

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1895

Adopting new Minor Offense Rules 5.1, 7.1, and 23 and amending Minor Offense Rules 1, 3-13, and 17-18 to clarify procedures, to clarify the authority of clerks and non-attorney representatives of the prosecutor, and to confirm when the minor offense rules apply.

IT IS ORDERED:

New Minor Offense Rules 5.1, 7.1, and 23 are adopted and Minor Offense Rules 1, 3-13, and 17-18 are amended to read as follows:

Rule 1. Scope, Purpose and Construction.

These rules govern the procedure in cases involving minor offenses, except as provided in Rule 17 and Rule 18. They are intended to provide for the just determination of these cases and to that effect shall be construed to secure simplicity and uniformity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

Rule 3. Citation.

(a) **Charging Document.** The charging document for a minor offense may be in the form of a citation. Each citation may name only one defendant and only one offense. Except as provided in subsection (h) below, a citation must name an individual as the defendant. Citations may not be filed with the court until the defendant has been served.

(b) **Uniform Table of Minor Offenses.**** The citation must include the statute, regulation, or ordinance that the defendant is

alleged to have violated, as identified in the uniform table of minor offenses maintained by the court system.

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(h) **Corporations, Limited Liability Companies, and Other Entities.** A citation issued to a corporation or limited liability company must name the corporation or company as the defendant. The officer must serve the citation on the on-site manager, a managing member, an officer, a managing or general agent, or on any other agent authorized by appointment or by law to receive service of process. If service cannot be made on one of the above in Alaska, service may be made as provided in AS 10.06.175(b) or 10.50.065(b). A citation issued to a sole proprietorship must name the owner of the business as the defendant and must be served on that person. A citation issued to a partnership, unincorporated association or other entity must name the entity as the defendant and must be served on a person designated for that entity in Civil Rule 4. The citation must name the person served.

(i) **Authority of Clerk.**

The clerk shall return any citation for correction if the citation is deficient because

- (1) the offense listed on the citation is not in the court system's uniform table of minor offenses;
- (2) the citation does not list the classification of the offense required by Administrative Bulletin 83;
- (3) the citation does not list the penalty information or the procedure for responding required by Administrative Bulletin 83;

- (4) the citation lists more than one defendant, lists more than one offense, or fails to name the defendant as required by subsections (a) and (h);
- (5) the citation does not list the name of the person who was served on behalf of the entity described in subsection (h);
- (6) the citation does not state the method of service;
- (7) proof of service of the citation is not provided, if required by paragraph (g)(3) of this rule because the citation was served by a method other than personal service or property service;
- (8) the form of the citation does not meet the requirements of this rule or Administrative Bulletin 83; or
- (9) the officer's signature, printed name, identification number, or the date of issuance is missing.

** The Uniform Minor Offense Table (UMOT) is maintained by the Alaska Court System. It is available on the Court System's website at: <http://courts.alaska.gov/trialcourts/umot.htm>

Rule 4. Minor Offenses Not Charged on a Citation.

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- (d) A summons shall be issued by a judge or magistrate judge only if probable cause has been established as provided in Criminal Rule 4(a)(1). No warrant may issue. The summons must be on a form approved by the administrative director. The prosecuting authority shall furnish the court with a copy of the summons and charging document to be served on the defendant.
- (e) If probable cause is not established, the case is deemed dismissed.

(f) The summons and charging document shall be served together. They may be served upon the defendant by any peace officer or by any other person authorized to serve a summons in a civil action, within this state or the United States or any of its possessions, by delivering a copy to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by certified mail as provided in Civil Rule 4(h). Proof of service must be filed with the court. If requesting service by certified mail, the prosecuting authority shall give the court an addressed envelope, adequate postage, and appropriate completed postal forms and must address the delivery receipt so it is returned to the court.

(g) If the offense charged is on a bail forfeiture schedule or fine schedule, the defendant must, within 30 days after being served with the summons, respond to the summons using one of the options provided in Rule 5.

(h) A violation of AS 04.16.049, AS 04.16.050, or a similar municipal ordinance may not be joined with other minor offenses.

Rule 5. Optional Court Appearance.

(a) A defendant charged with a minor offense for which a bail forfeiture amount has been established by supreme court order or for which a scheduled fine amount has been established by statute or ordinance must within 30 days after the citation was issued:

(1) request to appear in court for an arraignment, which must be conducted in accordance with Criminal Rule 5(c), to the extent applicable to minor offenses; or

(2) enter a plea of not guilty and request trial by mailing or delivering a signed plea as directed on the citation; or

(3) enter a plea of no contest and submit payment of the citation, plus any surcharge established by statute, as directed on the citation; or

(4) provide proof of compliance to a law enforcement agency if a statute, regulation, or ordinance permits dismissal of the citation upon a showing of compliance, except that proof of compliance also may be made to the court for violation of AS 28.15.131 (failure to carry or exhibit license) or AS 28.22.019 (proof of insurance) or similar municipal ordinance that authorizes proof of compliance to be made to the court.

