

THE CRIMINAL RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:

2. Criminal Rule 23(c)—Findings in a nonjury trial.

The proposed change to Rule 23(c) would specify the findings the court must make in a criminal nonjury trial.

The committee discussed Rule 23 governing criminal trials and *Klecka v. State*, 2014 WL 819504 (Alaska App. 2014). In *Klecka*, the defendant was convicted of the criminal offense of disorderly conduct under AS 11.61.110(a)(6). The case was tried to the district court without a jury. In its written decision, the district court relied on the wrong legal test and the wrong burden of proof. The court of appeals vacated the verdict and remanded the case to the district court.

The committee discussed whether there is a danger of wrongful conviction that could escape review in a judge-tried case. The committee considered the parallel federal criminal rule that requires the court to state specific findings of fact in a nonjury trial. The committee agreed that the trial court should state the elements of each offense charged and find whether the prosecution proved each element beyond a reasonable doubt. Also, the court should state the burden of proof for any defense asserted by the defendant, and whether the burden has been met.

The Criminal Rules Committee recommends the following proposal:

Rule 23. Trial by Jury or by the Court.

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(c) Trial Without a Jury. In a case tried without a jury, the court shall ~~make a general finding and shall, in addition, on request, find the facts specially state, orally or in writing, the elements of each offense charged and find whether the prosecution has proved each element beyond a reasonable doubt. The court shall also state the burden of proof for any defense asserted by the defendant, and whether the burden has been met. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.~~