

ALASKA RULES OF MINOR OFFENSE PROCEDURE

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ALASKA RULES OF MINOR OFFENSE PROCEDURE Rule 1

Rule 1. Scope, Purpose, and Construction.

These rules govern the procedure in cases involving minor offenses, except as provided in Rule 17 and Rule 18. They are intended to provide for the just determination of these cases and to that effect shall be construed to secure simplicity and uniformity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

(Rescinded and readopted by SCO 1794 effective April 15, 2013; renamed and renumbered by SCO 1797 effective April 15, 2013; and amended by SCO 1895 effective November 1, 2016)

Rule 2. Minor Offense Defined.

Any offense that meets one of the definitions below is a minor offense, including an offense that is classified as a misdemeanor by statute, regulation, or ordinance. An offense is not a minor offense under these rules if the only penalty is a civil penalty. As used in these rules, "minor offense" means

(a) an offense classified by statute as an infraction or a violation; or

(b) any offense for which a bail forfeiture amount has been authorized by statute and established by supreme court order; or

(c) any municipal motor vehicle or traffic offense for which a fine amount has been established in a fine schedule adopted by municipal ordinance under AS 28.05.151; or

(d) any offense under a municipal ordinance for which a conviction cannot result in incarceration or the loss of a valuable license and for which a fine schedule has been established under AS 29.25.070(a); or

(e) any offense under statute or municipal ordinance for which a conviction cannot result in incarceration, a fine greater than \$1,000, or the loss of a valuable license; or

(f) any fish and game offense in 5 AAC charged as a strict liability offense; or

(g) any commercial fishing offense listed in AS 16.05.722 or 5 AAC charged as a strict liability offense (classified in AS 16.05.722 as a violation).

(Rescinded and readopted by SCO 1794 effective April 15, 2013; renamed and renumbered by SCO 1797 effective April 15, 2013; and amended by SCO 1892 effective August 15, 2016)

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 subsection (h) below, a citation must name an individual as the defendant. Citations may not be filed with the court until the defendant has been served.

(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,
- (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, and
- (6) the method used to serve the citation on the defendant.

(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 served the citation on the defendant as required by AS 12.25.175-12.25.190.

(g) **Methods of Service of Citation.**

(1) *Offenses Requiring Personal Service.* The issuing officer must personally serve the citation on the defendant by handing the citation to the defendant if the citation charges one of the following:

- (A) an offense involving a moving motor vehicle,
- (B) an offense punishable by a fine of more than \$500, or

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(C) a violation of AS 04.16.050 or similar ordinance of a municipality.

(2) *Other Offenses.* For all other offenses, the citation may be served by one of the following methods:

(A) personal service as provided in (1) above;

(B) property service under AS 12.25.175(d)(1) by leaving the citation in a conspicuous place on the vehicle or other personal or real property that was the subject of the infraction or violation; or

(C) any other method of service allowed by Civil Rule 4, including:

(i) other methods of personal service by an officer, a process server, or other person authorized to serve process as provided in Civil Rule 4(d); or

(ii) certified mail, restricted delivery, with return receipt requested as provided in Civil Rule 4(h). If certified mail is used, the postal return receipt shall be addressed so it is returned to the person serving the citation. Service of process by mail is completed when the return receipt is signed.

(3) *Proof of Service.* If the citation was served by any method in subparagraph 2(C), proof of service must be filed with the citation. The proof of service must set forth the method, place, and date of service of the citation.

(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 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 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. The citation must name the person served.

(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;

(2) the citation does not list the classification of the offense required by Administrative Bulletin 83;

(3) the citation does not list the penalty information or the procedure for responding required by Administrative Bulletin 83;

(4) the citation lists more than one defendant, lists more than one offense, or fails to name the defendant as required by subsections (a) and (h);

(5) the citation does not list the name of the person who was served on behalf of the entity described in subsection (h);

(6) the citation does not state the method of service;

(7) proof of service of the citation is not provided, if required by paragraph (g)(3) of this rule because the citation was served by a method other than personal service or property service;

(8) the form of the citation does not meet the requirements of this rule or Administrative Bulletin 83; or

(9) the officer's signature, printed name, identification number, or the date of issuance is missing.

