment made by Chapter 32 SLA 2016 (SB 165); and

Amending Adoption Rules 5 and 6, adopting a new CINA Rule 17.3, and adding Notes to implement the direct court rule amendments made by Chapter 6, 4SSLA 2016 (HB 200).

IT IS ORDERED:

1. The following note is added to the end of Criminal Rule 32, *effective nunc pro tunc July 12, 2016*:

Note: Chapter 36, SLA 2016 (SB 91) enacted a number of changes relating to criminal procedure. According to section 180(b) of the Act, AS 12.55.055(h), enacted by section 76 of the Act, has the effect of changing Criminal Rule 32, effective July 12, 2016, by directing the court to include a provision in the judgment that community work hours that are not completed shall be converted to a fine as provided in AS 12.55.055(h).

2. The following note is added to the end of Criminal Rule 32.1, *effective nunc pro tunc July 12, 2016*:

Note: Chapter 36, SLA 2016 (SB 91) enacted a number of changes relating to criminal procedure. According to section 180(d) of the Act,

AS 12.55.135(p), enacted by section 93 of the Act, has the effect of changing Criminal Rule 32.1, effective July 12, 2016, regarding the procedure for notice and proof of aggravating factors sought to be considered at the sentencing of a defendant convicted of a class A misdemeanor.

3. The following note is added to the end of Criminal Rule 43, *effective nunc pro tunc July 12, 2016*:

Note: Chapter 36, SLA 2016 (SB 91) enacted a number of changes relating to criminal procedure. According to section 180(c) of the Act, AS 12.55.078, enacted by section 77 of the Act, has the effect of changing Criminal Rule 43, effective July 12, 2016, by creating an alternate procedure (suspended entry of judgment) for when the court may dismiss charges.

4. Minor Offense Rule 17 is amended, *effective October 4, 2016*, to read as follows:

Rule 17. Minor Offense Joined with Related Criminal Offense.

(a) Except as provided in subsection (g), a prosecutor may join a minor offense with a related criminal offense under the circumstances described in Criminal Rule 8(a).

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(g) A prosecutor may not join a minor offense for a violation of AS 04.16.049 or 04.16.050 with a related criminal offense.

5. The following note is added to the end of Minor Offense Rule 17, *effective October 4, 2016*:

Note: Chapter 32, SLA 2016 (SB 165), at sections 8 and 9, make the following offenses violations: AS 04.16.049 (unauthorized presence on a licensed premises) and AS 04.16.050 (minors consuming alcohol). Sections 20 and 21 of the Act amended subsection (a) of Minor Offense Rule 17 and added a new subsection (g), effective October 4, 2016, to require that these violations not be joined with any related criminal offense. This rule change is adopted for the sole reason that the legislature has mandated the amendment.

6. Adoption Rule 5 is amended, *effective January 1, 2017*, by adding a new subsection (d) to read as follows:

Rule 5. Venue.

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(d) A petition to adopt a child in state custody under AS 47.10 must be brought in the superior court where the child-in-need-of-aid proceeding is pending or in the judicial district in which the petitioner resides as provided under AS 47.10.111 and AS 25.23.030(d).

7. The following note is added to the end of Adoption Rule 5, *effective January 1, 2017*:

Note: Chapter 6, 4SSLA 2016 (HB 200) enacted changes to the procedures for adopting or becoming the guardian of a child in state custody. Section 14 of the Act amended Adoption Rule 5, effective January 1, 2017, by adding a new subsection addressing where to file an adoption petition when the child is in state custody. This rule change is adopted for the sole reason that the legislature has mandated the amendment.

8. Adoption Rule 6(a) is amended, *effective January 1, 2017*, to read as follows:

Rule 6. Petitions.

(a) Petitions for Adoption.

