

SUBJECT: A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY SUPPORTING AN AMENDMENT TO THE ALASKA RULES OF MINOR OFFENSE PROCEDURE ALLOWING SERVICE OF CITATIONS BY METHODS DESCRIBED IN RULE 4 OF THE ALASKA RULES OF CIVIL PROCEDURE.





AGENDA OF: November 5, 2013

ASSEMBLY ACTION:

RS 13-127 was approved under the consent agenda 11-5-13 

MANAGER RECOMMENDATION: Present to the Assembly for consideration.

APPROVED BY JOHN MOOSEY, BOROUGH MANAGER: 

Route To:	Department/Individual	Initials	Remarks
	Originator	A. Strawn	
	Planning and Land Use Director		
	Borough Attorney		
	Borough Clerk		

ATTACHMENT(S): Fiscal Note: NO X YES _____
 Alaska Supreme Court Order 1794 (19 pp)
 Alaska Supreme Court Order 1797 (21 pp)
 Municipality of Anchorage Memo to Senator Egan (10 pp)
 Resolution Serial No. 13-127 (2 pp)

SUMMARY STATEMENT: In December 2012 the Alaska Supreme Court issued court order number 1794 modifying the rules governing procedure in cases involving minor offenses and made the effective date April 15, 2013. The order requires officers to personally deliver citations in accordance with AS 12.25.175-190. Prior to the order, Matanuska-Susitna Borough Code Compliance Officers regularly used process servers and certified mail to issue citations. The requirement for personal service of citations has considerably reduced the effectiveness of borough code enforcement efforts. The requirement increases exposure of code enforcement officers to potentially hostile encounters, and in cases where violators of Borough Code live

out of State, enforcement is not a realistic possibility.

Recommendation of Administration:

Staff respectfully requests approval of a resolution supporting an amendment to the Alaska rules of minor offense procedure allowing service of citations by methods described in Rule 4 of the Alaska Rules of Civil Procedure.

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1794

Rescinding the current District Court Criminal Rule 8 and adopting a new District Court Criminal Rule 8 concerning Minor Offenses

IT IS ORDERED:

The current District Court Criminal Rule 8 is rescinded and a new District Court Criminal Rule 8 adopted to read as follows:

Rule 8. Minor Offenses

(a) **Scope, Purpose, and Construction.** This rule governs the procedure in cases involving minor offenses, except as provided in (q) and (r) of this rule. It is 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.

(b) **Minor Offense Defined.** Any offense that meets one of the definitions below is a minor offense, including an offense that is classified as a misdemeanor by statute, regulation or ordinance. An offense is not a minor offense under this rule if the only penalty is a civil penalty. As used in this rule, "minor offense" means

- (1) an offense classified by statute as an infraction or a violation; or
- (2) any offense for which a bail forfeiture amount has been authorized by statute and established by supreme court order; or

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(3) any municipal motor vehicle or traffic offense for which a fine amount has been established in a fine schedule adopted by municipal ordinance under AS 28.05.151; or

(4) any offense under a municipal ordinance for which a conviction cannot result in incarceration or the loss of a valuable license and for which a fine schedule has been established under AS 29.25.070(a); or

(5) any offense under statute or municipal ordinance for which a conviction cannot result in incarceration, a fine greater than \$500, or the loss of a valuable license; or

(6) any fish and game offense in 5 AAC charged as a strict liability offense; or

(7) any commercial fishing offense listed in AS 16.05.722 or 5 AAC charged as a strict liability offense (classified in AS 16.05.722 as a violation).

(c) Citation.

(1) 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 (8) below, a citation must name an individual as the defendant.

(2) 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.

(3) The administrative director shall establish content and format requirements for minor offense citations by administrative bulletin, including requirements that the citations include:

(A) the essential facts constituting the offense charged,

(B) notice of the defendant's rights listed in AS 12.25.200,

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(C) the procedure for responding to the citation,

(D) the consequences of a failure to respond, and

(E) if forfeiture of seized items is authorized by statute or ordinance, the citation must list the seized items and state that they will be forfeited if defendant waives appearance by entering a no contest plea or if a default judgment is entered.

(4) If a citation meets the requirements set forth in the bulletin, it is presumed to provide adequate notice of the charges, the defendant's rights listed in AS 12.25.200, the procedure for responding to the citation, the consequences of failure to respond, and the potential for forfeiture. In addition, all citations filed with the court must comply with any standards adopted by the Department of Public Safety under AS 12.25.175.

(5) The defendant's social security number may not appear on a citation. This paragraph applies to citations issued on or after April 15, 2013.

(6) The officer must state on the citation that the officer has probable cause to believe the defendant committed the offense but need not state the grounds for the probable cause determination beyond the essential facts. The officer must certify, under penalty of perjury, that the information in the citation is true and that the officer personally served the citation on the defendant.

(7) In this rule, personal service means the officer must deliver the citation to the defendant personally in accordance with AS 12.25.175-190.

(8) *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

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personally 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 personal 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.

(9) *Authority of Clerk.* The clerk shall return any citation for correction if the citation is deficient because

(A) the offense listed on the citation is not in the court system's uniform table of minor offenses; or

(B) the citation does not include a certification by the officer, made under penalty of perjury, that the information in the citation is true and that the officer personally served the citation on the defendant.

(d) **Minor Offenses Not Charged on a Citation.** This subsection applies to minor offenses charged on an information or complaint without any related criminal charges.

(1) The charging document must include the information required by (c)(2) and the administrative bulletin issued under (c)(3) of this rule. The defendant's social security number may not appear on an information or complaint. Each defendant joined in an information or complaint must be assigned a separate case number. The prosecuting authority must provide the court with an additional copy of the charging document for each defendant's case file. Except as provided in (2)

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below, an information or complaint must name an individual or individuals as the defendant.

(2) An information or complaint charging a corporation, limited liability company, or other entity must name the defendant as provided in (c)(8). The summons must be served on a person listed in (c)(8).

(3) A summons shall be issued by a judge or magistrate only if probable cause has been established as provided in Criminal Rule 4(a)(1). 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.

(4) 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.

(5) 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 subsection (e).

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(e) Optional Court Appearance.

(1) 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:

(A) appear for arraignment at the time and place indicated on the citation. Arraignment must be conducted in accordance with District Court Criminal Rule 1; or

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

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

(D) 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). The court or municipality shall dismiss the citation upon notification from the agency or proof of compliance.

(2) A defendant who mails or delivers an unsigned copy of the citation with the defendant's payment will be deemed to have entered a plea of no contest unless the defendant designates otherwise.

(f) Mandatory Court Appearance. 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:

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(1) appear for arraignment at the time and place indicated on the citation or summons. Arraignment must be conducted in accordance with District Court Criminal Rule 1; or

(2) 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. The court or municipality shall dismiss the citation upon notification from the agency.