**The Uniform Minor Offense Table (UMOT) is maintained by the Alaska Court System. It is available on the Court System's website at: <http://courts.alaska.gov/trialcourts/umot.htm>

(Rescinded and readopted by SCO 1794 effective April 15, 2013; renamed and renumbered by SCO 1797 effective April 15, 2013; amended by SCO 1827 effective June 24, 2014; by SCO 1895 effective November 1, 2016; and by SCO 1909 effective June 21, 2017)

Note: Rule 3(c) refers to Administrative Bulletin 83 "Form of Citation" available on the court system website at <http://www.courts.alaska.gov/adbulls/ab83.pdf>

Note to SCO 1827: Minor Offense Rule 3(f) was amended by § 3 of ch. 53 SLA 2014 (CSSB 116), effective June 24, 2014, to delete the word "personally" and add "as required by AS 12.25.175 – 12.25.190" in the second sentence. Section 1 of this Order was adopted for the sole reason that the legislature has mandated the amendments.

Minor Offense Rule 3(g) Personal Service was repealed by § 4 of ch. 53 SLA 2014 (CSSB 116), effective June 24, 2014. Section 3 of this Order was adopted for the sole reason that the legislature has mandated the repeal. Section 5 of this Order re-adopted a new subsection (g) Methods of Service of Citation.

Rule 4. Minor Offenses Not Charged on a Citation.

(a) This rule applies to minor offenses charged on an information or complaint without any related criminal charges.

(b) The charging document must include the information required by Rule 3(b) and the administrative bulletin issued under Rule 3(c). The defendant's social security number may not appear on an information or complaint. Each defendant joined in an information or complaint must be assigned a separate case number. The prosecuting authority must provide the court with an additional copy of the charging document for each defendant's case file. Except as provided in (c) below, an information or complaint must name an individual or individuals as the defendant.

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(c) An information or complaint charging a corporation, limited liability company, or other entity must name the defendant as provided in Rule 3(h). The summons must be served on a person listed in Rule 3(h).

(d) A summons shall be issued by a judge or magistrate judge only if probable cause has been established as provided in Criminal Rule 4(a)(1). No warrant may issue. The summons must be on a form approved by the administrative director. The prosecuting authority shall furnish the court with a copy of the summons and charging document to be served on the defendant.

(e) If probable cause is not established, the case is deemed dismissed.

(f) The summons and charging document shall be served together. They may be served upon the defendant by any peace officer or by any other person authorized to serve a summons in a civil action, within this state or the United States or any of its possessions, by delivering a copy to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by certified mail as provided in Civil Rule 4(h). Proof of service must be filed with the court. If requesting service by certified mail, the prosecuting authority shall give the court an addressed envelope, adequate postage, and appropriate completed postal forms and must address the delivery receipt so it is returned to the court.

(g) If the offense charged is on a bail forfeiture schedule or fine schedule, the defendant must, within 30 days after being served with the summons, respond to the summons using one of the options provided in Rule 5.

(h) A violation of AS 04.16.049, AS 04.16.050, or a similar municipal ordinance may not be joined with other minor offenses.

(Rescinded and readopted by SCO 1794 effective April 15, 2013; renamed and renumbered by SCO 1797 effective April 15, 2013; amended by SCO 1829 effective October 15, 2014); by SCO 1887 effective October 4, 2016; and by SCO 1895 effective November 1, 2016)

Rule 5. Optional Court Appearance.

(a) A defendant charged with a minor offense for which a bail forfeiture amount has been established by supreme court order or for which a scheduled fine amount has been established by statute or ordinance must within 30 days after the citation was issued:

(1) request to appear in court for an arraignment, which must be conducted in accordance with Criminal Rule 5(c), to the extent applicable to minor offenses; or

(2) enter a plea of not guilty and request trial by mailing or delivering a signed plea as directed on the citation; or

(3) enter a plea of no contest and submit payment of the citation, plus any surcharge established by statute, as directed

on the citation; or

(4) provide proof of compliance to a law enforcement agency if a statute, regulation, or ordinance permits dismissal of the citation upon a showing of compliance, except that proof of compliance also may be made to the court for violation of AS 28.15.131 (failure to carry or exhibit license) or AS 28.22.019 (proof of insurance) or similar municipal ordinance that authorizes proof of compliance to be made to the court.

(b) If a citation is filed with the court, the clerk is authorized to dismiss the citation upon notification from the agency that proof of compliance was made or when proof of compliance is submitted to the court for violation of AS 28.15.131, AS 28.22.019, or similar ordinance. A person may display proof of insurance to the clerk on a mobile electronic device. The clerk may also grant a request for an extension of time to correct the defect.

