



LAWS OF ALASKA

1991

Source

HB 105

Chapter No.

79

AN ACT

Amending Rule 8(b) and Rule 14 of the Alaska Rules of Criminal Procedure to facilitate joint trials of multiple defendants and joint charges in criminal prosecutions and amending Rule 404(b)(1) of the Alaska Rules of Evidence as applicable to civil actions and criminal prosecutions.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: June 26, 1991
Actual Effective Date: September 24, 1991

AN ACT

1 Amending Rule 8(b) and Rule 14 of the Alaska Rules of Criminal Procedure to facilitate
2 joint trials of multiple defendants and joint charges in criminal prosecutions and
3 amending Rule 404(b)(1) of the Alaska Rules of Evidence as applicable to civil actions
4 and criminal prosecutions.
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8 * Section 1. PURPOSE. (a) The rules governing joinder of two or more defendants at the same trial
9 are different than the rules for joinder of offenses because joinder is governed by a different section of
10 Criminal Rule 8 of the Alaska Rules of Criminal Procedure. Under Rules 8(b) and 13, defendants may
11 be tried together "if they are alleged to have participated in the same act or transaction or in the same
12 series of acts or transactions constituting an offense or offenses." However, in Greiner v. State, 741 P.2d
13 662 (Alaska App. 1987), the Alaska Court of Appeals held that evidence that codefendants "were willing
14 to sell drugs and were well acquainted and cooperated with each other in the individual sale of drugs"
15 was insufficient to show the existence of a conspiracy, joint venture, or common scheme or plan. The
16 amendment of Rule 8(b), Alaska Rules of Criminal Procedure, made by sec. 2 of this Act, overrules
17 Greiner v. State and allows a tacit joint venture to be proven by circumstantial evidence.

18 (b) Rule 14 of the Alaska Rules of Criminal Procedure vests the trial court with discretion to
19 sever counts if joinder unfairly prejudices the defendant. The Alaska Court of Appeals has held that a
20 defendant is prejudiced unless the evidence of the joined offenses is completely mutually cross-
21 admissible (that is, the evidence of crime A is admissible at a trial on crime B and the evidence of crime

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1 B is admissible at a trial on crime A). *Velez v. State*, 762 P.2d 1297 (Alaska App. 1988). However,
2 mutual cross-admissibility is not required under federal law. *United States v. Harper*, 680 F.2d 731, 734
3 (11th Cir.), cert. denied, 459 U.S. 916, 103 S.Ct. 229, 74 L.Ed.2d 182 (1982); *United States v. Jamar*,
4 561 F.2d 1103, 1107 - 1108 n.8 (4th Cir. 1977). This difference in interpretation means that more cases
5 are severed in Alaska courts than in federal courts. The amendment of Criminal Rule 14 made by sec. 3
6 of this Act expressly provides that a showing that evidence of similar offenses is not completely and
7 mutually cross-admissible is insufficient, by itself, as a reason to grant severance.

8 (c) State courts treat Rule 404(b), Alaska Rules of Evidence, as a rule of exclusion. Evidence
9 is presumed prejudicial and inadmissible even if it is relevant to an issue at trial. *Lerchenstein v. State*,
10 697 P.2d 312, 315, and 318, n.2 (Alaska App. 1985), aff'd., *State v. Lerchenstein*, 726 P.2d 546 (Alaska
11 1986); *Oksoktaruk v. State*, 611 P.2d 521, 524 (Alaska 1980). In *Lerchenstein*, the court explained that,
12 "The exclusionary provision of Evidence Rule 404(b) represents the 'presumption in our law that the
13 prejudicial effect of introducing a prior crime outweighs what probative value may exist with regard to
14 propensity. No case by case balancing is permitted.'" 697 P. 2d at 315. The state courts want
15 evidence of other crimes to fit into the uses specifically set out in Evidence Rule 404(b). If the evidence
16 is not relevant to one of these expressly stated purposes, state courts will generally find it inadmissible.
17 In contrast, federal courts treat the comparable federal rule as a rule of inclusion and are more willing
18 to admit evidence of other charged acts when weighing the probative value of the evidence against the
19 danger of unfair prejudice, generally allowing admissibility of the evidence for a nonpropensity purpose.
20 The amendment of Rule 404(b)(1), Alaska Rules of Evidence, made by sec. 4 of this Act, changes the
21 state court rule applicable in a criminal action or proceeding to make it one of inclusion and to establish
22 that the nonpropensity purposes listed in the rule are not inclusive and that evidence can be admitted if
23 it is relevant to a purpose not listed in the rule.

24 * Sec. 2. Rule 8(b), Alaska Rules of Criminal Procedure, is amended to read:

25 (b) JOINDER OF DEFENDANTS. Two or more defendants may be charged in the same
26 indictment or information if they are alleged to have participated in the same act or transaction
27 or in the same series of acts or transactions constituting an offense or offenses, or if the
28 defendants are parties to an express or tacit agreement to aid each other to commit an act
29 or transaction constituting a criminal offense or offenses. Such defendants may be charged
30 in one or more counts together or separately and all of the defendants need not be charged in

1 each count. The disposition of the indictment or information as to one of several defendants
2 joined in the same indictment or information shall not affect the right of the state to proceed
3 against the other defendants.

4 * Sec. 3. Rule 14, Alaska Rules of Criminal Procedure, is amended to read:

5 RULE 14. RELIEF FROM PREJUDICIAL JOINDER. If it appears that a defendant or
6 the state is unfairly prejudiced by a joinder of offenses or of defendants in an indictment or
7 information or by such joinder for trial together, the court may order an election or separate trials
8 of counts, grant a severance of defendants, or provide whatever other relief justice requires. A
9 showing that evidence of one offense would not be admissible during a separate trial of a
10 joined offense or a codefendant does not constitute prejudice that warrants relief under this
11 rule. In ruling on a motion by a defendant for severance the court may order the attorney for
12 the state to deliver to the court for inspection in camera any statements or confessions made by
13 the defendants which the state intends to introduce at trial.

14 * Sec. 4. Rule 404(b)(1), Alaska Rules of Evidence, is amended to read:

15 (1) Evidence of other crimes, wrongs, or acts is not admissible if the sole
16 purpose for offering the evidence is to prove the character of a person in order to show that
17 the person [HE] acted in conformity therewith. It is [MAY], however, [BE] admissible for other
18 purposes, including, but not limited to, [SUCH AS] proof of motive, opportunity, intent,
19 preparation, plan, knowledge, identity, or absence of mistake or accident.