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REQUEST FOR COMMENTS ON PROPOSED RULE CHANGES
(Comments Due by Monday, June 18, 2018)

The Alaska Supreme Court seeks comments on the following proposed rule changes. Proposed changes to existing rules are shown in “legislative” style: new language is underlined, and deleted language is struck through. Except as otherwise indicated, new text is not underlined when a new rule is proposed or when an existing rule is rescinded and readopted.

Comments are due by Monday, June 18, 2018. Please direct your comments via email to hflint@akcourts.us, or use the mailing address or fax number shown above. Thank you for your time and consideration.

Proposed Changes to the Criminal Rules

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THE CRIMINAL RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:

1. **Criminal Rules 4(a)(2) and 9(a)** —Aligning the rules' standards for issuing summons and warrants.

Both Rule 4(a)(2) and Rule 9(a) address when the court will issue a warrant rather than a summons. Rule 4 applies when a complaint is filed; Rule 9 upon indictment or information. But their standards differ materially.

Under Rule 4(a)(2), a warrant may issue if “the defendant poses a danger to other persons and the community.” But that factor is not a consideration under the current Rule 9(a). This proposal changes that and adds the “danger” language to Rule 9(a). It also replaces the current “danger” language in Rule 4(a)(2), as shown below:

The court must issue a summons as opposed to a warrant unless the court finds that an arrest is necessary to ensure the defendant’s presence in court, or that an arrest is necessary because the defendant poses *an articulable danger to a victim, other persons, or the community*.

The committee agreed that the new “danger” standard is less ambiguous. The very fact that there is probable cause to charge the defendant with a crime will almost always establish that the defendant poses *some* danger to someone.

The real question — for purposes of a judge’s decision to issue an arrest warrant — is whether the defendant poses the kind of danger that requires an immediate arrest, rather than trusting to a summons. While the danger need not be imminent, there has to be some articulable danger to justify a warrant.

Besides aligning the two rules’ warrant standards, the proposal replaces the current Rule 4(a)(2) and Rule 9(a) with clearer language. In so doing, superfluous or inaccurate provisions are removed.

For instance, the committee agreed that there is no need for these rules to mention a court’s authority to deal with bail violations. Criminal Rules 4 and 9 deal with a different situation: instances where initial charges are being filed and the court must decide what process to issue against the defendant. No process is necessary when an indictment is returned or information is filed in an ongoing case with the same offense(s).

The sentence at the end of Rule 4(a)(2), stating that “In any case in which it is lawful for an officer to arrest a person without a warrant, the officer may give the person a summons instead of arresting the person[,]” is deleted as both erroneous and superfluous. Judges, not officers, issue summons. Officers issue citations. The discretion to issue a citation rather than make an arrest is addressed in AS 12.55.180.

Because Rule 4(a)(2) and Rule 9(a)’s warrant standards should be aligned and both provisions would benefit from clearer language, the Criminal Rules Committee recommends the following proposal:

Rule 4. Warrant or Summons Upon Complaint.

(a) **Issuance.**

* * * *

(2) Summons or Warrant. ~~The court must issue a summons as opposed to a warrant unless the judge or magistrate judge finds that an arrest is necessary to ensure the defendant's presence in court, or that an arrest is necessary because the defendant poses an articulable danger to a victim, other persons, or the community.—A summons shall be issued in all cases unless the judge or magistrate judge has reason to believe that the defendant will not appear in response to a summons or that the defendant poses a danger to other persons and the community.~~

~~No warrant shall issue where bail has previously been established in that case except upon a showing that conditions of release have been violated, that a warrant is necessary to assure the presence of the defendant in court, or that the defendant poses a danger to other persons and the community. In any case in which it is lawful for an officer to arrest a person without a warrant, the officer may give the person a summons instead of arresting the person.~~

* * * *

Rule 9. Warrant or Summons Upon Indictment or Information.