(c) A defendant who responds but

(1) fails to sign the citation,

(2) fails to submit a plea, or

(3) fails to provide full payment of the amount due

will be deemed to have entered a plea of no contest, unless the defendant clearly indicates otherwise. If any amount remains due to be paid, a judgment for the amount due will be entered against the defendant under Rule 10.

(Rescinded and readopted by SCO 1794 effective April 15, 2013; renamed and renumbered by SCO 1797 effective April 15, 2013; amended by SCO 1799 effective October 15, 2013; and by SCO 1895 effective November 1, 2016)

Rule 5.1. Request for Judgment by Municipality.

If the citation is initially filed with a municipality as provided in Administrative Bulletin 39 and the defendant either submits a plea of no contest without full payment or makes a partial payment without a not guilty plea, the municipality may request a judgment by filing a request for judgment on a form designated by the administrative director. Requests for judgment must be filed within six months after the citation was issued.

Rule 6. Mandatory Court Appearance.

(a) A defendant charged with a minor offense for which no bail forfeiture amount has been established by supreme court order and for which no scheduled fine amount has been established by statute or ordinance must:

(1) appear at the time and place indicated on the citation or summons for arraignment, which must be conducted in accordance with Criminal Rule 5(c), to the extent applicable to minor offenses;

(2) submit a plea of not guilty without appearing for arraignment; or

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(3) provide proof of compliance to a law enforcement agency if a statute, regulation, or ordinance permits dismissal of the citation upon a showing of compliance.

(b) The clerk is authorized to dismiss the citation upon notification from the agency that proof of compliance was made.

(Rescinded and readopted by SCO 1794 effective April 15, 2013; renamed and renumbered by SCO 1797 effective April 15, 2013; amended by SCO 1799 effective October 15, 2013; and by SCO 1895 effective November 1, 2016)

Rule 7. Pleas.

(a) When a no contest or guilty plea is entered, a judgment of conviction will be entered.

(b) When a plea of not guilty is entered, the defendant is not required to post bail pending trial. When trial is requested, the case will be set on the calendar and notice sent to the parties.

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

Rule 7.1 Motions; Requests to Reschedule Hearing or Trial.

(a) **Motions.** Motions are governed by Criminal Rule 42 except that

(1) the moving party may not file a reply unless allowed by the court; and

(2) if a party seeks expedited consideration, the motion must be titled expedited and the reasons for expedited consideration must be set out in the motion. A separate motion for expedited consideration shall not be filed.

(b) **Requests to Reschedule Arraignment.** The clerk is authorized to reschedule an arraignment upon request by a defendant.

(c) Request to Reschedule Trial.

(1) *Form of Request.* A request to reschedule trial must be submitted on a form authorized by the administrative director. The requesting party must include an explanation for the request, a list of available dates, and for defendants, a waiver of the right to a speedy trial for the period of delay caused by the request. A motion for expedited consideration shall not be filed.

(2) *Request by Prosecution.* When the prosecutor, officer who issued the citation, or other representative under Rule 12(a) requests to reschedule a trial, the defendant will be notified and provided the opportunity to respond as provided below.

(A) If the request is filed more than fifteen days before the scheduled trial date,

(i) the clerk shall give written notice of the request to the defendant; and

(ii) the defendant may file an opposition within 10 days of the date the clerk distributes the notice.

(B) If the request is filed within 15 days before the scheduled trial date, the clerk shall attempt to notify the defendant by telephone, email, or fax. The clerk shall note the defendant's responses on the request.

(3) *Request by Defendant.* When a defendant requests to reschedule a trial, notice to the prosecution is not required. No opposition may be filed unless requested by the court.

(4) *Clerk's Authority.* The clerk is authorized to reschedule the trial except the court will decide the request when

(A) the requesting party has previously requested to reschedule the trial two times,

(B) trial cannot be rescheduled within the time set for speedy trial under Rule 15,

(C) an opposition is filed or noted, or

(D) the clerk is unable to get a response from the defendant as provided in (2)(B).

(Adopted by SCO 1895 effective November 1, 2016)

Rule 8. Defendants Under 18.

