

SB

116

<TARGET><BILL>SB 116</BILL><SUBJECT>SB
116</SUBJECT><COMM>HJUD28</COMM></TARGET>



SENATOR DENNIS EGAN

MEMORANDUM

March 27, 2014

To: Representative Wes Keller, Chair
House Judiciary Committee

From: Sen. Dennis Egan

A handwritten signature in black ink, appearing to be "Dennis Egan", written over a horizontal line.

Re: SB 116, Citations

I respectfully request a hearing on Senate Bill 116, on service of citations.

I look forward to discussing the bill with you and the committee.

If you have questions about scheduling this bill, please feel free to contact Jesse Kiehl in my office at 465-6827.

-----ALASKA SENATE-----

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SENATOR DENNIS EGAN

SB 116 - Citations

Sponsor Statement

SB 116 fixes an unintended problem with Alaska law that made law enforcement less effective and less fair when it comes to minor offenses. For decades, parking tickets have been left under windshield wipers. A 2010 bill on citations inadvertently ended that practice by requiring all citations to be “personally served.”

That’s a problem for Alaska cities that need to enforce parking and other rules. Taxpayers shouldn’t be burdened with paying enough parking and animal control officers to stake out cars and front yards when the law is broken in minor ways.

Since the Alaska Court System implemented the law in 2013, some Alaska cities have used workarounds that are more expensive to administer and effectively deny Alaskans who need to fight a ticket their day in court.

SB 116 lets law enforcement leave a ticket on the real or personal property that is the subject of an infraction or violation. It also allows service by the same methods as civil process, including certified mail with a return receipt or a process server. The bill still requires personal service by the officer for moving violations, minor consuming, or anything more serious than an infraction.

SB 116 provides more efficient government for Alaskans and gives those who need to fight a ticket fair access to the courts.

ALASKA SENATE

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Changes in SB 116

Substantive changes in Sen. STA "O" version:

- At page 1, line 7: Corrects an error in existing statute applying rules to citations issued by both a peace officer and another person authorized to issue citations. The rules should apply to citations issued by either.
- At page 2, lines 8-9: Limits the citations that can be served by leaving them on property or by civil processes to offenses with a maximum fine less than \$500. This matches the threshold for most violations under state law (AS 12.55.035(b)(7)), though it is half the maximum permitted for municipal violations (AS 29.25.070(a)).
- At page 2, line 10: Requires citations left on real or personal property to be left "in a conspicuous place on" the property.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSSB 116(STA)
Fiscal Note Number: 1
(S) Publish Date: 3/14/14

Identifier: SB116- ACS-TRC-03-06-14
Title: SERVICE OF CITATIONS
Sponsor: EGAN
Requester: Senate State Affairs

Department: Alaska Court System
Appropriation: Alaska Court System
Allocation: Trial Courts
OMB Component Number: 768

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues

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Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Initial version.

Prepared By: <u>Nancy Meade, General Counsel</u>	Phone: <u>(907)465-4736</u>
Division: <u>Alaska Court System</u>	Date: <u>03/06/2014 04:00 PM</u>
Approved By: <u>Nancy Meade for Christine Johnson, Administrative Director</u>	Date: <u>03/06/14</u>
Agency: <u>Alaska Court System</u>	

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSSB 116(STA)

Analysis

Senate Bill 116 would allow certain citations to be served by a method other than personal service. Specifically, except for an offense under AS 04.16.050 (concerning minors consuming or possessing or in control of alcoholic beverages), and except for offenses involving a moving motor vehicle, a peace officer would be authorized to serve a citation by leaving it on the vehicle or other personal or real property that is the subject of the citation or violation, or by using a manner permitted for service of process under Civil Rule 4. This would include mailing the citation by registered or certified mail, return receipt requested, with restricted delivery only to the party to whom the citation is issued. Civil Rule 4(h).