(b) If a citation is filed with the court, the clerk is authorized to dismiss the citation upon notification from the agency that proof of compliance was made or when proof of compliance is submitted to the court for violation of AS 28.15.131, AS 28.22.019, or similar ordinance. A person may display proof of insurance to the clerk on a mobile electronic device. The clerk may also grant a request for an extension of time to correct the defect.

(c) A defendant who responds but

(1) fails to sign the citation,

(2) fails to submit a plea, or

(3) fails to provide full payment of the amount due

will be deemed to have entered a plea of no contest, unless the defendant clearly indicates otherwise. If any amount remains due to be paid, a judgment for the amount due will be entered against the defendant under Rule 10.

Rule 5.1 Request for Judgment by Municipality.

If the citation is initially filed with a municipality as provided in Administrative Bulletin 39 and the defendant either submits a plea of no contest without full payment or makes a partial payment without a not guilty plea, the municipality may request a judgment by filing a request for judgment on a form designated by the administrative director. Requests for judgment must be filed within six months after the citation was issued.

Rule 6. Mandatory Court Appearance.

(a) A defendant charged with a minor offense for which no bail forfeiture amount has been established by supreme court order and for which no scheduled fine amount has been established by statute or ordinance must:

(1) appear at the time and place indicated on the citation or summons for arraignment, which must be conducted in accordance with Criminal Rule 5(c), to the extent applicable to minor offenses;

(2) submit a plea of not guilty without appearing for arraignment;
or

(3) provide proof of compliance to a law enforcement agency if a statute, regulation, or ordinance permits dismissal of the citation upon a showing of compliance.

(b) The clerk is authorized to dismiss the citation upon notification from the agency that proof of compliance was made.

Rule 7. Pleas.

(a) When a no contest or guilty plea is entered, a judgment of conviction will be entered.

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Rule 7.1 Motions; Request to Reschedule Hearing or Trial.

(a) **Motions.** Motions are governed by Criminal Rule 42 except that

(1) the moving party may not file a reply unless allowed by the court; and

(2) if a party seeks expedited consideration, the motion must be titled expedited and the reasons for expedited consideration must be set out in the motion. A separate motion for expedited consideration shall not be filed.

(b) **Request to Reschedule Arraignment.** The clerk is authorized to reschedule an arraignment upon request by a defendant.

(c) **Request to Reschedule Trial.**

(1) *Form of Request.* A request to reschedule trial must be submitted on a form authorized by the administrative director. The requesting party must include an explanation for the request, a list of available dates, and for defendants, a waiver of the right to a speedy trial for the period of delay caused by the request. A motion for expedited consideration shall not be filed.

(2) *Request by Prosecution.* When the prosecutor, officer who issued the citation, or other representative under Rule 12(a) requests to reschedule a trial, the defendant will be notified and provided the opportunity to respond as provided below.

(A) If the request is filed more than fifteen days before the scheduled trial date,

(i) the clerk shall give written notice of the request to the defendant; and

(ii) the defendant may file an opposition within 10 days of the date the clerk distributes the notice.

(B) If the request is filed within 15 days before the scheduled trial date, the clerk shall attempt to notify the defendant by telephone, email, or fax. The clerk shall note the defendant's response on the request.

(3) *Request by Defendant.* When a defendant requests to reschedule a trial, notice to the prosecution is not required. No opposition may be filed unless requested by the court.

(4) *Clerk's Authority.* The clerk is authorized to reschedule the trial except the court will decide the request when

(A) the requesting party has previously requested to reschedule the trial two times,

(B) trial cannot be rescheduled within the time set for speedy trial under Rule 15,

(C) an opposition is filed or noted, or

(D) the clerk is unable to get a response from the defendant as provided in (2)(B).

Rule 8. Defendants Under 18.

A defendant under age 18 at the time of the offense must be accompanied by a parent, guardian, or legal custodian at any court appearance for a minor offense until the defendant reaches age 18.

Rule 9. Failure to Respond or to Appear.

(a) **Failure to Respond to Citation.**

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(3) *Citations Filed With Municipalities.* If the citation is initially filed with a municipality as provided in Administrative Bulletin 39, the municipality may request a default judgment by filing with the court the citation and an affidavit from a municipal employee stating that the municipality sent the defendant the warning notice required in (2) above and the defendant failed to respond. If the municipality has entered into an agreement to file citations electronically under Rule 22, the agreement must include procedures for verifying that the defendant was sent the warning notice and failed to respond. Requests for default judgment must be filed within six months after the citation was issued. The request and affidavit for default judgment must be on a form approved by the administrative director.