(g) Pleas.

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

(2) When a plea of not guilty is entered, the defendant is not required to post bail pending trial. When trial is requested, the case will be set on the calendar and notice sent to the parties.

(h) Defendants Under 18. A defendant under 18 years of age 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.

(i) Failure to Respond or to Appear.

(1) *Failure to Respond to Citation.*

(A) *Default Judgment.* If a defendant fails to respond as provided in (e) or (f) of this rule, the court may, without finding probable cause to believe the defendant committed the offense, enter a default judgment of conviction as provided in (j).

(B) *Warning Notice Requirement.* At least 15 days before default judgment is entered, a notice advising the defendant of the consequences of a failure to respond must be sent to the defendant at

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the address on record with the Division of Motor Vehicles or the address shown on the citation.

(C) *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 (B) above and the defendant failed to respond. If the municipality has entered into an agreement to file citations electronically under District Court Criminal Rule 8.2, 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.

(2) *Failure to Appear After Summons.* If a defendant who has been served a summons issued under (d) of this rule fails to appear, the court may enter a default judgment of conviction as provided in (j).

(3) *Failure to Appear for Trial.* If a defendant has been sent notice of a trial date and then 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 (j). The notice of a trial date must advise the defendant of the consequences if the defendant fails to appear.

(4) *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 cases as provided in (q) and (r) of this rule.

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(j) Judgment, Costs, Fees, and Relief from Default Judgment.

(1) *Fine.* A judgment of conviction must order payment of the fine as follows:

(A) After Plea or Trial.

(i) Pursuant to AS 12.25.230(c), the fine may not exceed the amount listed on the bail forfeiture or fine schedule. A scheduled fine amount may not be reduced if a municipal ordinance prohibits reduction of the fine amount.

(ii) For offenses that require a mandatory court appearance, the court may impose a fine up to the maximum authorized by statute or ordinance.

(B) Default Judgment. A default judgment entered under (i) must require the defendant to pay the scheduled bail or fine amount if the offense is an optional court appearance offense or the maximum penalty if the offense is a mandatory court appearance offense.

(2) *Surcharge.* All judgments must order payment of any applicable surcharge.

(3) Forfeiture.

(A) A default judgment or a judgment entered on a no contest plea must order forfeiture of any seized items listed on the citation or other charging document.

(B) All other judgments of conviction must order forfeiture of:

(i) all fish and game seized under AS 16.05.190 and listed on the citation or other charging document,

(ii) all fish, or its fair market value, taken or retained as a result of a strict liability commercial fishing violation as provided in AS 16.05.722(b),

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(iii) any seized items listed on the citation or other charging document if a statute or ordinance requires the item to be forfeited upon conviction, and

(iv) any other items ordered by the court to be forfeited when forfeiture is authorized by statute or ordinance.

(C) Forfeited items shall be disposed of at the discretion of the prosecuting authority, unless otherwise ordered by the court.

(4) *Restitution.* If the offense is a mandatory appearance offense, the court may order restitution as provided in AS 16.05.925(b) or any other statute or ordinance authorizing restitution. If the offense is a mandatory appearance offense, any default judgment entered must order payment of any applicable restitution listed in AS 16.05.925(b). As provided in AS 16.05.165(d), restitution under AS 16.05.925(b) may not be ordered for offenses for which bail has been forfeited under AS 16.05.165(c).

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

(6) *Collection Costs - All Judgments.*

(A) The defendant will be assessed \$25 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 subparagraph belong to the political entity that prosecuted the offense.

(B) For execution procedures not covered under (A), the defendant will be assessed collection costs in the amount authorized

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by Civil Rule 69 and Administrative Rule 11.

(7) *Relief from Default Judgment.*

(A) Upon a motion filed within one year after entry of a default judgment under (j)(1), (2) or (3), the court may vacate the judgment if the defendant shows that either

(i) there is a good reason for the failure to respond or appear and the defendant has a meritorious defense to the offense charged, or

(ii) the proceedings were not fair to the defendant because the defendant did not receive notice of the charge or the procedure for responding to the charge or that a default judgment would be entered if defendant did not respond to the charge.

(B) If the judgment is vacated, the case must be set for trial unless the prosecution dismisses the case or, if the offense is correctable, the defendant shows proof of compliance with the law.

(8) *Authority of Clerk.* The clerk is authorized to enter judgments of conviction when a defendant mails or delivers to the clerk a plea of no contest, fails to respond to a citation or summons, or fails to appear for trial.

(9) *Disposition of Records of Conviction.* The court system must transmit notice of conviction to the following agencies:

(A) In the case of a motor vehicle offense, the conviction will be transmitted to the Department of Administration, Division of Motor Vehicles.

(B) In the case of a fish and game violation, the conviction will be transmitted to the Department of Public Safety.

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(C) In the case of a commercial fishing violation, the conviction and sentence will be transmitted to the Commercial Fisheries Entry Commission as required by AS 16.43.880 and AS 16.43.970.

(k) Dismissal and Deferred Prosecution.

(1) *By Prosecuting Attorney.* The prosecuting attorney may file a dismissal of a minor offense citation or information.

(2) *By Court.* The court may dismiss a citation or information if

(A) there is unnecessary delay in bringing a defendant to trial pursuant to (o) of this rule;

(B) the prosecution or the prosecution's representative under (l) of this rule fails to appear for trial; or

(C) dismissal is in furtherance of justice. The reasons for the dismissal shall be set forth in the order or on the record.

(3) *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.

(4) *Deferred Prosecution.* When a citation has been filed with the court and the prosecutor 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 must file the agreement with the court. 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

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completion of the agreement, the prosecutor 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.

(l) Non-Attorney Representation.

(1) *Representation of State or Municipality by Non-Attorney.* A municipal corporation or the State of Alaska may be represented by an employee of the state, the municipality, or other political subdivision of the state for the prosecution of minor offenses under this rule. The representative may give testimony, offer exhibits, and call witnesses for examination by the court, but may not examine witnesses, make opening and closing arguments, or otherwise act as an attorney. The representative need not be employed by the same government entity represented, but must be authorized by the entity to represent it.

(2) *Corporations.* A corporation or other public or private organization may be represented in any stage of a minor offense proceeding including an appeal by any officer or employee authorized in writing to represent it.

(m) Temporary Transfer of Minor Offense Cases.

(1) 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.

(2) A minor offense case may be temporarily transferred from the original court to a second court for purposes of arraignment under the circumstances described below:

(A) If there is a mandatory court appearance for the minor offense, the defendant may request a temporary transfer from the

original court to the court nearest the place where the defendant resides or is employed; or

(B) If a warrant relating to the minor offense is outstanding, the defendant may request a temporary transfer from the original court to the nearest court; or

(C) If the defendant is arrested on a bench warrant relating to the minor offense, the defendant may request a temporary transfer from the original court to the court where the defendant was arrested.