The Alaska Court System anticipates that the main effect of SB 116 would be to permit parking citations (tickets) to be processed by the court system in the same manner that other citations, which must be personally served, are processed by the courts. That is, defendants who receive a parking ticket left on their vehicle, rather than given to them personally, would be able to contest that ticket in court in those municipalities that do not process parking tickets administratively as civil offenses. SB 116 would therefore have the effect of expanding the number of citations that would be processed by the court system. This would include expanding data entry tasks, handling an increased number of court hearings for contested cases, expanding accounting functions relating to transmitting collected citation fees to the state and to municipalities, and increasing the number of documents and other information transmitted to the Department of Law's Collections Unit and to municipalities in cases of default judgments for unpaid citations.

Nonetheless, the Court System anticipates that it can implement the changes, and handle the increased number of citations that would be authorized under SB 116, without a fiscal impact. The Court System therefore submits a zero fiscal note.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSSB 116(STA)
Fiscal Note Number: 2
(S) Publish Date: 3/14/14

Identifier: SB116-DNR-PKS-3-8-14
Title: SERVICE OF CITATIONS
Sponsor: EGAN
Requester: Senate State Affairs Committee

Department: Department of Natural Resources
Appropriation: Parks & Outdoor Recreation
Allocation: Parks Management & Access
OMB Component Number: 3001

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015	Included in	Out-Year Cost Estimates				
	Appropriation Requested	FY2015 Request	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
OPERATING EXPENDITURES	FY 2015	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed? N/A

Why this fiscal note differs from previous version:

Initial Version

Prepared By:	Claire Holland LeClair	Phone:	(907)269-8702
Division:	Parks & Outdoor Recreation	Date:	03/08/2014 12:00 PM
Approved By:	Joe Balash, Commissioner	Date:	03/08/14
Agency:	Department of Natural Resources		

FISCAL NOTE ANALYSIS #2

**STATE OF ALASKA
2014 LEGISLATIVE SESSION**

BILL NO. CSSB 116(STA)

Analysis

Under current statute park rangers, who are peace officers, must personally serve every citation they issue, even for minor infractions such as non-payment of park fees or parking in a no-parking zone.

SB 116 adds a new subsection (d) to AS 12.25.175 allowing park rangers to cite individuals for violations of state park regulations by leaving a completed citation form on a vehicle or personal property.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSSB 116(STA)
Fiscal Note Number: 3
(S) Publish Date: 3/14/14

Identifier: SB116-DPS-DET-03-10-14
Title: SERVICE OF CITATIONS
Sponsor: EGAN
Requester: Senate State Affairs

Department: Department of Public Safety
Appropriation: Alaska State Troopers
Allocation: Alaska State Trooper Detachments
OMB Component Number: 2325

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2015 Request	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
OPERATING EXPENDITURES	FY 2015	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? **No**
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Lt. Rodney Dial	Phone:	(907)254-1284
Division:	Alaska State Troopers	Date:	03/10/2014 09:35 AM
Approved By:	Gary Folger, Commissioner	Date:	03/10/14
Agency:	Department of Public Safety		

FISCAL NOTE ANALYSIS #3

**STATE OF ALASKA
2014 LEGISLATIVE SESSION**

BILL NO. CSSB 116(STA)

Analysis

This bill would amend AS 12.25 to allow municipal and state agencies to resume the practice of issuing qualifying minor offense citations by a means other than personal service.

Passage of this bill would have no fiscal impact to the Department of Public Safety, Division of Alaska State Troopers.

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.

(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 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 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 for, 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 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.