(b) **Failure to Appear After Summons.** If a defendant who has been served a summons issued under Rule 4 fails to appear or respond, the court may enter a default judgment of conviction as provided in Rule 10.

(c) **Failure to Appear for Arraignment or Trial.** If the court sends a defendant notice of an arraignment or trial date and the defendant fails to appear on the scheduled date, the court may, without finding probable cause to believe the defendant committed the offense, enter a default judgment of conviction as provided in Rule 10. The court's notice of the arraignment or trial date must advise the defendant of the consequences if the defendant fails to appear.

(d) **Bench Warrants Prohibited.** The court shall not issue a bench warrant for failure to respond or appear or for failure to satisfy the judgment in a minor offense case. This provision does not apply to minor offenses filed in criminal and underage consuming cases as provided in Rule 17 and Rule 18.

Rule 10. Judgment, Costs, Fees, and Relief from Default Judgment.

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(e) **Court Costs for Default Judgments.** A default judgment entered under Rule 9 must require the defendant to pay court costs in the amount of \$25 per case. Court costs imposed under this rule must be deposited in the state general fund.

(f) **Collection Costs - All Judgments.**

(1) The defendant will be assessed \$25 per case in collection costs if the judgment is transferred for collection against the defendant's Alaska Permanent Fund Dividend as provided in Administrative Bulletin 43. The court may waive this collection cost upon a showing of good cause. Collection costs imposed under this paragraph belong to the political entity that prosecuted the offense.

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(h) **Authority of Clerk.**

(1) The clerk is authorized to enter judgments of conviction when a defendant mails or delivers to the clerk a plea of no contest, payment of the fine without a plea, fails to respond to a citation or summons, or fails to appear for trial.

(2) The clerk is authorized to enter a judgment of conviction when a municipality files a request and affidavit for entry of judgment under Rule 5.1.

(3) After entry of a judgment of conviction, the clerk may, upon request of the defendant, approve deferral of payment of the fine and surcharge for up to six months from the date of the request. This request does not need to be served on the prosecution.

(4) The clerk is authorized to reduce a fine upon presentation of required proof under AS 04.16.049(i) or AS 04.16.050(c).

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Rule 11. Dismissal and Deferred Prosecution

(a) By the Prosecuting Attorney or Representative. The prosecuting attorney or the prosecution's representative under Rule 12(a) may dismiss a minor offense charge.

(b) By Court. The court may dismiss a minor offense charge if

(1) there is unnecessary delay in bringing a defendant to trial pursuant to Rule 15;

(2) the prosecuting attorney or the prosecution's representative under Rule 12(a) fails to appear for trial;

(3) proof of compliance is made to an agency or to the court as provided in Rule 5(a)(4) or Rule 6(a)(3); or

(4) dismissal is in furtherance of justice. The reasons for the dismissal shall be set forth in the order or on the record. The court may not dismiss a minor offense charge conditioned upon the defendant paying a fine, completing a defensive driving course, completing community work service, or other conditions.

(c) Identity Error in Charging Document. If the prosecution initiates or concurs with the dismissal of charges against a defendant because the named defendant was not the person whom the prosecution intended to charge with the offense, the court shall enter a written order of dismissal clearly stating that this is the reason for the dismissal.

(d) Deferred Prosecution. When a charge has been filed with the court and the prosecutor or prosecution's representative under

Rule 12(a) enters into an agreement with the defendant to defer prosecution based on the defendant's agreement to complete a defensive driving course or on other conditions, the prosecutor or representative must file the agreement with the court or put the parties' agreement on the record. The agreement must include the date by which the defendant must complete the defensive driving course or other conditions and the date by which the prosecutor will file a dismissal. If the agreement is conditioned upon payment of a fee or costs, payment may not be made to the court. Upon satisfactory completion of the agreement, the prosecutor or representative must file a notice of dismissal with the court. If a notice of dismissal is not filed by the date stated in the agreement, the court may enter a judgment of conviction.

Note: Rule 11(d) clarifies that defensive driving course dismissals are within the jurisdiction of the prosecuting authority as a form of deferred prosecution.

Rule 12. Non-Attorney Representation.

(a) Representation of State or Municipality by Non-Attorney.

(1) For the prosecution of minor offense charges under these rules, a municipal corporation or the State of Alaska may be represented by the officer who issued the citation or complaint or by another employee of the investigating agency. The representative need not be employed by the same government entity represented, but must be authorized by the entity to represent it.

(2) The representative may file a request to reschedule trial or a request to participate telephonically, and may give testimony, offer exhibits, or call witnesses for examination by the court. The representative may also defer prosecution and dismiss charges.

The representative may not examine witnesses, make opening statements and closing arguments, or otherwise act as an attorney.