(3) The request for temporary transfer 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.

(4) If the requirements of subparagraph (2) are satisfied, the clerk shall grant the request for temporary transfer. Approval of the prosecuting authority at the original court is not required.

(5) 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 quash any outstanding warrants relating to the minor offense. If the request is granted by the second court and the original court cannot immediately be contacted, the clerk in the second court shall quash any outstanding warrants relating to the minor offense.

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

(7) 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.

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

(n) **Change of Venue.** A request to change the place of trial in a minor offense case may be made for the reasons stated in AS 22.15.080. It must be made by motion and must be supported by affidavit. The opposing party has five days from the date of service to file a response. If the court grants the motion, the clerk in the court where the case is filed must transmit the file to the new court.

(o) **Speedy Trial - When Time Commences to Run.** The right to speedy trial on minor offenses is governed by Criminal Rule 45. A defendant charged with a minor offense must be tried within 120 days from the date the defendant's request for trial is received by the court or the municipality, whichever occurs first. If the defendant is to be tried after a judgment is vacated, a mistrial, an order for a new trial, or an appeal, the time for trial shall run from the date the judgment was vacated, the date of mistrial or order granting a new trial, or the remand date.

(p) **Peremptory Challenges.** A judge in a minor offense case may not be peremptorily challenged under either Criminal Rule 25(d) or AS 22.20.022.

(q) **Minor Offense Joined with Related Criminal Offense.**

(1) A prosecutor may join a minor offense with a related criminal offense under the circumstances described in Criminal Rule 8(a).

(2) Except as provided in (r), a minor offense citation may not be filed in a criminal case.

(3) The minor offense joined with a criminal offense 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)

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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 (c)(2).

(4) If a citation is issued for a minor offense and the prosecutor wishes to join that offense with a criminal offense, the prosecutor must file a "Notice Joining Minor Offense with Criminal Offense" in the minor offense case. This notice will close the minor offense case. The prosecutor must list the minor offense as a count in the criminal charging document as provided in (3).

(5) Criminal procedures rather than minor offense procedures apply to minor offenses joined with related criminal offenses.

(6) If the minor offense joined with a related criminal charge is listed on a bail forfeiture schedule or municipal fine schedule, the fine may not exceed the amount listed on the schedule. A scheduled fine amount may not be reduced if a municipal ordinance prohibits reduction of the fine amount.

(r) **Minor Offenses that Must be Filed as Criminal Cases.** The offenses listed as exceptions to the minor offense case numbering policy in Administrative Bulletin 7 must be filed as criminal cases and must be assigned criminal case numbers, even though these offenses are not classified by statute as criminal offenses. Criminal procedures rather than minor offense procedures apply to these offenses.

(s) **Telephonic Participation in Minor Offense Cases.** In any proceeding the defendant may waive the right to be present and request to participate by telephone. The defendant's waiver of the right to be physically present may be obtained orally on the record or in writing. The court may allow telephonic participation of one or more parties, witnesses, counsel or the judge at trial or any other proceeding

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unless good cause or due process requires otherwise. The responsibility for the cost of a telephonic hearing is governed by Administrative Rule 48(b).

Note: Subsection (c)(3) refers to Administrative Bulletin 83 "Form of Citation" available on the court system website at <http://www.courts.alaska.gov/adminbullpublic.htm>.

Note: The personal service requirement in (c)(6), (c)(7), and (c)(8) is based on AS 12.25.180 and .190 which contemplate that the citation will be issued when "a peace officer stops or contacts a person for the commission of an infraction or a violation..." Alaska Statute 12.25.175(a)(2) requires that the citation state that the citation "was personally served on the person charged."

Note: Subsection (k)(4) clarifies that defensive driving course dismissals are within the jurisdiction of the prosecuting authority as a form of deferred prosecution.

Note to (r): Under Administrative Bulletin 7, available on the court system website at <http://www.courts.alaska.gov/adminbullpublic.htm>, the following offenses must be filed as a criminal case:

- AS 04.16.050(b) Minor Consuming Alcohol;
- AS 04.16.050(c) Repeat Minor Consuming;
- AS 28.35.280 Minor Operating Vehicle after Consuming;
- AS 28.35.285 Minor Refusing To Submit to Chemical Test, and
- AS 28.35.290 Minor Operating Vehicle Within 24 Hours of Being Cited for Offenses Under AS 28.35.280 or 285.

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DATED: December 6, 2012

EFFECTIVE DATE: April 15, 2013

/s/
Chief Justice Fabe

/s/
Justice Carpeneti

/s/
Justice Winfree

/s/
Justice Stowers

/s/
Justice Maassen

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IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1797

Renaming and Renumbering
District Court Criminal Rules 8,
8.1 and 8.2 as Minor Offense
Rules 1 – 22

IT IS ORDERED:

District Court Criminal Rules 8, 8.1 and 8.2 are renamed and renumbered as Minor Offense Rules 1 – 22 as follows:

Alaska Rules of Minor Offense Procedure

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. It is 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 2. Minor Offense Defined. Any offense that meets one of the definitions below is a minor offense, including an offense that is classified as a misdemeanor by statute, regulation or ordinance. An offense is not a minor offense under these rules if the only penalty is a civil penalty. As used in these rules, "minor offense" means

- (a) an offense classified by statute as an infraction or a violation; or
- (b) any offense for which a bail forfeiture amount has been authorized by statute and established by supreme court order; or
- (c) any municipal motor vehicle or traffic offense for which a fine amount has been established in a fine schedule adopted by municipal ordinance under AS 28.05.151; or

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- (d) any offense under a municipal ordinance for which a conviction cannot result in incarceration or the loss of a valuable license and for which a fine schedule has been established under AS 29.25.070(a); or
- (e) any offense under statute or municipal ordinance for which a conviction cannot result in incarceration, a fine greater than \$500, or the loss of a valuable license; or
- (f) any fish and game offense in 5 AAC charged as a strict liability offense; or
- (g) any commercial fishing offense listed in AS 16.05.722 or 5 AAC charged as a strict liability offense (classified in AS 16.05.722 as a violation).

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 (h) below, a citation must name an individual as the defendant.
- (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.
- (c) **Content and Format.** The administrative director shall establish content and format requirements for minor offense citations by administrative bulletin, including requirements that the citations include:
 - (1) the essential facts constituting the offense charged,
 - (2) notice of the defendant's rights listed in AS 12.25.200,
 - (3) the procedure for responding to the citation,
 - (4) the consequences of a failure to respond, and

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(5) if forfeiture of seized items is authorized by statute or ordinance, the citation must list the seized items and state that they will be forfeited if defendant waives appearance by entering a no contest plea or if a default judgment is entered.