A defendant under age 18 at the time of the offense must be accompanied by a parent, guardian, or legal custodian at any court appearance for a minor offense until the defendant reaches age 18.

(Rescinded and readopted by SCO 1794 effective April 15, 2013; renamed and renumbered by SCO 1797 effective April 15, 2013; and amended by SCO 1895 effective November 1, 2016)

Rule 9. Failure to Respond or to Appear.

(a) Failure to Respond to Citation.

(1) *Default Judgment.* If a defendant fails to respond as provided in Rules 5 or 6, the court may, without finding probable cause to believe the defendant committed the offense, enter a default judgment of conviction as provided in Rule 10.

(2) *Warning Notice Requirement.* At least 15 days before default judgment is entered, a notice advising the defendant of the consequences of a failure to respond must be sent to the defendant at the address on record with the Division of Motor Vehicles or the address shown on the citation.

(3) *Citations Filed With Municipalities.* If the citation is initially filed with a municipality as provided in Administrative Bulletin 39, the municipality may request a default judgment by filing with the court the citation and an affidavit from a

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municipal employee stating that the municipality sent the defendant the warning notice required in (2) above and the defendant failed to respond. If the municipality has entered into an agreement to file citations electronically under Rule 22, the agreement must include procedures for verifying that the defendant was sent the warning notice and failed to respond. Requests for default judgment must be filed within six months after the citation was issued. The request and affidavit for default judgment must be on a form approved by the administrative director.

(b) **Failure to Appear After Summons.** If a defendant who has been served a summons issued under Rule 4 fails to appear or respond, the court may enter a default judgment of conviction as provided in Rule 10.

(c) **Failure to Appear for Arraignment or Trial.** If the court sends a defendant notice of an arraignment or trial date and the defendant fails to appear on the scheduled date, the court may, without finding probable cause to believe the defendant committed the offense, enter a default judgment of conviction as provided in Rule 10. The court's notice of the arraignment or trial date must advise the defendant of the consequences if the defendant fails to appear.

(d) **Bench Warrants Prohibited.** The court shall not issue a bench warrant for failure to respond or appear or for failure to satisfy the judgment in a minor offense case. This provision does not apply to minor offenses filed in criminal and underage consuming cases as provided in Rule 17 and Rule 18.

(Rescinded and readopted by SCO 1794 effective April 15, 2013; renamed and renumbered by SCO 1797 effective April 15, 2013; and amended by SCO 1895 effective November 1, 2016)

Rule 10. Judgment, Costs, Fees, and Relief from Default Judgment.

(a) **Fine.** A judgment of conviction must order payment of the fine as follows:

(1) *After Plea or Trial.*

(A) Pursuant to AS 12.25.230(c), the fine may not exceed the amount listed on the bail forfeiture or fine schedule. A scheduled fine amount may not be reduced if a municipal ordinance prohibits reduction of the fine amount.

(B) For offenses that require a mandatory court appearance, the court may impose a fine up to the maximum authorized by statute or ordinance.

(2) *Default Judgment.* A default judgment entered under Rule 9 must require the defendant to pay the scheduled bail or fine amount if the offense is an optional court appearance offense or the maximum penalty if the offense is a mandatory court appearance offense.

(b) **Surcharge.** All judgments must order payment of any applicable surcharge.

(c) **Forfeiture.**

(1) A default judgment or a judgment entered on a no contest plea must order forfeiture of any seized items listed on the citation or other charging document.

(2) All other judgments of conviction must order forfeiture of:

(A) all fish and game seized under AS 16.05.190 and listed on the citation or other charging document,

(B) all fish, or its fair market value, taken or retained as a result of a strict liability commercial fishing violation as provided in AS 16.05.722(b),

(C) any seized items listed on the citation or other charging document if a statute or ordinance requires the item to be forfeited upon conviction, and

(D) any other items ordered by the court to be forfeited when forfeiture is authorized by statute or ordinance.

(3) Forfeited items shall be disposed of at the discretion of the prosecuting authority, unless otherwise ordered by the court.

(d) **Restitution.** If the offense is a mandatory appearance offense, the court may order restitution as provided in AS 16.05.925(b) or any other statute or ordinance authorizing restitution. If the offense is a mandatory appearance offense, any default judgment entered must order payment of any applicable restitution listed in AS 16.05.925(b). As provided in AS 16.05.165(d), restitution under AS 16.05.925(b) may not be ordered for offenses for which bail has been forfeited under AS 16.05.165(c).