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Rule 13. Temporary Transfer of Minor Offense Cases.

(a) For purposes of this rule, the term "original court" means the court in which a minor offense case is pending. The term "second court" means the court to which the defendant requests that the case be temporarily transferred.

(b) The defendant may request that arraignment be held in a second court, which is nearest to the place where the defendant resides or is employed, instead of in the original court.

(c) The defendant's request for temporary transfer for arraignment may be made in writing or in person to the clerk of court in the original court or to the clerk of court in the second court.

(d) If the requirements of subsection (b) are satisfied, the clerk shall grant the request for temporary transfer. Approval of the prosecuting authority at the original court is not required.

(e) The clerk who grants the request shall immediately notify the other court of the temporary transfer. Following notification, the clerk in the original court shall provide a copy of the citation to the second court.

(f) The defendant may be arraigned in the second court on a copy or facsimile of the citation.

(g) If the defendant enters a plea of guilty or no contest in the second court, the defendant shall be sentenced in the second court. If the defendant enters a plea of not guilty, the second court shall return the case to the original court for trial setting.

(h) After the plea has been entered, the second court shall, within 10 working days, return all papers to the original court.

Rule 17. Minor Offenses in Criminal Cases.

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

(b) **Minor Offense Citation.** A minor offense citation may not be filed in a criminal case.

(c) **Separate Count.** The minor offense charge joined with a criminal charge must be charged in a separate count in the criminal complaint, information or indictment. The minor offense count must include the arrest tracking number (ATN) and charge tracking number (CTN) as required by Criminal Rule 3(c) or 7(c). It must also include the statute, regulation or ordinance as identified in the uniform table of minor offenses required in Rule 3(b).

(d) **Notice of Joinder.** If a citation issued for a minor offense has been filed with the court and the prosecutor wishes to join that charge with a criminal charge, the prosecutor must file a "Notice Joining Minor Offense Charge with Criminal Charge" in the minor offense case. This notice will close the minor offense case. The prosecutor must list the minor offense charge as a count in the criminal charging document as provided in subsection (c).

(e) **Criminal Rules Apply.** Except as provided in (f) and (g), criminal rules rather than minor offense rules apply when (1) a minor offense charge is joined with a related criminal charge, and (2) a criminal charge is amended to be a minor offense charge.

(f) **When Minor Offense Rules Apply.** If all criminal charges have been disposed of in a criminal case and the only remaining

charge or charges are minor offenses, the minor offense rules apply to all further proceedings. If the defendant has failed to appear, the court may direct the clerk to issue a warning notice advising the defendant that the defendant must contact the court within 15 days to reschedule the hearing or the court will enter a default judgment of conviction for the minor offense as provided in Rule 10. This subsection does not apply to underage consuming offenses as defined in Administrative Bulletin 7.

(g) **Maximum Fine for Minor Offense.** Pursuant to AS 12.25.230(c), the fine for an offense listed on a bail forfeiture schedule or a municipal fine schedule is the maximum fine that may be imposed for that offense. A scheduled fine amount may not be reduced if a municipal ordinance prohibits reduction of the fine amount.

(h) **Joinder Limits.** A prosecutor may not join a violation of AS 04.16.049, AS 04.16.050, or a similar municipal ordinance with a related criminal charge.

Rule 18. Minor Offenses that Must be Filed as Underage Consuming Cases.

Unless filed with a related criminal charge in a criminal case, the offenses listed as exceptions to the minor offense case numbering policy in Administrative Bulletin 7 must be filed as underage consuming cases and must be assigned underage consuming case numbers. Criminal rules rather than minor offense rules apply to these offenses, even though these offenses are not classified by statute as criminal offenses. Criminal charges may not be filed in an underage consuming case.

Note: Under Administrative Bulletin 7, available on the court system website at <http://www.courts.alaska.gov/adbulls/index.htm>, the following offenses must be filed as an underage consuming case:

AS 28.35.280 Minor Operating Vehicle after Consuming;
AS 28.35.285 Minor Refusing To Submit to Chemical Test;
AS 28.35.290 Minor Operating Vehicle Within 24 Hours of Being Cited for Offenses Under AS 28.35.280 or 285; and

Any municipal offense similar to the above involving alcohol or marijuana that is not classified as a misdemeanor and with potential penalties that do not include incarceration but otherwise entitle the defendant to jury trial and to counsel at public expense.

Rule 23. Exhibits.

The procedure for exhibits in minor offense trials is governed by Criminal Rule 26.1.

DATED: October 20, 2016

EFFECTIVE DATE: November 1, 2016

/s/
Chief Justice Stowers

/s/
Justice Winfree

/s/
Justice Maassen

/s/
Justice Bolger

/s/
Justice Carney