(d) **Adequacy of Citation.** If a citation meets the requirements set forth in the bulletin, it is presumed to provide adequate notice of the charges, the defendant's rights listed in AS 12.25.200, the procedure for responding to the citation, the consequences of failure to respond, and the potential for forfeiture. In addition, all citations filed with the court must comply with any standards adopted by the Department of Public Safety under AS 12.25.175.

(e) **Social Security Number.** The defendant's social security number may not appear on a citation. This subsection applies to citations issued on or after April 15, 2013.

(f) **Required Statements.** The officer must state on the citation that the officer has probable cause to believe the defendant committed the offense but need not state the grounds for the probable cause determination beyond the essential facts. The officer must certify, under penalty of perjury, that the information in the citation is true and that the officer personally served the citation on the defendant.

(g) **Personal Service.** In this rule, personal service means the officer must deliver the citation to the defendant personally in accordance with AS 12.25.175-190.

(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 personally 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 personal 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.

(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; or

(2) the citation does not include a certification by the officer, made under penalty of perjury, that the information in the citation is true and that the officer personally served the citation on the defendant.

Note: Rule 3(c) refers to Administrative Bulletin 83 "Form of Citation" available on the court system website at <http://www.courts.alaska.gov/adminbullpublic.htm>.

Note: The personal service requirement in Rule 3(f), (g), and (h) is based on AS 12.25.180 and .190 which contemplate that the citation will be issued when "a peace officer stops or contacts a person for the commission of an infraction or a violation..." Alaska Statute 12.25.175(a)(2) requires that the citation state that the citation "was personally served on the person charged."

Rule 4. Minor Offenses Not Charged on a Citation.

(a) This rule applies to minor offenses charged on an information or complaint without any related criminal charges.

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(b) The charging document must include the information required by Rule 3(b) and the administrative bulletin issued under Rule 3(c). The defendant's social security number may not appear on an information or complaint. Each defendant joined in an information or complaint must be assigned a separate case number. The prosecuting authority must provide the court with an additional copy of the charging document for each defendant's case file. Except as provided in (c) below, an information or complaint must name an individual or individuals as the defendant.

(c) An information or complaint charging a corporation, limited liability company, or other entity must name the defendant as provided in Rule 3(h). The summons must be served on a person listed in Rule 3(h).

(d) A summons shall be issued by a judge or magistrate only if probable cause has been established as provided in Criminal Rule 4(a)(1). 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) 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.

(f) 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.

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) appear for arraignment at the time and place indicated on the citation. Arraignment must be conducted in accordance with District Court Criminal Rule 1; 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). The court or municipality shall dismiss the citation upon notification from the agency or proof of compliance.

(b) A defendant who mails or delivers an unsigned copy of the citation with the defendant's payment will be deemed to have entered a plea of no contest unless the defendant designates otherwise.

Rule 6. Mandatory Court Appearance. 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:

(a) appear for arraignment at the time and place indicated on the citation or summons. Arraignment must be conducted in accordance with District Court Criminal Rule 1; or

(b) 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. The court or municipality shall dismiss the citation upon notification from the agency.

Rule 7. Pleas.

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

(b) When a plea of not guilty is entered, the defendant is not required to post bail pending trial. When trial is requested, the case will be set on the calendar and notice sent to the parties.

Rule 8. Defendants Under 18. A defendant under 18 years of age 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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(1) *Default Judgment.* If a defendant fails to respond as provided in Rules 5 or 6, 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.

(2) *Warning Notice Requirement.* At least 15 days before default judgment is entered, a notice advising the defendant of the consequences of a failure to respond must be sent to the defendant at the address on record with the Division of Motor Vehicles or the address shown on the citation.

(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.

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

(c) **Failure to Appear for Trial.** If a defendant has been sent notice of a trial date and then 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 notice of a trial date must advise the defendant of the consequences if the defendant fails to appear.

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(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 cases as provided in Rule 17 and Rule 18.

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

(a) **Fine.** A judgment of conviction must order payment of the fine as follows:

(1) *After Plea or Trial.*

(A) Pursuant to AS 12.25.230(c), the fine may not exceed the amount listed on the bail forfeiture or fine schedule. A scheduled fine amount may not be reduced if a municipal ordinance prohibits reduction of the fine amount.

(B) For offenses that require a mandatory court appearance, the court may impose a fine up to the maximum authorized by statute or ordinance.

(2) *Default Judgment.* A default judgment entered under Rule 9 must require the defendant to pay the scheduled bail or fine amount if the offense is an optional court appearance offense or the maximum penalty if the offense is a mandatory court appearance offense.

(b) **Surcharge.** All judgments must order payment of any applicable surcharge.

(c) **Forfeiture.**

(1) A default judgment or a judgment entered on a no contest plea must order forfeiture of any seized items listed on the citation or other charging document.

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(2) All other judgments of conviction must order forfeiture of:

(A) all fish and game seized under AS 16.05.190 and listed on the citation or other charging document,

(B) all fish, or its fair market value, taken or retained as a result of a strict liability commercial fishing violation as provided in AS 16.05.722(b),

(C) any seized items listed on the citation or other charging document if a statute or ordinance requires the item to be forfeited upon conviction, and

(D) any other items ordered by the court to be forfeited when forfeiture is authorized by statute or ordinance.

(3) Forfeited items shall be disposed of at the discretion of the prosecuting authority, unless otherwise ordered by the court.

(d) **Restitution.** If the offense is a mandatory appearance offense, the court may order restitution as provided in AS 16.05.925(b) or any other statute or ordinance authorizing restitution. If the offense is a mandatory appearance offense, any default judgment entered must order payment of any applicable restitution listed in AS 16.05.925(b). As provided in AS 16.05.165(d), restitution under AS 16.05.925(b) may not be ordered for offenses for which bail has been forfeited under AS 16.05.165(c).

(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. Court costs imposed under this rule must be deposited in the state general fund.

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

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(1) The defendant will be assessed \$25 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.

(2) For execution procedures not covered under (1), the defendant will be assessed collection costs in the amount authorized by Civil Rule 69 and Administrative Rule 11.

(g) Relief from Default Judgment.

(1) Upon a motion filed within one year after entry of a default judgment under Rule 9(a), (b) or (c), the court may vacate the judgment if the defendant shows that either

(A) there is a good reason for the failure to respond or appear and the defendant has a meritorious defense to the offense charged, or

(B) the proceedings were not fair to the defendant because the defendant did not receive notice of the charge or the procedure for responding to the charge or that a default judgment would be entered if defendant did not respond to the charge.

(2) If the judgment is vacated, the case must be set for trial unless the prosecution dismisses the case or, if the offense is correctable, the defendant shows proof of compliance with the law.

(h) Authority of Clerk. The clerk is authorized to enter judgments of conviction when a defendant mails or delivers to the clerk a plea of no contest, fails to respond to a citation or summons, or fails to appear for trial.