(a) **Issuance of Summons or Warrant.** Upon the return of the indictment or filing of the information the court shall issue either a summons or a warrant for each defendant named in the indictment or information unless the defendant is already on bail or recognizance for the same offense(s). The court must issue a summons as opposed to a warrant unless the court finds that an arrest is necessary to ensure the defendant's presence in court, or that an arrest is necessary because the defendant poses an articulable danger to a victim, other persons, or the community. No summons or warrant may issue for a defendant named in an information unless the allegations are supported by statements made under oath. ~~issue a warrant of arrest for each defendant named in the information, if it is supported by oath, or in the indictment, except that no warrant should be issued for any defendant who has theretofore been held to answer for the offense or offenses charged or who is on bail or recognizance for that offense or offenses, and in other cases no warrant should be issued unless the court has reason to believe that the defendant will not appear in response to a summons. The clerk shall issue a summons instead of a warrant upon the request of the prosecuting attorney, or by direction of the court. Upon like request or direction the clerk shall issue more than one warrant or summons for the same defendant. The clerk shall deliver the warrant or summons to a peace officer or other person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue.~~

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THE CINA/DELINQUENCY RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:

2. CINA Rule 2(l), new CINA Rule 3.1—Consolidation in sibling CINA cases.

This proposal is intended to make the CINA rules mirror the way that most cases involving multiple children in a family are handled: It makes express the presumption that all of the cases for the children named in a petition will be handled together, even though each child’s case has its own number.

The proposal should help simplify procedures so that multiple hearing notices are not sent to the parties, multiple filings are not required from parties, discovery can proceed more efficiently, and people are clearer about who can access the court’s case files. Under CINA Rule 22(a), access to CINA case files is generally limited to parties.

The proposal amends the definition of party in Rule 2(l) to include the child’s siblings who are named in the same caption and introduces a new Rule 3.1 on Consolidation. The new rule treats cases covered by the same caption as consolidated for purposes of scheduling and discovery, unless otherwise ordered. As needed, a child’s case can be severed from the rest to proceed on its own path.

Because different people can have different ideas about what consolidation means, a use note is included after Rule 3.1 to clarify the expectation that each of the consolidated sibling cases will remain open, with its own case number.

The committee agreed that a motion would still be required to consolidate a newly filed case involving a new child with any existing sibling cases. It is not uncommon for the children in the original case to be at the permanency stage when a new child becomes the subject of a new petition.

The CINA/Delinquency Rules Committee recommends the proposal shown below:

CINA Rule 2. Definitions.

* * * *

(l) “Party” means the child, the siblings of the child named in the same caption, the parents, the guardian, the guardian ad litem, the Department, an Indian custodian who has intervened, an Indian child’s tribe which has intervened, and any other person who has been allowed to intervene by the court.

CINA Rule 3.1. Consolidation.

Cases, court files, proceedings, and hearings will be consolidated according to the caption of the original filing, unless otherwise ordered by the court to avoid unnecessary cost, delay, or prejudice.

Note: Consolidated sibling cases retain their original case numbers and remain open.

THE CINA/DELINQUENCY RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:

3. New Delinquency Rule 14.1—Adopting a speedy trial rule for delinquency cases.

The CINA/Delinquency Rules Committee recommends that a speedy trial rule be adopted for delinquency cases. While adjudication trials are rare, the committee concluded that a speedy trial rule could help to more quickly resolve cases, provide accountability, and get juveniles into needed treatment. Delay is reportedly a significant issue in many rural areas.

The new Delinquency Rule 14.1 is based on Criminal Rule 45 but adapted to the delinquency setting. Rather than introduce new standards or language, Rule 45's language is retained where feasible so that judicial officers and parties can look to the familiar caselaw interpreting Rule 45 for guidance.

A couple of the committee's choices at subsection (d) merit discussion.

The proposed language at *paragraph (d)(2)*, which addresses continuances requested by the juvenile, departs significantly from Criminal Rule 45. That paragraph was the focal point of much of the committee's debate. The committee had already decided that the juvenile should not have the power to opt out of the speedy trial rule altogether. But it debated the extent to which the juvenile should be able to hit the pause button—for instance, to allow time to achieve a more favorable outcome. The committee considered a presumption in favor of granting the juvenile's request but wrestled with how that would work with the other factors listed in the rule. Others questioned why have factors at all, apart from the fact that Criminal Rule 45 includes them.

Ultimately, the committee recommended a greatly simplified paragraph (d)(2) with no presumption and no factors. (The interests of the victims are already covered in subsection (h).) The committee members were confident that the parties would make their case for or against the requested continuance. If granted, the time would be excluded under the rule.

Paragraph (d)(3), which addresses continuances requested by the (prosecuting) Department, is also adjusted. The committee agreed that there needed to be high bar set in each of the subparagraphs for time to be excluded. Unlike in criminal cases, bail is not an option for juveniles who are detained, nor is credit available for time served.

The committee-recommended rule reads as follows:

***Tracked changes** show differences from Crim. R. 45; changes from defendant to juvenile, criminal to delinquency, or trial to adjudication or adjudication hearing are not generally shown.