(e) **Court Costs for Default Judgments.** A default judgment entered under Rule 9 must require the defendant to pay court costs in the amount of \$25 per case. Court costs imposed under this rule must be deposited in the state general fund.

(f) **Collection Costs—All Judgments.**

(1) The defendant will be assessed \$25 per case in collection costs if the judgment is transferred for collection against the defendant's Alaska Permanent Fund Dividend as provided in Administrative Bulletin 43. The court may waive this collection cost upon a showing of good cause. Collection costs imposed under this paragraph belong to the political entity that prosecuted the offense.

(2) For execution procedures not covered under (1), the defendant will be assessed collection costs in the amount authorized by Civil Rule 69 and Administrative Rule 11.

(g) **Relief from Default Judgment.**

(1) Upon a motion filed within two years after entry of a default judgment under Rule 9(a), (b), or (c), the court may vacate the judgment if the defendant shows that either

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(A) there is a good reason for the failure to respond or appear and the defendant has a meritorious defense to the offense charged, or

(B) the proceedings were not fair to the defendant because the defendant did not receive notice of the charge or the procedure for responding to the charge or that a default judgment would be entered if defendant did not respond to the charge.

(2) If the judgment is vacated, the case must be set for trial unless the prosecution dismisses the case or, if the offense is correctable, the defendant shows proof of compliance with the law.

(h) Authority of Clerk.

(1) The clerk is authorized to enter judgments of conviction when a defendant mails or delivers to the clerk a plea of no contest, payment of the fine without a plea, fails to respond to a citation or summons, or fails to appear for trial.

(2) The clerk is authorized to enter a judgment of conviction when a municipality files a request and affidavit for entry of judgment under Rule 5.1.

(3) After entry of a judgment of conviction, the clerk may, upon request of the defendant, approve deferral of payment of the fine and surcharge for up to six months from the date of the request. This request does not need to be served on the prosecution.

(4) The clerk is authorized to reduce a fine upon presentation of required proof under AS 04.16.049(i) or AS 04.16050(c).

(i) **Disposition of Records of Conviction.** The court system must transmit notice of conviction to the following agencies:

(1) In the case of a motor vehicle offense, the conviction will be transmitted to the Department of Administration, Division of Motor Vehicles.

(2) In the case of a fish and game violation, the conviction will be transmitted to the Department of Public Safety.

(3) In the case of a commercial fishing violation, the conviction and sentence will be transmitted to the Commercial Fisheries Entry Commission as required by AS 16.43.880 and AS 16.43.970.

(Rescinded and readopted by SCO 1794 effective April 15, 2013; renamed and renumbered by SCO 1797 effective April 15, 2013; amended by SCO 1827 effective June 24, 2014; and by SCO 1895 effective November 1, 2016)

Rule 11. Dismissal and Deferred Prosecution.

(a) **By the Prosecuting Attorney or Representative.** The prosecuting attorney or the prosecution's representative under Rule 12(a) may dismiss a minor offense charge.

(b) **By Court.** The court may dismiss a minor offense charge if

(1) there is unnecessary delay in bringing a defendant to trial pursuant to Rule 15;

(2) the prosecuting attorney or the prosecution's representative under Rule 12(a) fails to appear for trial;

(3) proof of compliance is made to an agency or to the court as provided in Rule 5(a)(4) or Rule 6(a)(3); or

(4) dismissal is in furtherance of justice. The reasons for the dismissal shall be set forth in the order or on the record. The court may not dismiss a minor offense charge conditioned upon the defendant paying a fine, completing a defensive driving course, completing community work service, or other conditions.

(c) **Identity Error in Charging Document.** If the prosecution initiates or concurs with the dismissal of charges against a defendant because the named defendant was not the person whom the prosecution intended to charge with the offense, the court shall enter a written order of dismissal clearly stating that this is the reason for the dismissal.

(d) **Deferred Prosecution.** When a charge has been filed with the court and the prosecutor or prosecution's representative under Rule 12(a) enters into an agreement with the defendant to defer prosecution based on the defendant's agreement to complete a defensive driving course or on other conditions, the prosecutor or representative must file the agreement with the court or put the parties' agreement on the record. The agreement must include the date by which the defendant must complete the defensive driving course or other conditions and the date by which the prosecutor will file a dismissal. If the agreement is conditioned upon payment of a fee or costs, payment may not be made to the court. Upon satisfactory completion of the agreement, the prosecutor or representative must file a notice of dismissal with the court. If a notice of dismissal is not filed by the date stated in the agreement, the court may enter a judgment of conviction.