(i) **Disposition of Records of Conviction.** The court system must transmit notice of conviction to the following agencies:

(1) In the case of a motor vehicle offense, the conviction will be transmitted to the Department of Administration, Division of Motor Vehicles.

(2) In the case of a fish and game violation, the conviction will be transmitted to the Department of Public Safety.

(3) In the case of a commercial fishing violation, the conviction and sentence will be transmitted to the Commercial Fisheries Entry Commission as required by AS 16.43.880 and AS 16.43.970.

Rule 11. Dismissal and Deferred Prosecution.

(a) **By Prosecuting Attorney.** The prosecuting attorney may file a dismissal of a minor offense citation or information.

(b) **By Court.** The court may dismiss a citation or information if

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

(2) the prosecution or the prosecution's representative under (l) of this rule fails to appear for trial; or

(3) dismissal is in furtherance of justice. The reasons for the dismissal shall be set forth in the order or on the record.

(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 citation has been filed with the court and the prosecutor 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 must file the agreement with the court. 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 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.** A municipal corporation or the State of Alaska may be represented by an employee of the state, the municipality, or other political subdivision of the state for the prosecution of minor offenses under this rule. The representative may give testimony, offer exhibits, and call witnesses for examination by the court, but may not examine witnesses, make opening and closing arguments, or otherwise act as an attorney. The representative need not be employed by the same government entity represented, but must be authorized by the entity to represent it.

(b) **Corporations.** A corporation or other public or private organization may be represented in any stage of a minor offense proceeding, including an appeal, by any officer or employee authorized in writing to represent it.

Rule 13. Temporary Transfer of Minor Offense Cases.

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- (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) A minor offense case may be temporarily transferred from the original court to a second court for purposes of arraignment under the circumstances described below:
- (1) If there is a mandatory court appearance for the minor offense, the defendant may request a temporary transfer from the original court to the court nearest the place where the defendant resides or is employed; or
 - (2) If a warrant relating to the minor offense is outstanding, the defendant may request a temporary transfer from the original court to the nearest court; or
 - (3) If the defendant is arrested on a bench warrant relating to the minor offense, the defendant may request a temporary transfer from the original court to the court where the defendant was arrested.
- (c) The request for temporary transfer 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 quash any outstanding warrants relating to the minor offense. If the request is granted by the second court and the original

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court cannot immediately be contacted, the clerk in the second court shall quash any outstanding warrants relating to the minor offense.

(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 14. Change of Venue. A request to change the place of trial in a minor offense case may be made for the reasons stated in AS 22.15.080. It must be made by motion and must be supported by affidavit. The opposing party has five days from the date of service to file a response. If the court grants the motion, the clerk in the court where the case is filed must transmit the file to the new court.

Rule 15. Speedy Trial - When Time Commences to Run. The right to speedy trial on minor offenses is governed by Criminal Rule 45. A defendant charged with a minor offense must be tried within 120 days from the date the defendant's request for trial is received by the court or the municipality, whichever occurs first. If the defendant is to be tried after a judgment is vacated, a mistrial, an order for a new trial, or an appeal, the time for trial shall run from the date the judgment was vacated, the date of mistrial or order granting a new trial, or the remand date.

Rule 16. Peremptory Challenges. A judge in a minor offense case may not be peremptorily challenged under either Criminal Rule 25(d) or AS 22.20.022.

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Rule 17. Minor Offense Joined with Related Criminal Offense.

- (a) A prosecutor may join a minor offense with a related criminal offense under the circumstances described in Criminal Rule 8(a).
- (b) Except as provided in Rule 18, a minor offense citation may not be filed in a criminal case.
- (c) The minor offense joined with a criminal offense 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) If a citation is issued for a minor offense and the prosecutor wishes to join that offense with a criminal offense, the prosecutor must file a "Notice Joining Minor Offense with Criminal Offense" in the minor offense case. This notice will close the minor offense case. The prosecutor must list the minor offense as a count in the criminal charging document as provided in subsection (c).
- (e) Criminal procedures rather than minor offense procedures apply to minor offenses joined with related criminal offenses.
- (f) If the minor offense joined with a related criminal charge is listed on a bail forfeiture schedule or municipal fine schedule, the fine may not exceed the amount listed on the schedule. A scheduled fine amount may not be reduced if a municipal ordinance prohibits reduction of the fine amount.

Rule 18. Minor Offenses that Must be Filed as Criminal Cases.

The offenses listed as exceptions to the minor offense case numbering policy in Administrative Bulletin 7 must be filed as criminal cases and must be assigned criminal case numbers, even though these offenses

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are not classified by statute as criminal offenses. Criminal procedures rather than minor offense procedures apply to these offenses.

Note: Under Administrative Bulletin 7, available on the court system website at <http://www.courts.alaska.gov/adminbullpublic.htm>, the following offenses must be filed as a criminal case:

- AS 04.16.050(b) Minor Consuming Alcohol;
- AS 04.16.050(c) Repeat Minor Consuming;
- AS 28.35.280 Minor Operating Vehicle after Consuming;
- AS 28.35.285 Minor Refusing To Submit to Chemical Test, and
- AS 28.35.290 Minor Operating Vehicle Within 24 Hours of Being Cited for Offenses Under AS 28.35.280 or 285.

Rule 19. Telephonic Participation in Minor Offense Cases. In any proceeding the defendant may waive the right to be present and request to participate by telephone. The defendant's waiver of the right to be physically present may be obtained orally on the record or in writing. The court may allow telephonic participation of one or more parties, witnesses, counsel or the judge at trial or any other proceeding unless good cause or due process requires otherwise. The responsibility for the cost of a telephonic hearing is governed by Administrative Rule 48(b).

Rule 20. Form of Judgment.

(a) **Electronic Record Is Official Judgment.** The official judgment in a minor offense case is the electronic record in the case management system. The clerk will provide a printout of the electronic judgment upon request.

(b) **Content.** An electronic judgment must contain the following information:

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- (1) the case number,
- (2) the date of the offense,
- (3) the defendant's full name,
- (4) the following information if it appears on the citation:
 - (A) the defendant's date of birth,
 - (B) the defendant's address, and
 - (C) the defendant's driver's license or ID number.
- (5) the name of the offense and number of the statute, regulation or ordinance of which the defendant is charged or convicted,
- (6) the DMV code of the offense if it appears on the citation,
- (7) the defendant's plea, and
- (8) the final disposition (including sentence).

Rule 21. Commencement of Time for Appeal; Writ of Execution.

(a) Commencement of Time for Appeal.

(1) *Judgment Based on No Contest Plea.* When a defendant mails or delivers a no contest plea, a copy of the judgment will not be distributed to the parties, except upon request. To appeal a judgment based on a no contest plea, other than an appeal of the penalty, the defendant must first move to withdraw the plea under Criminal Rule 11. Appeal may be taken from an order denying (or granting) the motion. The appeal must be filed within 30 days after the date shown in the clerk's certificate of distribution on the order.