(Adopted by SCO 5 October 9, 1959; amended by SCO 49 effective January 1, 1963; by SCO 66 effective July 1, 1964; by SCO 90 effective July 24, 1967; by SCO 168 dated June 25, 1973; by SCO 215 effective May 23, 1975; by SCO 266 effective March 31, 1977; by SCO 282 effective November 15, 1977; by SCO 306 effective April 11, 1978; by SCO 357 effective June 30, 1978; by SCO 373 effective August 15, 1979; by SCO 465 effective June 1, 1981; by SCO 591 effective July 1, 1984; by SCO 679 effective June 15, 1986; by SCO 697 effective September 15, 1986; by SCO 714 effective September 15, 1986; by SCO 788 effective March 15, 1987; by SCO 815 effective August 1, 1987; by SCO 836 effective August 1, 1987; by SCO 1025 effective July 15, 1990; by SCO 1128 effective July 15, 1993; by SCO 1153 effective July 15, 1994; by SCO 1269 effective July 15, 1997; by SCO 1295 effective January 15, 1998; by SCO 1445 effective October 15, 2001; by SCO 1482 effective October 15, 2002; by SCO 1522 effective October 15, 2003; by SCO 1525 effective October 15, 2003; by SCO 1570 effective October 15, 2005; by SCO 1581 effective October 15, 2005; by SCO 1607 effective October 15, 2006; by SCO 1713 effective nunc pro tunc to May 16, 2009; by SCO 1716 effective nunc pro tunc to July 1, 2009; by SCO 1769 effective April 16, 2012; and by SCO 1788 effective nunc pro tunc June 15, 2012)

Note: In 1996, the legislature enacted AS 18.66.160, which relates to service of process in a proceeding to obtain a domestic violence protective order. According to 77 ch. 64 SLA 1996, this statute has the effect of amending Civil Rule 4.

Note: AS 10.06.580(b), as enacted by ch. 166, 1, SLA 1988, amended Civil Rule 4 by allowing a corporation in an action brought under AS 10.06.580 to serve non-resident dissenting shareholders by certified mail and publication without satisfying the conditions under which certified mail and publication can be used under Civil Rule 4. AS 10.06.638, as enacted by ch. 166, 1, SLA 1988, amended Civil Rule 4 by changing (1) the requirements for service by publication, and (2) how long a corporation has to respond to a complaint in an involuntary dissolution proceeding before the Commissioner of Commerce and Economic Development may take a default judgment against the corporation.

Note: Section 132 of ch. 87 SLA 1997 adds AS 25.27.265(c) which authorizes the court to allow CSED to serve a party by mailing documents to the last known address on file with the agency. This is permitted only if the court finds that CSED has made diligent efforts to serve documents in the appropriate manner. According to 153 of the Act, 132 has the effect of amending Civil Rules 4 and 5 by allowing service at the opposing party's last known address on file with the child support enforcement agency in certain circumstances.

Note: Ch. 61 SLA 2002 (HB 52), Section 2, repeals and reenacts AS 33.36.110 to authorize the governor to execute the Interstate Compact for Adult Offender Supervision. According to Section 6 of the Act, Article VIII(a)(2) of the Compact, contained in the new AS 33.36.110, would have the effect of amending Civil Rule 4 by entitling the Interstate Commission for Adult Offender Supervision to receive service of process of a judicial proceeding in this state that pertains to the Interstate Compact for

Adult Offender Supervision and that may affect the powers, responsibilities or actions of that commission.

Note: Ch. 128 SLA 2002 (HB 393), Section 3, adds a new Chapter 66 to Title 45 of the Alaska Statutes, concerning the sale of business opportunities. According to Section 4 of the Act, AS 45.66.120(b) has the effect of amending Civil Rule 4 by requiring that the clerk of the court mail a copy of the complaint to the attorney general when an action is filed under AS 45.66.120.

Note: Chapter 87 SLA 03 (HB 1) enacted AS 18.65.865, which addresses service of process of protective orders issued under AS 18.65.850-860 for persons who are victims of stalking not involving domestic violence. According to Section 8(a) of the Act, the new AS 18.65.865 has the effect of amending Civil Rule 4 relating to service of process by requiring that service be made in accordance with AS 18.66.160, which governs service of domestic violence protective orders.