(Rescinded and readopted by SCO 1794 effective April 15, 2013; renamed and renumbered by SCO 1797 effective April 15, 2013; and amended by SCO 1895 effective November 1, 2016)

Note: Rule 11(d) clarifies that defensive driving course dismissals are within the jurisdiction of the prosecuting authority as a form of deferred prosecution.

Rule 12. Non-Attorney Representation.

(a) **Representation of State or Municipality by Non-Attorney.**

(1) For the prosecution of minor offense charges under these rules, a municipal corporation or the State of Alaska may be represented by the officer who issued the citation or complaint or by another employee of the investigating agency. The representative need not be employed by the same

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government entity represented, but must be authorized by the entity to represent it.

(2) The representative may file a request to reschedule trial or a request to participate telephonically, and may give testimony, offer exhibits, or call witnesses for examination by the court. The representative may also defer prosecution and dismiss charges. The representative may not examine witnesses, make opening statements and closing arguments, or otherwise act as an attorney.

(b) **Corporations.** A corporation or other public or private organization may be represented in any stage of a minor offense proceeding, including an appeal, by any officer or employee authorized in writing to represent it.

(Rescinded and readopted by SCO 1794 effective April 15, 2013; renamed and renumbered by SCO 1797 effective April 15, 2013; and amended by SCO 1895 effective November 1, 2016)

Rule 13. Temporary Transfer of Minor Offense Cases.

(a) For purposes of this rule, the term “original court” means the court in which a minor offense case is pending. The term “second court” means the court to which the defendant requests that the case be temporarily transferred.

(b) The defendant may request that arraignment be held in a second court, which is nearest to the place where the defendant resides or is employed, instead of in the original court.

(c) The defendant’s request for temporary transfer for arraignment may be made in writing or in person to the clerk of court in the original court or to the clerk of court in the second court.

(d) If the requirements of subsection (b) are satisfied, the clerk shall grant the request for temporary transfer. Approval of the prosecuting authority at the original court is not required.

(e) The clerk who grants the request shall immediately notify the other court of the temporary transfer. Following notification, the clerk in the original court shall provide a copy of the citation to the second court.

(f) The defendant may be arraigned in the second court on a copy or facsimile of the citation.

(g) If the defendant enters a plea of guilty or no contest in the second court, the defendant shall be sentenced in the second court. If the defendant enters a plea of not guilty, the second court shall return the case to the original court for trial setting.

(h) After the plea has been entered, the second court shall, within 10 working days, return all papers to the original court.

(Rescinded and readopted by SCO 1794 effective April 15, 2013; renamed and renumbered by SCO 1797 effective April 15, 2013; and amended by SCO 1895 effective November 1, 2016)

Rule 14. Change of Venue.

A request to change the place of trial in a minor offense case may be made for the reasons stated in AS 22.15.080. It must be made by motion and must be supported by affidavit. The opposing party has five days from the date of service to file a response. If the court grants the motion, the clerk in the court where the case is filed must transmit the file to the new court.

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

Rule 15. Speedy Trial—When Time Commences to Run.

The right to speedy trial on minor offenses is governed by Criminal Rule 45. A defendant charged with a minor offense 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. If the defendant is to be tried after a judgment is vacated, a mistrial, an order for a new trial, or an appeal, the time for trial shall run from the date the judgment was vacated, the date of mistrial or order granting a new trial, or the remand date.

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

Rule 16. Peremptory Challenges.

A judge in a minor offense case may not be peremptorily challenged under either Criminal Rule 25(d) or AS 22.20.022.

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

Rule 17. Minor Offenses in Criminal Cases.

(a) **Joinder.** Except as provide in subsection (h), a prosecutor may join a minor offense charge with a related criminal charge under the circumstances described in Criminal Rule 8(a).

(b) **Minor Offense Citation.** A minor offense citation may not be filed in a criminal case.

(c) **Separate Count.** The minor offense charge joined with a criminal charge must be charged in a separate count in the criminal complaint, information or indictment. The minor offense count must include the arrest tracking number (ATN) and charge tracking number (CTN) as required by Criminal Rule 3(c) or 7(c). It must also include the statute, regulation or

ordinance as identified in the uniform table of minor offenses required in Rule 3(b).