[NEW] Delinquency Rule 14.1. Speedy Adjudication.

(a) **Priorities in Scheduling Adjudication Hearings**~~Cases.~~ The court shall provide for placing delinquency proceedings upon appropriate calendars. Preference shall be given to adjudication hearings and the trial of juveniles in detention shall be given preference over other delinquency cases. The court

shall consider the circumstances of the victim, ~~particularly a victim of advanced age or extreme youth,~~ in setting the hearing date. Adjudication hearing dates in delinquency cases shall be set at the time of arraignment, and if a hearing date is thereafter vacated, the hearing shall be ~~immediately rescheduled~~ set for a date certain.

(b) **Speedy Adjudication Trial Time Limits.** ~~A juvenile charged with a felony, a misdemeanor, or a violation~~ An adjudication hearing shall be held ~~tried~~ within 120 days from the time set forth in paragraph (c) of this rule.

(c) **When Time Commences to Run.**

(1) *Generally.* Except as provided in ~~sub~~paragraphs (2) through (5), the time for adjudication shall begin running, ~~without demand by the juvenile,~~ from the date of arraignment, ~~the charging document is served upon the juvenile.~~

(2) *Refiling of Original Charge.* If a charge is dismissed by the ~~prosecution~~ Department, the refiling of the charge shall not extend the time. If the charge is dismissed upon motion of the juvenile, the time for adjudication shall begin running from the date of arraignment ~~on service of~~ the second charge.

(3) *New Charges.* ~~The Rule 45 speedy adjudication~~ commencement date for a new charge arising out of the same episode shall be the same as the commencement date for the original charge, unless the evidence on which the new charge is based was not available to the ~~prosecution~~ Department or law enforcement on the commencement date for the original charge. When the new charge is based on new evidence from the same episode and the ~~prosecution~~ Department and law enforcement have ~~has~~ acted with due diligence in investigating and bringing the new charge, ~~the Rule 45 speedy adjudication~~ commencement date for the original charge shall be the same as the commencement date for the new charge.

(4) *Mistrial, New Trial, or Remand.* If the juvenile is to be tried again following a mistrial, an order for a new trial, or an appeal or collateral attack, the time for adjudication shall run from the date of mistrial, order granting a new trial, or remand.

(5) *Withdrawal of Admission, or Notice That Juvenile No Longer Intends to Admit to Petition Allegations.* When a juvenile withdraws an admission to all or part of the allegations in the petition, the time for adjudication hearing shall run from the date of the order permitting the withdrawal. When a juvenile who previously informed the court of an intention to admit to all or part of the allegations in the petition notifies the court that the juvenile now intends to proceed to trial, the time for adjudication hearing shall run from the date of that notification.

~~(6) *Minor Offenses.* In cases involving minor offenses as defined in Minor Offense Rule 2, the defendant 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.~~

(d) **Excluded Periods.** The following periods shall be excluded in computing the time for adjudication hearing:

(1) The period of delay resulting from other proceedings concerning the juvenile, including but not limited to motions to dismiss or suppress, petitions for waiver of juvenile jurisdiction, examinations and hearings on competency, the period during which the juvenile is incompetent to stand trial, interlocutory appeals, and adjudication of other charges. No ~~pretrial motion or petition made prior to adjudication~~ shall be held under advisement for more than 30 days and any time longer than 30 days shall not be considered as an excluded period.

(2) The period of delay resulting from ~~a~~ an adjournment or continuance granted at the juvenile's request. ~~timely request or with the consent of the juvenile and the juvenile's counsel. The court shall grant such a continuance only if it is satisfied that the postponement is in the interest of justice, taking into account the public interest in the prompt disposition of delinquency offenses, and after consideration of the interests of the victim, if known, as provided in (h) of this rule. A juvenile without counsel shall not be deemed to have consented to a continuance unless the juvenile has been advised by the court of the right to a speedy trial under this rule and of the effect of consent.~~

(3) The period of delay resulting from a continuance granted at the timely request of the prosecution, if:

(A) The continuance is granted because of the unavailability of evidence material to the state's case, when the ~~prosecuting attorney~~ Department and law enforcement have ~~has~~ exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date. The period excluded under this subparagraph shall not exceed 30 days while the juvenile is detained, absent a finding of extraordinary circumstances; or

(B) The continuance is granted to allow the ~~prosecuting attorney~~ prosecution ~~in a felony case~~ additional time to prepare the state's case when the allegations involve felony conduct, the Department and law enforcement have exercised due diligence, and additional time is justified because of the exceptional complexity of the particular case.