Note to SCO 1570: Civil Rule 4(d)(13), concerning service on individuals in a foreign country, parallels the language in Federal Rule of Civil Procedure 4(f). The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, referred to in Civil Rule 4(d)(13), generally provides for service of process by a central authority (usually the Ministry of Justice) in the Convention countries pursuant to a request submitted on a form USM-94 available at the office of any United States Marshall or at <http://www.usmarshals.gov/forms/usm94.pdf>. The Convention also permits service of process by international registered mail subject to the option of individual countries to object to such service. Many countries have objected, including Argentina , China , the Czech Republic , Egypt , Germany , Greece , the Republic of South Korea , Latvia , Lithuania , Luxembourg , Norway , Poland , the Slovak Republic , Sri Lanka , Switzerland , Turkey , Ukraine , and Venezuela ; service by registered mail is therefore not appropriate in those countries.

The full text of the Convention may be found

at http://www.hcch.net/index_en.php?act=conventions.text&cid=17.

Current information on the Convention may be found in the United States Department of State's Circular on Service of Process Abroad, available at http://travel.state.gov/law/judicial/judicial_680.html.

Note: Chapter 54 SLA 2005 (HB 95) enacted extensive amendments and new provisions related to public health, including public health emergencies and disasters. According to Section 13(a) of the Act, AS 18.15.375(c)(3), (d), and (e), and 18.15.385(d) – (k), enacted in Section 8, have the effect of amending Civil Rule 4 by adding special proceedings, timing, and pleading requirements for matters involving public health.

Note: Chapter 10 SLA 2009 (HB 137), effective May 16, 2009, enacted changes relating to an Interstate Compact on Educational Opportunity for Military Children. According to section 2 of the Act, AS 14.34.010-.090 have the effect of changing Civil Rule 4 by entitling the Interstate Commission on Educational Opportunity for Military Children to receive service of process of a judicial proceeding in this state that pertains

to the Interstate Compact on Educational Opportunity for Military Children, and in which the validity of a compact provision or rule is an issue for which a judicial determination has been sought.

Note: Chapter 37 SLA 2009 (HB 141), effective July 1, 2009, enacted changes relating to the Interstate Compact for Juveniles. According to section 11 of the Act the changes made to AS 47.15.010 have the effect of changing Civil Rule 4 by entitling the Interstate Commission for Juveniles to receive service of process of a judicial proceeding in this state that pertains to the Interstate Compact for Juveniles, and in which the validity of a compact provision or rule is an issue for which a judicial determination has been sought.

Note: Chapter 65, SLA 2012 (HB 296) added a new subsection (c) to AS 09.05.050 relating to service of process on prisoners, effective June 15, 2012. According to section 5 of the Act, AS 09.05.050, including the amendment made by section 1, has the effect of amending Alaska Rule of Civil Procedure 4, relating to service of process on prisoners committed to the custody of the commissioner of corrections.

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
- (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.

(Rescinded and readopted by SCO 1794 effective April 15, 2013; renamed and renumbered by SCO 1797 effective April 15, 2013)

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."

APOA

ALASKA PEACE OFFICERS ASSOCIATION

Making a Difference in the Last Frontier



February 10, 2014

The Honorable Dennis Egan
Alaska State House of Representatives
State Capitol, Rm. 9
120 4th Street, Mail Stop 3100
Juneau AK 99801-1182

Dear Senator Egan:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing Senate Bill 116, "An Act relating to service of citations; amending Rule 3(f), Alaska Rules of Minor Offense Procedure; repealing Rule 3(g), Alaska Rules of Minor Offense Procedure; and providing for an effective date."

The APOA Board of Directors recently reviewed this proposed legislation and unanimously supports this bill in its current form.

Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Brad Johnson
State President



Alaska Association of Chiefs of Police

March 3, 2014

The Honorable Dennis Egan
Alaska Senate
State Capitol Room 9
Juneau AK, 99801
Email: Senator.Dennis.Egan@akleg.gov

Dear Senator Eagan,

In my capacity as President of the Alaska Association of Chiefs of Police, I am writing to express our support of Senate Bill 116: "An Act relating to service of citations; amending Rule 3(f), Alaska Rules of Minor Offense Procedure; repealing Rule 3(a), Alaska Rules of Minor Offense Procedure; and providing for an effective date." Our Association is comprised of more than 100 law enforcement executives from all across Alaska, and we feel you should be proud of a well crafted piece of legislation which does much to ameliorate problems created by a recent ruling on the service of citations. Thank you for your continued strong commitment to the needs of public safety officers in Alaska.

We would be pleased to work with your staff to insure that SB 116 is passed, and encourage you to contact our Executive Director, Kalie Klaysmat, by email at kalie.klaysmat@aacop.org should there be some way we can be of assistance in that regard. Thank you for your dedication to the people of Alaska and your support of the law enforcement community in particular.

Sincerely,

Chief Tom Clemons, President



Fairbanks North Star Borough

Office of the Mayor

809 Pioneer Road

P.O. Box 71267

Fairbanks, Alaska 99707-1267

907/459-1300

Fax: 907/459-1102

Email: mayor@co.fairbanks.ak.us

January 21, 2014

The Honorable Senator Egan
State Capitol
Juneau, AK 99801

RE: Senate Bill Relating to Service of Citations

Dear Senator Egan:

On behalf of the Fairbanks North Star Borough, I write in support of the draft senate bill recently received by my office. This bill, amending Alaska Statute 12.25.175 and repealing Alaska Rules of Minor Offense Procedure 3(g), will enable local governments to reasonably serve code enforcement citations to violators.

A.S. 12.25.175 in its present form restricts service of a citation only to personal service. This becomes an untenable situation for instances such as zoning or parking violations, where the violator may not be readily found, and where there are limited officers for enforcement. Further difficulty is seen in circumstances such as Animal Control offenses, where a violator may be located but refuses to answer the door or to accept a citation from an Animal Control officer. Under existing law there is heightened cost to municipal governments and their residents for enforcing code violations where personal service cannot be accomplished – including court filing fees, process server fees, and staff time for filing an enforcement complaint outside of the citations process. Current Alaska law regarding citations is of particular concern to the Fairbanks North Star Borough as we move forward with possible ordinances to address compulsory attendance for students in the Fairbanks North Star Borough School District.

The proposed legislation resolves logistical and cost issues by providing for service via posting on property that is the subject of the violation, or otherwise according to the Alaska Rules of Civil Procedure. This revision provides due process regarding the offense, as well as a potentially significant cost savings to local governments enforcing their ordinances.

Thank you for bringing forward this important revision to Alaska law regarding service of citations.

Sincerely,

Luke Hopkins, Mayor
Fairbanks North Star Borough

Cc: Interior Delegation

Adopted: 11/05/13

**MATANUSKA-SUSITNA BOROUGH
RESOLUTION SERIAL NO. 13-127**

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.

WHEREAS, Supreme court orders 1794 and 1797 modified the rules governing procedure in cases involving minor offenses; and


WHEREAS, the order requires officers to personally deliver citations; and

WHEREAS, prior to the order, Matanuska-Susitna Borough Code Compliance Officers regularly used process servers and certified mail to issue citations; and

WHEREAS, the requirement for personal service of citations has considerably reduced the effectiveness of Borough code enforcement efforts.


NOW, THEREFORE, BE IT RESOLVED, the Matanuska-Susitna Borough Assembly supports a senate bill amending Rule 3(g), Alaska Rules of Minor Offense Procedure, to allow service of citations by methods described in Rule 4 of the Alaska Rules of Civil Procedure.

ADOPTED by the Matanuska-Susitna Borough Assembly this
5 day of November, 2013.



LARRY DEVILLIERS, Borough Mayor

ATTEST:



LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)

PASSED UNANIMOUSLY: Sykes, Beck, Arvin, Colligan, Salmon,
and Colver