(d) **Notice of Joinder.** If a citation issued for a minor offense has been filed with the court and the prosecutor wishes to join that charge with a criminal charge, the prosecutor must file a “Notice Joining Minor Offense Charge with Criminal Charge” in the minor offense case. This notice will close the minor offense case. The prosecutor must list the minor offense charge as a count in the criminal charging document as provided in subsection (c).

(e) **Criminal Rules Apply.** Except as provided in (f) and (g), criminal rules rather than minor offense rules apply when

(1) a minor offense charge is joined with a related criminal charge, and

(2) a criminal charge is amended to be a minor offense charge.

(f) **When Minor Offense Rules Apply.** If all criminal charges have been disposed of in a criminal case and the only remaining charge or charges are minor offenses, the minor offense rules apply to all further proceedings. If the defendant has failed to appear, the court may direct the clerk to issue a warning notice advising the defendant that the defendant must contact the court within 15 days to reschedule the hearing or the court will enter a default judgment of conviction for the minor offense as provided in Rule 10. This subsection does not apply to underage consuming offenses as defined in Administrative Bulletin 7.

(g) **Maximum Fine for Minor Offense.** Pursuant to AS 12.25.230(c), the fine for an offense listed on a bail forfeiture schedule or a municipal fine schedule is the maximum fine that may be imposed for that offense. A scheduled fine amount may not be reduced if a municipal ordinance prohibits reduction of the fine amount.

(h) **Joinder Limits.** A prosecutor may not join a violation of AS 04.16.049 or 04.16.050 or a similar municipal ordinance with a related criminal charge.

(Rescinded and readopted by SCO 1794 effective April 15, 2013; renamed and renumbered by SCO 1797 effective April 15, 2013; amended by SCO 1886 effective October 4, 2016; by SCO 1887 effective October 4, 2016; and by SCO 1895 effective November 1, 2016)

Note to SCO 1886: Chapter 32, SLA 2016 (SB 165), at sections 8 and 9, make the following offenses violations: AS 04.16.049 (unauthorized presence on a licensed premises) and AS 04.16.050 (minors consuming alcohol). Sections 20 and 21 of the Act amended subsection (a) of Minor Offense Rule 17 and added a new subsection (g), effective October 4, 2016, to require that these violations not be joined with any related criminal offense. This rule change is adopted for the sole reason that the legislature has mandated the amendment.

Rule 18. Minor Offenses that Must be Filed as Underage Consuming Cases.

Unless filed with a related criminal case, the offenses listed as exceptions to the minor offense case numbering policy in Administrative Bulletin 7 must be filed as underage consuming cases and must be assigned underage consuming case numbers. Criminal rules rather than minor offense rules apply to these offenses, even though these offenses are not classified by statute as criminal offenses. Criminal charges may not be filed in an underage consuming case.

(Rescinded and readopted by SCO 1794 effective April 15, 2013; renamed and renumbered by SCO 1797 effective April 15, 2013; amended by SCO 1845 effective January 1, 2015; and by SCO 1895 effective November 1, 2016)

Note: Under Administrative Bulletin 7, available on the court system website at <http://www.courts.alaska.gov/adbulls/ab83.pdf>, the following offenses must be filed as an underage consuming case:

AS 28.35.280 Minor Operating Vehicle after Consuming;

AS 28.35.285 Minor Refusing to Submit to Chemical Test;

AS 28.35.290 Minor Operating Vehicle Within 24 Hours of Being Cited for Offenses Under AS 28.35.280 or 285; and

Any municipal offense similar to the above involving alcohol or marijuana that is not classified as a misdemeanor and with potential penalties that do not include incarceration but otherwise entitle the defendant to jury trial and to counsel at public expense.

Rule 19. Telephonic Participation in Minor Offense Cases.

In any proceeding the defendant may waive the right to be present and request to participate by telephone. The defendant's waiver of the right to be physically present may be obtained orally on the record or in writing. The court may allow telephonic participation of one or more parties, witnesses, counsel or the judge at trial or any other proceeding unless good cause or due process requires otherwise. The responsibility for the cost of a telephonic hearing is governed by Administrative Rule 48(b).

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

Rule 20. Form of Judgment.