(4) The period of delay resulting from the absence or unavailability of the juvenile. A juvenile should be considered absent whenever the juvenile's whereabouts are unknown and ~~in addition~~ the juvenile is attempting to avoid apprehension or prosecution, or the juvenile's whereabouts cannot be determined by due diligence. A juvenile should be considered unavailable whenever the juvenile's whereabouts are known but the juvenile's presence for trial cannot be obtained or the juvenile resists being returned to the state for trial.

(5) A reasonable period of delay when the juvenile is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases, the juvenile shall be granted a

severance in order that the juvenile may be tried within the time limits applicable to the juvenile.

(6) The period of delay resulting from detention of the juvenile in another jurisdiction provided the ~~prosecuting attorney~~ Department has been diligent and has made reasonable efforts to obtain the presence of the juvenile for adjudication. When the ~~prosecution~~ Department is unable to obtain the presence of the juvenile in detention, and seeks to exclude the period of detention, the ~~prosecution~~ Department shall cause a detainer to be filed with the official having custody of the juvenile and request the official to advise the juvenile of the detainer and to inform the juvenile of the juvenile's rights under this rule.

(7) Other periods of delay for good cause.

(e) **Rulings on Motions to Dismiss or Continue.** In the event the court decides any motion brought pursuant to this rule, either to continue the time for the adjudication hearing or to dismiss the case, the reasons underlying the decision of the court shall be identified ~~set forth in full~~ on the record.

(f) **Waiver.** Failure of a juvenile represented by counsel to move for dismissal of the charges under this rule ~~these rules~~ prior to the juvenile admitting to the allegations in the petition ~~plea of guilty~~ or adjudication hearing shall constitute waiver of the juvenile's rights under this rule.

(g) **Absolute Discharge.** If a juvenile is not brought to adjudication hearing before the running of the time for adjudication hearing, as extended by excluded periods, the court upon motion of the juvenile shall dismiss the charge with prejudice. Such discharge bars prosecution for the offense charged and for any other lesser included offense or offenses within the offense charged.

(h) **Victim's Interest in Ruling on Motion to Continue.** Before ruling on a motion for a continuance in a case involving a victim, as defined in AS 12.55.185, the court shall consider the victim's position, if known, on the motion to continue and the effect of a continuance on the victim.

THE SUPREME COURT REQUESTS COMMENT ON THE FOLLOWING PROPOSAL:

4. **Administrative Rule 50**—Use of electronic devices in court facilities (formerly “Media Coverage of Court Proceedings”).

This proposal, initiated by the presiding judges, would replace the current Administrative Rule 50 “Media Coverage of Court Proceedings” with a new Rule 50 titled “Use of Electronic Devices in Court Facilities.” It comes as our understanding of who or what the media is evolves and as electronic devices capable of filming, photographing, recording, or streaming events become more prevalent.

The new rule focuses on conduct more than media status. It reinforces the court’s ability to ensure that the use of electronic devices or cameras to film, photograph, or record events does not disrupt or affect the integrity of its proceedings and operations. Court approval for such uses is required and that approval is subject to case- or court-specific restrictions set by individual judges or the districts’ presiding judges. Like the current rule, the administrative director retains authority to address statewide logistical and technical standards by bulletin. The rule itself includes general restrictions on sensitive or privileged content. See proposed Rule 50(a)(2).

The new rule also supports greater transparency by narrowing the scope of cases in which court approval depends on a person’s or party’s consent. Victims of sexual offenses and the parties to protective order proceedings must still consent to have their images recorded. But coverage of divorce, dissolution of marriage, child custody and visitation, paternity or other family proceedings would no longer depend on the consent of the adult parties, as the current Rule 50(c) provides. The new rule puts the decision whether to allow or restrict coverage of these proceedings in the judge’s hands rather than the party’s.

This is not to dismiss the parties’ personal privacy interests but to recognize that those interests can be protected by less restrictive means than the current Rule 50(c).

The new Rule 50(d), which addresses procedures for oral arguments in the appellate courts, includes tools to strike a balance between privacy and public interests. Paragraph (d)(2) provides for the use of pseudonyms and for any cameras be positioned to avoid capturing images of the parties or minors present. Individual trial court judges or the presiding judges on a district scale may adopt similar restrictions concerning the use of electronic devices in sensitive cases.