(1) An adoption petition must include the information required by AS 25.23.080, except as provided under (a)(4) of this rule. A separate petition must be filed for each person to be adopted. If the proceeding involves a minor, the petition must also state whether the minor to be adopted is an Indian child and whether any other court cases involving the minor are known to be pending.

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(4) A proceeding to adopt a child in state custody under AS 47.10 must comply with AS 47.10.111. A proceeding to adopt a child in state custody under AS 47.10 shall be heard either

(A) as part of the child-in-need-of-aid proceeding; or

(B) in the judicial district in which the petitioner resides if the petitioner provides notice to all of the parties to the child-in-need-of-aid proceedings and no party objects.

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9. The following note is added to the end of Adoption Rule 6, *effective January 1, 2017*:

Note: Chapter 6, 4SSLA 2016 (HB 200) enacted changes to the procedures for adopting or becoming the guardian of a child in state custody. Sections 15 and 16 of the Act amended Adoption Rule 6(a), effective January 1, 2017, to incorporate and reference the new requirements for proceedings to adopt a child in state custody. This rule change is adopted for the sole reason that the legislature has mandated the amendment.

10. The Child In Need of Aid Rules are amended, *effective January 1, 2017*, by the adoption of a new Rule 17.3 to read as follows:

Rule 17.3. Petition or proxy for adoption or legal guardianship of a child under AS 47.10.111.

(a) A petitioner may file a petition for adoption or legal guardianship of a child who is the subject of a pending child-in-need-of-aid proceeding under AS 47.10 as part of the same case. If a petitioner files a petition for adoption or legal guardianship of a child before the court approves adoption or legal guardianship as the permanent plan for the child, the court shall hold the petition for adoption or legal guardianship in abeyance until the court approves adoption or legal guardianship as the permanent plan for the child under Rule 17.2 and AS 47.10.080(l). If the child is in an out-of-home placement but is not placed with the petitioner at the time the petition is filed, the court shall hold a hearing within 90 days to review the permanent plan required under AS 47.10.111(c). At the hearing, the court shall, in addition to the findings required under Rule 17.2 and AS 47.10.080(l), make findings related to whether the petitioner is entitled to placement preference under AS 47.14.100(e) or 25 U.S.C. 1915(a), whichever is applicable. If 25 U.S.C. 1915(a) applies, the court shall make written findings related to whether the current placement is in compliance with or whether there is good cause to deviate from the placement preferences.

(b) A person may file a proxy for a formal petition for adoption or legal guardianship of a child who is the subject of a pending child-in-need-of-aid proceeding under AS 47.10 as part of the same case. If a person files a proxy for a formal petition for adoption or legal guardianship of a child who is in out-of-home placement, and the child is not placed with the person who files the proxy at the time the person files the proxy, the court shall hold a hearing within 90 days to review the permanent plan for the child as required under AS 47.10.112(c). At

the hearing, the court shall, in addition to the findings required under Rule 17.2 and AS 47.10.080(l), make findings related to whether the person who filed the proxy is entitled to placement preference under AS 47.14.100(e) or 25 U.S.C. 1915(a), whichever is applicable, and, if 25 U.S.C. 1915(a) applies, whether the current placement is in compliance or whether there is good cause to deviate from the placement preferences.

11. The following note is added to the end of CINA Rule 17.3, *effective January 1, 2017*:

Note: Chapter 6, 4SSLA 2016 (HB 200) enacted changes to the procedures for adopting or becoming the guardian of a child in state custody. Section 17 of the Act amended the Child In Need of Aid Rules, effective January 1, 2017, by adding a new Rule 17.3 concerning adoption or guardianship petitions under AS 47.10.011 for children who are the subject of a pending CINA case. This rule change is adopted for the sole reason that the legislature has mandated the amendment.

DATED: July 20, 2016

EFFECTIVE DATE: As provided in the Order

/s/
Chief Justice Stowers

/s/
Justice Winfree

/s/
Justice Maassen

/s/
Justice Bolger

/s/
Justice Carney