(2) *Default Judgment.* When a judgment of conviction is entered under Rule 9, a copy of the judgment will not be distributed to the parties, except upon request. To appeal a default judgment, the defendant must first move to vacate or modify the judgment under Rule 10(g). Appeal may be taken from an order denying (or granting) the motion. The appeal must be

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filed within 30 days after the date shown in the clerk's certificate of distribution on the order.

(3) *Judgment Entered in Open Court.* When judgment of conviction is entered in open court, parties who are present will be given written notice of the terms of the judgment. Any appeal must be filed within 30 days from the date the judgment is announced in court. This also applies to an order of dismissal entered in open court.

(4) *Matters Taken Under Advisement.* When a court takes a matter under advisement, the court will reduce its decision to writing. A copy of the written order or judgment will be distributed to the parties. Any appeal must be filed within 30 days from the date of distribution of the order or judgment.

(b) **Writ of Execution.** Writs of execution may be issued to enforce minor offense judgments, including electronic judgments, as provided in Civil Rule 69.

Rule 22. Electronic Citations in Minor Offense Cases.

(a) **Authorization for Filing Citations Electronically.** The administrative director may enter into an agreement with a law enforcement agency to allow the law enforcement agency to file citations charging minor offenses, as defined Rule 2, by transmitting data electronically rather than by filing paper citations. The administrative director may enter into an agreement if the law enforcement agency's systems and procedures assure that:

(1) the charging officer will issue a paper citation to the defendant in accordance with AS 12.25.190;

(2) a paper citation issued from an electronic device will contain the charging officers electronic or digital signature as defined in AS 09.80.190;

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(3) the court will have the ability to view an electronic version of the paper citation that the charging officer issued to the defendant, including the charging officers electronic, digital, or handwritten signature;

(4) the agency has a written acknowledgement from each peace officer authorized to issue electronic citations certifying that the officer understands that affixing an electronic or digital signature to a citation is the legally binding equivalent of signing a citation by hand, and that by affixing an electronic or digital signature, the officer intends to be bound by the signature;

(5) the agency employs policies that hold individual officers accountable and responsible for actions initiated under their electronic or digital signatures; and

(6) the agency employs adequate security procedures to verify that an electronic signature, record, or performance is that of a specific person and to detect changes or errors in the electronic records related to the citation.

(b) **Electronic Signature.** A charging officer's electronic or digital signature on a citation is the legally binding equivalent of the officer's handwritten signature and satisfies the requirement of Criminal Rule 3(a) that a citation for a minor offense must be signed with a certification under penalty of perjury that the citation is true.

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DATED: January 22, 2013

EFFECTIVE DATE: April 15, 2013

/s/
Chief Justice Fabe

/s/
Justice Carpeneti

/s/
Justice Winfree

/s/
Justice Stowers

/s/
Justice Maassen

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MUNICIPALITY OF ANCHORAGE



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Mayor Dan Sullivan

September 3, 2013

Jesse Kiehl
c/o Senator Egan
State Capitol Room 9
Juneau, Alaska 99801

Re: *Rule 8 - Parking Tickets and Changes to District Court Minor Offense Rules*
Case No. 5 – Project; Dept. of Law Matter No. L13-1057

Dear Mr. Kiehl:

Please relay to Senator Egan our appreciation for the opportunity of having the Alaska Municipal Attorneys Association (AMAA) comment on the proposed draft legislation to correct some of the defects in A.S. 12.25.175(a) and 12.25.200(b).

I did contact the members of AMAA to seek comments on your draft. As it turned out very few responded and most of those who did respond indicated they had already written Senator Egan on their own. As such, I am not able to give you an AMAA specific position.

However, I would like to suggest some changes that the Municipality of Anchorage (MOA) would like to see regarding the draft legislation.

Like every municipality, we were concerned when we first learned that the statute, and the court system's subsequent rules, meant that personal service would be required for parking tickets and other minor offenses. This stood a well-functioning system on its head. Along with the fact that warrants for failure to appear on a ticket citation would no longer be issued, this change essentially pulled the rug out from any effort at effective parking enforcement. Reasonable parking enforcement is central to providing the necessary on-street parking turnover that is critical to businesses, government offices, and nonprofits that are located in city cores and provide shopping and services to residents and visitors.

The other, perhaps even more significant, concern is that the new rule also negatively affects service of other types of citations, such as those relating to land use and zoning enforcement, building code violations, health and safety enforcement, and animal control enforcement. In the past, it has been allowed that such citations could be served by posting them on the property at issue or by mailing them certified mail with return receipt requested.

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Jesse Kiehl
September 3, 2013

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I think Senator Egan's proposed changes are on the right track in terms of alleviating the burden on enforcement and allowing service other than in person. However, I would recommend a few changes to broaden it a bit further, while still protecting the due process rights of those who receive a citation.

We think a very good way to insure proper service without requiring personal service is to rely on Rule 4 of the Alaska Rules of Civil Procedure. It describes in detail all the types of proper service that are allowed under the law including service by mail or by process server. (I have also attached a copy of Rule 4 for easy reference).

Allowing service by any of the methods described in Rule 4 seems particularly appropriate since Rule 4 is used for all other civil matters in the state – everything from parental termination proceedings, to divorce, to major civil lawsuits. It seems particularly wrongheaded that something as minor as a parking ticket and other minor citations would be required to use *only* personal service when all other cases, with much more at stake, can be served by other, more cost effective methods. Adding Rule 4 would rectify that seeming contradiction.

In addition we would suggest having a definition of "property" so it is clear that real property and other personal property, in addition to motor vehicles, can be posted with a citation if the individual is not present. For example, in a matter involving a land use violation the real property could be posted with a notice of the violation.

I have attached a copy of Senator Egan's draft legislation with our proposed additions included.

Thank you for taking our recommendations into consideration.

Sincerely,



Dennis A. Wheeler
Municipal Attorney

cc: Todd K. Sherwood, Assistant Municipal Attorney

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Rules of Civil Procedure, Rule 4

Rule 4. Process

(a) Summons--Issuance. Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver it to the plaintiff or the plaintiff's attorney, who shall cause the summons and a copy of the complaint to be served in accordance with this rule. Upon request of the plaintiff separate or additional summonses shall issue against any defendants.

(b) Summons--Form.

(1) The summons shall be signed by the clerk, bear the seal of the court, identify the court and the parties, be directed to the defendant, and state the name and address of the plaintiff's attorney or the plaintiff's name and address if the plaintiff is unrepresented. It shall also state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in judgment by default against the defendant for the relief demanded in the complaint. The summons must also notify the defendant that the defendant has a duty to inform the court and all other parties, in writing, of the defendant's or defendant's attorney's current mailing address and telephone number, and to inform the court and all other parties of any changes, as set out in Civil Rule 5(i).

