

**THE CRIMINAL RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:**

**1. Criminal Rule 23(a)**—Clarifying waiver of a jury trial in a misdemeanor case.

The Rule 23(a) proposal would clarify that court approval and government consent is required when a defendant waives a jury trial in a misdemeanor case.

In May 2013, the Criminal Rules Committee first considered the Rule 23(a) language and discussed the ambiguity of whether court approval and government consent was required when a defendant waives a jury trial in a misdemeanor case. At that meeting, the committee did not recommend any change. In 2017, the court of appeals answered the question. In *Treptow v. State*, 408 P.3d 1220 (Alaska Ct. App. 2017), the defendant argued that the rule did not require court approval and government consent when the defendant waived a jury trial in a misdemeanor case, unlike a felony case. The Alaska Court of Appeals disagreed with this interpretation and held that Rule 23(a) required court approval and government consent in both felony and misdemeanor cases. The proposal is to amend Rule 23 by adding clarifying language based on the *Treptow* opinion.

To clarify the rule, the Criminal Rules Committee recommends the following proposal:

**Rule 23. Trial by Jury or by the Court.**

**(a) Trial by Jury.** Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial with the approval of the court and the consent of the government. ~~In felony cases, the waiver must be in writing with the approval of the court and the consent of the state.~~ In misdemeanor cases, the defendant's waiver may be in writing or made on the record in open court. In felony cases, the defendant's waiver must be in writing.

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