The new subsection (d) reflects the supreme court’s interest in making the workings of the appellate courts more accessible and transparent to the public. Since 2015, most supreme court arguments have been live streamed by 360 North. The arguments are archived and regularly broadcast on 360 North TV. Under the current Rule 50(c), few family law or CINA cases have had the necessary consents to be included. Yet these cases can raise important issues of broad concern. Rather than presume that the parties’ personal privacy interests outweigh the public’s interest in witnessing how the court wrestles with these cases, the new rule flips the presumption and leaves it to the court to determine whether any restrictions are warranted.

The oral argument notice will remind parties that unless otherwise ordered for good cause, the appellate argument will be recorded for broadcast. If a party has a concern, the party should

raise it.

Under the proposal, Administrative Rule 50 would be rescinded and readopted to read as follows:

Rule 50. Use of Electronic Devices in Court Facilities.

(a) In the Courtroom.

(1) *Prior Approval.* No electronic devices or cameras may be used in the courtroom to film, photograph, record, transmit, stream, or broadcast sounds or images during court proceedings without prior approval of the judge presiding over the proceedings or the clerk of the appellate courts. Permission can be requested by completing the court system's [Application for Photographing, Filming, or Recording a Court Proceeding](#). [Note: Form will be hyperlinked.]

Approval may be subject to specific restrictions imposed by the judge or clerk. The administrative director may also establish statewide standards by administrative bulletin.

(2) *Restrictions on Content.* The following restrictions apply to all proceedings:

(A) A victim of a sexual offense or a party in a protective order proceeding under AS 18.65.850 – 18.65.870 or under AS 18.66.100 – 18.66.990 may not be photographed, filmed, videotaped, or sketched without consent and court approval;

(B) Jurors may not be photographed, filmed, videotaped, or sketched at any time during the proceedings;

(C) Minors may not be photographed, filmed, videotaped, or sketched at any time during the proceedings, unless the minor is being prosecuted as an adult in a criminal case;

(D) The content of bench conferences may not be recorded; and

(E) The content of confidential communications between counsel and client, between clients, or between counsel may not be recorded.

(3) *General Authority.* The use of electronic devices in a courtroom is subject at all times to the authority of the judicial officer to:

- Ensure decorum and prevent distractions;
- Ensure the fair administration of justice in the pending case; and
- Ensure the security of the court and all court users.

Judges presiding over proceedings and the clerk of the appellate courts may require that cell phones and other electronic devices be turned off or placed in silent mode.

(b) Outside the Courtroom. The use of electronic devices outside the courtroom in a court facility is subject at all times to the authority of the presiding judge, clerk of the appellate courts, or area court administrator to:

- Ensure decorum and prevent distractions;
- Ensure the fair administration of justice; and
- Ensure the security of the court and all court users.

(c) **Local Procedure.** In addition to (a) and (b) above, the presiding Judge for each judicial district may establish by order procedures or restrictions regarding the use of electronic devices in court facilities within their district.

(d) **Procedure for Oral Argument in the Supreme Court and Court of Appeals.**

(1) Unless otherwise ordered for good cause, all regularly scheduled oral arguments before the supreme court or the court of appeals may be recorded for broadcast or streaming on the internet. All requests to use cameras or recording equipment at supreme court or court of appeals oral arguments are subject to the provisions of subsection (a) and any restrictions specifically imposed by the court concerned.

(2) In divorce, dissolution of marriage, domestic violence, child custody and visitation, paternity, or other family proceedings including child in need of aid cases, or in proceedings involving involuntary commitments or the involuntary administration of medications,

(A) counsel or any self-represented party who is arguing the case may be required to use pseudonyms to protect the privacy of the parties and any affected minors;

(B) any cameras and recording equipment may need to be positioned to avoid capturing images of the parties or minors present; and

(C) the court may order that the argument not be recorded for broadcast or streaming on the internet.

Note: Presiding Judges' orders on the use of electronic devices in court facilities are available on the court's website under court rules at: <http://www.courts.alaska.gov/jord/index.htm#trial>. Copies may also be obtained from the office of the court rules attorney at 820 West 4th Avenue, Anchorage, AK, 99501, (907)264-8231.

The administrative bulletin referred to in paragraph (a)(1) is [Bulletin No. 45](#). It begins on the following page.

[*Comment:* Administrative Bulletin 45 is not reproduced here. It will be revised to conform to the new rule, if adopted.]