(2) The summons must be on the current version of the summons form developed by the administrative director or a duplicate of the court form. A party or attorney who lodges a duplicate certifies by lodging the duplicate that it conforms to the current version of the court form.

(c) Methods of Service--Appointments to Serve Process--Definition of Peace Officer.

(1) Service of all process shall be made by a peace officer, by a person specially appointed by the Commissioner of Public Safety for that purpose or, where a rule so provides, by registered or certified mail.

(2) A subpoena may be served as provided in Rule 45 without special appointment.

(3) Special appointments for the service of all process relating to remedies for the seizure of persons or property pursuant to Rule 64 or for the service of process to enforce a judgment by writ of execution shall only be made by the Commissioner of Public Safety after a thorough investigation of each applicant, and such appointment may be made subject to such conditions as appear proper in the discretion of the Commissioner for the protection of the public. A person so appointed must secure the assistance of a peace officer for the completion of process in each case in which the person may encounter physical resistance or obstruction to the service of process.

(4) Special appointments for the service of all process other than the process as provided under paragraph (3) of this subdivision shall be made freely when substantial savings in travel fees and costs will result.

(5) The term "peace officer" as used in these rules shall include any officer of the state police, members of the police force of any incorporated city, village or borough, United States Marshals and their deputies, other officers whose duty is to enforce and preserve the public peace, and within the authority conferred upon them, persons specially appointed pursuant to paragraph (3) of this subdivision.

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(d) Summons--Personal Service. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) *Individuals.* Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to the individual personally, or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(2) *Infants.* Upon an infant, by delivering a copy of the summons and complaint to such infant personally, and also to the infant's father, mother or guardian, or if there be none within the state, then to any person having the care or control of such infant, or with whom the infant resides, or in whose service the infant is employed; or if any service cannot be made upon any of them, then as provided by order of the court.

(3) *Incompetent Persons.* Upon an incompetent person, by delivering a copy of the summons and complaint personally--

(A) To the guardian of the person or a competent adult member of the person's family with whom the person resides, or if the person is living in an institution, then to the director or chief executive officer of the institution, or if service cannot be made upon any of them, then as provided by order of the court; and

(B) Unless the court otherwise orders, also to the incompetent person.

(4) *Corporations or Limited Liability Companies.* Upon a domestic or foreign corporation or limited liability company, by delivering a copy of the summons and of the complaint to a managing member, an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process.

(5) *Partnerships.* Upon a partnership, by delivering a copy of the summons and of the complaint personally to a general partner of such partnership, or to a managing or general agent of the partnership, or to any other agent authorized by appointment or by law to receive service of process, or to a person having control of the business of the partnership; or if service cannot be made upon any of them, then as provided by order of the court.

(6) *Unincorporated Associations.* Upon an unincorporated association, by delivering a copy of the summons and the complaint personally to an officer, a managing or general agent, or to any other person authorized by appointment or by law to receive service of process; or if service cannot be made upon any of them, then as provided by order of the court.

(7) *State of Alaska.* Upon the state, by sending a copy of the summons and the complaint by registered or certified mail to the Attorney General of Alaska, Juneau, Alaska, and [a] to the chief of the attorney general's office in Anchorage, Alaska, when the matter is filed in the Third Judicial District; or [b] to the chief of the attorney general's office in Fairbanks, Alaska, when the matter is filed in the Fourth Judicial District.

(8) *Officer or Agency of State.* Upon an officer or agency of the state, by serving the State of Alaska as provided in the preceding paragraph of this rule, and by delivering a copy of the summons and of the complaint to such officer or agency. If the agency is a

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corporation, the copies shall be delivered as provided in paragraph (4) of this subdivision of this rule.

(9) *Public Corporations.* Upon a borough or incorporated city, town, school district, public utility district, or other public corporation in the state, by delivering a copy of the summons and of the complaint to the chief executive officer or chief clerk or secretary thereof.

(10) *Unknown Parties.* Upon unknown persons who may be made parties in accordance with statute and these rules, by publication as provided in subdivision (e) of this rule.

(11) *Officer or Agency of State as Agent for Non-governmental Defendant.* Whenever, pursuant to statute, an officer or an agency of the State of Alaska has been appointed as agent to receive service for a non-governmental defendant, or whenever, pursuant to statute, an officer or agency of the State of Alaska, has been deemed, considered or construed to be appointed as agent for a non-governmental defendant by virtue of some act, conduct or transaction of such defendant, service of process shall be made in the manner provided by statute.

(12) *Personal Service Outside State.* Upon a party outside the state in the same manner as if service were made within the state, except that service shall be made by a sheriff, constable, bailiff, peace officer or other officer having like authority in the jurisdiction where service is made, or by a person specifically appointed by the court to make service, or by service as provided in subsection (h) of this rule. In an action to enforce any lien upon or claim to, or to remove any encumbrance or lien or cloud upon the title to, real or personal property within the state, such service shall also be made upon the person or persons in possession or in charge of such property, if any. Proof of service shall be in accordance with (f) of this rule.

(13) *Personal Service in a Foreign Country.* Upon an individual in a foreign country--
(A) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(B) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(i) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(ii) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(iii) unless prohibited by the law of the foreign country, by delivery to the individual personally of a copy of the summons and the complaint, or by any form of mail requiring a signed receipt by the party to be served, so long as the return receipt is filed with the court; or

(C) by other means not prohibited by international agreement as may be directed by the court.

Regardless of which method of service is followed for personal service in a foreign country, before entry of judgment, the court must be satisfied that the method used was a method reasonably likely to effect actual notice.

(e) *Other Service.* When it shall appear by affidavit of a person having knowledge of the facts filed with the clerk that after diligent inquiry a party cannot be served with process

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under (d) of this rule, service may be made by publication or as otherwise directed by the court as provided in this subdivision. Service by publication will be allowed in adoption cases only if ordered by the court for compelling reasons.

(1) *Diligent Inquiry.* Inquiry as to the absent party's whereabouts shall be made by the party who seeks to have service made, or by the party's attorney actually entrusted with the conduct of the action, or by the agent of the attorney. It shall be made of any person who the inquirer has reason to believe possesses knowledge or information as to the absent party's residence or address or the matter inquired of. Unless otherwise ordered by the court, diligent inquiry shall include a reasonable effort to search the internet for the whereabouts of the absent party. The inquiry shall also be undertaken in person or by letter, and the inquirer shall state that an action has been or is about to be commenced against the party inquired of, that the object of the inquiry is to give such party notice of the action in order that such party may appear and defend it. When the inquiry is made by letter, postage shall be enclosed sufficient for the return of an answer. The affidavit of inquiry shall be made by the inquirer. It shall fully specify the inquiry made, of what persons and in what manner it was made, and a description of any efforts that were made to search the internet, so that by the facts stated therein it may appear that diligent inquiry has been made for the purpose of effecting actual notice.