(a) **Electronic Record Is Official Judgment.** The official judgment in a minor offense case is the electronic record in the case management system. The clerk will provide a printout of the electronic judgment upon request.

(b) **Content.** An electronic judgment must contain the following information:

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- (1) the case number,
- (2) the date of the offense,
- (3) the defendant's full name,
- (4) the following information if it appears on the citation:
 - (A) the defendant's date of birth,
 - (B) the defendant's address, and
 - (C) the defendant's driver's license or ID number.

(5) the name of the offense and number of the statute, regulation or ordinance of which the defendant is charged or convicted,

(6) the DMV code of the offense if it appears on the citation,

(7) the defendant's plea, and

(8) the final disposition (including sentence).

(Added by SCO 1453 effective April 15, 2002; renamed and renumbered by SCO 1797 effective April 15, 2013)

Rule 21. Commencement of Time for Appeal; Writ of Execution.

(a) Commencement of Time for Appeal.

(1) *Judgment Based on No Contest Plea.* When a defendant mails or delivers a no contest plea, a copy of the judgment will not be distributed to the parties, except upon request. To appeal a judgment based on a no contest plea, other than an appeal of the penalty, the defendant must first move to withdraw the plea under Criminal Rule 11. Appeal may be taken from an order denying (or granting) the motion. The appeal must be filed within 30 days after the date shown in the clerk's certificate of distribution on the order.

(2) *Default Judgment.* When a judgment of conviction is entered under Rule 9, a copy of the judgment will not be distributed to the parties, except upon request. To appeal a default judgment, the defendant must first move to vacate or modify the judgment under Rule 10(g). Appeal may be taken from an order denying (or granting) the motion. The appeal must be filed within 30 days after the date shown in the clerk's certificate of distribution on the order.

(3) *Judgment Entered in Open Court.* When judgment of conviction is entered in open court, parties who are present will be given written notice of the terms of the judgment. Any appeal must be filed within 30 days from the date the judgment is announced in court. This also applies to an order of dismissal entered in open court.

(4) *Matters Taken Under Advisement.* When a court takes a matter under advisement, the court will reduce its decision to writing. A copy of the written order or judgment will be distributed to the parties. Any appeal must be filed

within 30 days from the date of distribution of the order or judgment.

(b) **Writ of Execution.** Writs of execution may be issued to enforce minor offense judgments, including electronic judgments, as provided in Civil Rule 69.

(Added by SCO 1453 effective April 15, 2002; renamed and renumbered by SCO 1797 effective April 15, 2013)

Rule 22. Electronic Citations in Minor Offense Cases.

(a) **Authorization for Filing Citations Electronically.** The administrative director may enter into an agreement with a law enforcement agency to allow the law enforcement agency to file citations charging minor offenses, as defined in Rule 2, by transmitting data electronically rather than by filing paper citations. The administrative director may enter into an agreement if the law enforcement agency's systems and procedures assure that:

(1) the charging officer will issue a paper citation to the defendant in accordance with AS 12.25.190;

(2) a paper citation issued from an electronic device will contain the charging officers electronic or digital signature as defined in AS 09.80.190;

(3) the court will have the ability to view an electronic version of the paper citation that the charging officer issued to the defendant, including the charging officers electronic, digital, or handwritten signature;

(4) the agency has a written acknowledgement from each peace officer authorized to issue electronic citations certifying that the officer understands that affixing an electronic or digital signature to a citation is the legally binding equivalent of signing a citation by hand, and that by affixing an electronic or digital signature, the officer intends to be bound by the signature;

(5) the agency employs policies that hold individual officers accountable and responsible for actions initiated under their electronic or digital signatures; and

(6) the agency employs adequate security procedures to verify that an electronic signature, record, or performance is that of a specific person and to detect changes or errors in the electronic records related to the citation.

(b) **Electronic Signature.** A charging officer's electronic or digital signature on a citation is the legally binding equivalent of the officer's handwritten signature and satisfies the requirement of Criminal Rule 3(a) that a citation for a minor offense must be signed with a certification under penalty of perjury that the citation is true.

(Added by SCO 1587 effective December 15, 2005; renamed and renumbered by SCO 1797 effective April 15, 2013)

Rule 23. Exhibits

The procedure for exhibits in minor offense trials is governed by Criminal Rule 26.1.

(Added by SCO 1895 effective November 1, 2016)