(2) *Service by Publication in a Newspaper.* A notice shall be published four times during four consecutive calendar weeks, once in each week, in a newspaper published in the district in which the action is pending, or if none be published therein, then in a newspaper published in this state circulating in such district. Prior to the last publication, the party who seeks to have service made must send the absent party a copy of the notice and the complaint or the pleading (A) by registered or certified mail, with return receipt requested, with postage prepaid, and (B) by regular first class mail. The notice must be addressed in care of the absent party's residence or the place where the party usually receives mail, unless it shall appear by affidavit that the absent party's residence or place is unknown or cannot be ascertained after inquiry.

(3) *Other Service.* In its discretion the court may allow service of process to be made upon an absent party in any other manner which is reasonably calculated to give the party actual notice of the proceedings and an opportunity to be heard, if an order permitting such service is entered before service of process is made

(4) *Form and Contents of Notice--Time.* The notice referred to in paragraph (2) of this subdivision shall be in the form of a summons. It shall state briefly the nature of the action, the relief demanded, and why the party to whom it is addressed is made a party to the action. Where the action concerns real property or where real property of a party has been attached, the notice shall set forth a legal description of the property, shall state the municipality or district in which it is located, and the street or road on which the property is situated, and if the property is improved, it shall state the street number of the same. Where personal property of a party has been attached, the notice shall generally describe the property. If a mortgage is to be foreclosed, the notice shall state the names of all parties thereto and the dates that the mortgage was executed. The notice shall specify the time within which the absent party has to appear or answer or plead, which shall not be less than 20 days after personal service or, if service is made by publication, not less than 30 days after the last date of publication, and shall state the effect of a failure to appear or answer or plead. If the absent party does not appear or answer or plead within the time

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specified within the notice, the court may proceed as if such party had been served with process within the state.

(5) Proof of Service. If service is made by publication, proof of publication shall be made by the affidavit of the newspaper's publisher, printer, manager, foreman, or principal clerk, or by the certificate of the attorney for the party at whose instance the service was made. A printed copy of the published notice with the name of the newspaper and dates of publication marked therein shall be attached to the affidavit or certificate. Proof of mailing shall be made by affidavit of a deposit in a post office of the copies of the notice and the complaint or other pleadings.

(f) Return. The person serving the process shall give proof of service thereof to the party requesting issuance of the process or to the party's attorney promptly and in any event within the time during which the person served must respond to the process. Within 120 days after filing of the complaint, the party shall file and serve an affidavit identifying the parties who have been served, the date service was made and the parties who remain unserved. If service is made by a person other than a peace officer, the person shall make affidavit thereof, proof of service shall be in writing and shall set forth the manner, place, date of service, and all pleadings or other papers served with the process. Failure to make proof of service does not affect the validity of the service.

(g) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the parties against whom the process issued.

(h) Service of Process by Mail. In addition to other methods of service provided for by this rule, process may also be served within this state or the United States or any of its possessions by registered or certified mail, with return receipt requested, upon an individual other than an infant or an incompetent person and upon a corporation, partnership, unincorporated association, or public corporation. In such case, copies of the summons and complaint or other process shall be mailed for restricted delivery only to the party to whom the summons or other process is directed or to the person authorized under federal regulation to receive the party's restricted delivery mail. All receipts shall be so addressed that they are returned to the party serving the summons or process or the party's attorney. Service of process by mail under this paragraph is complete when the return receipt is signed.

(i) RESERVED.

(j) Summons--Time Limit for Service. The clerk shall review each pending case 120 days after filing of the complaint to determine whether all defendants have been served. If any defendant has not been served, the clerk shall send notice to the plaintiff to show good cause in writing why service on that defendant is not complete. If good cause is not shown within 30 days after distribution of the notice, the court shall dismiss without prejudice the action as to that defendant. The clerk may enter the dismissal if the plaintiff has not opposed dismissal. If the court finds good cause why service has not been made, the court shall establish a new deadline by which plaintiff must file proof of service or proof that plaintiff has made diligent efforts to serve.

Credits

[Amended effective March 15, 1987; August 15, 1987; July 15, 1990; July 15, 1993; July 15, 1994; amended by Order No. 1445, effective October 15, 2001; amended by Order

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No. 1482, effective October 15, 2002; amended by Order No. 1522, effective October 15, 2003; amended by Order No. 1570 dated May 25, 2005, effective October 15, 2005; amended by Order No. 1607 dated April 24, 2006, effective October 15, 2006; amended by Order No. 1769 dated Sept. 29, 2011, effective April 16, 2012.]

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SENATE BILL NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY SENATOR

Introduced:
Referred:

A BILL
FOR AN ACT
ENTITLED

1 "An Act relating to service of citations; amending Rule 3(g), Alaska Rules of
Minor
2 Offense Procedure; and providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 *Section 12.25.025(a) is amended to read:

5 (a) Notwithstanding any contrary provision of law, a citation issued by a peace
6 officer and by another person who is authorized by law to issue a citation in the state
7 must comply with standards concerning uniform citation format and procedure
8 adopted by the Department of Public Safety. The standards must include

- 9 (1) a statewide numbering system for citations;
10 (2) a requirement that a citation be made upon oath or affirmation
11 before a person authorized by law to administer oaths or affirmations or signed with a
12 certification under penalty of perjury that the citation is true and

- 13 (A) was personally served on the person charged; or
14 (B) if the person believed to have committed the offense
was

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is not present, the officer

(i) left the citation on the vehicle or other property that was the subject of the violation; or

~~(ii) mailed the citation to the person by first class~~

~~mail;~~

(ii) served the citation by any of the methods described in Rule 4 of the Alaska Rules of Civil Procedure

(3) a requirement that the citation contain information required by AS 12.25.200(b).

(4) Property, for purposes of this subsection is defined to include any real or personal property that is the subject of the citation or violation;

* Sec. 2. The uncodified laws of the State of Alaska are amended by adding a new section to read:

DIRECT COURT RULE AMENDMENTS. Rule 3(g), Alaska Rules of Minor Offense Procedure, is amended to read:

(g) Personal Service. In this rule, personal service means the officer must,

(1) if the defendant is present, deliver the citation to the defendant personally, in accordance with AS 12.25.175-190; or

~~(2) if the defendant is not present,~~

~~(A) leave the citation on the vehicle or other property that is the subject of the violation; or~~

~~(B) mail the citation to the defendant by first class mail.~~

Serve the citation by any of the methods described in Rule 4 of the Alaska Rules of Civil Procedure

(3) Property, for purposes of this subsection is defined to include any real or personal property that is the subject of the citation or violation;

*Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

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