

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1419

Amending Criminal 41 concerning
performance bonds.

IT IS ORDERED:

Criminal Rule 41 is amended to read as follows:

(a) **Admission to Bail.** The defendant in a criminal proceeding is entitled to be admitted to bail pursuant to AS 12.30.010-12.30.080.

(b) **Types of Bonds.** The court may require:

(1) the execution of an unsecured appearance bond in an amount specified, under the criteria set forth in AS 12.30.020(a);

(2) the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security, of a sum not to exceed 10 percent of the amount of the bond;

(3) the execution of a bail bond with sufficient solvent sureties or the deposit of cash; or

(4) the execution of a performance bond in a specified amount and the deposit in the registry of the court of cash or other security.

(c) **Separate Bonds.** If a performance bond is required, it must be enforced separately from any appearance or bail bond. Appearance in court may not be a condition of a performance bond.

(d) **Misdemeanor Bail Schedule.**

(1) The presiding judge of each judicial district may adopt, under Administrative Rule 46, a misdemeanor bail schedule for use in each community within that district. Before adopting a schedule for a community, the presiding judge shall consult with the judicial officers in that community who regularly set bail in misdemeanor cases.

(2) Any order adopting a misdemeanor bail schedule must provide that the arresting police agency may apply to a judicial officer for a different bail. The order must also provide that a judicial officer must be contacted at the defendant's request if the defendant is immediately unable to post the scheduled amount in any case in which circumstances exist indicating that protection of the public and the defendant's appearance at subsequent proceedings can be reasonably assured by one of the following:

(A) release on personal recognizance;

(B) release on other appropriate conditions;

(C) the execution of an unsecured appearance bond in an amount equal to or less than the scheduled bail amount, and the deposit in cash or other security of not more than 10 percent of the amount of the bond; or

(D) the execution of a bail bond in an amount less than the scheduled bail amount, secured by cash or other solvent sureties; or

(E) the execution of a performance bond.

(3) A misdemeanor bail schedule may not be set for crimes involving domestic violence as defined in AS 18.66.990 or for the crime of stalking under AS 11.41.270.

(e) **Other Bail Schedules.** No bail schedule shall be established for felonies.

(f) **Prosecuting Attorney--Appearance and Notice.** The prosecuting attorney may appear and be heard in all proceedings relating to bail. The judge or magistrate may require that notice of such proceedings be given the prosecuting attorney.

(g) **Surrender of Defendant.** At any time before forfeiture of the undertaking or the cash deposit in lieu thereof, the sureties on the undertaking or the owner of the deposit may surrender the defendant to the custody of a peace officer or the defendant may surrender personally to the officer. There shall be delivered to the officer at the time of surrender a certified copy of the undertaking or a certificate as to the cash deposit executed by the clerk of court. The peace officer shall thereupon detain the defendant in custody as upon a commitment and acknowledge the surrender by a written certificate.

(h) **Appearance and Bail Bonds.**

(1) *Judgment of Forfeiture.* If the person released on bail on the giving or pledging of security fails to appear before a court or a judicial officer as required, the judge or magistrate before whom the person released was to appear shall forfeit the security. The clerk may sign the judgment of forfeiture if directed to do so on the record in the particular proceeding by the judge. However, the judgment of forfeiture may not be enforced until a hearing is held pursuant to subparagraph (h)(3) or, if no hearing is requested, until 30 days after the date of notice of the judgment of forfeiture. Nothing in this subparagraph shall interfere with the issuance of a summons or bench warrant for a person who fails to appear as required before a court or judicial officer.

(2) *Notice of Forfeiture.* The clerk shall send notice of the judgment of forfeiture to the defendant, defendant's attorney and the

person giving or pledging the security at their last known addresses. The notice must state that a hearing will be held on the forfeiture if timely requested pursuant to subparagraph (h)(3).

(3) *Hearing.* If requested by the defendant or person giving or pledging the security within 30 days of the date of notice of the forfeiture, the court shall hold a hearing to determine whether the defendant's failure to appear was willful. The state, the defendant, the defense attorney, and the person giving or pledging the security have the right to be heard at this hearing. The court shall set aside the judgment of forfeiture if it is proven by a preponderance of the evidence that the failure to appear was not willful. The court may set aside the judgment of forfeiture if the court concludes that justice does not require the enforcement of the judgment. An appeal may be taken from the judgment of forfeiture in the manner of other appeals.

(4) *Remission.* Within one year after entry of judgment of forfeiture, a person who has given or pledged security may apply to the court for a remission, either in whole or in part, based on the return of the defendant with the assistance of the person who gave or pledged security or upon such other extraordinary circumstances as justice requires. The conditions of remission may include payment of expenses incurred for enforcement of the forfeiture and for securing the return of the defendant to custody. (5) *Exoneration.* When the conditions of the bond has been satisfied or the forfeiture thereof has been remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.

(6) *Enforcement.* Execution shall issue on judgments of forfeiture in the same manner as on other judgments for the payment of money.

(i) Performance Bonds.

(1) *Exoneration.* When the defendant has met all of the conditions of the bond, the court shall exonerate the bond and release any security to the person giving or pledging the security.

(2) *Petition for Forfeiture.* At any time prior to exoneration, the prosecuting attorney may file a petition for forfeiture with the court alleging that the defendant violated one or more of the conditions of the performance bond. The petition shall set forth the allegations and shall be supported by an affidavit. The prosecuting attorney shall serve copies of the petition and affidavit on the defendant, defendant's attorney, and the person giving or pledging the security at their last known addresses.

(3) *Notice of Intent to Contest.* The defendant or any person giving or pledging the security shall have 30 days from the date of the petition for forfeiture in which to file a written notice of an intent to contest the forfeiture. The notice shall be served on the prosecuting attorney. If the notice is filed by the defendant, it shall also be served on any person giving or pledging the security. If the notice is filed by a person giving or pledging security, it shall also be served on the defendant and the defendant's attorney. If no notice is filed, the court shall deem the allegations admitted and shall forfeit the security.

(4) *Hearing.* If the defendant or the person giving or pledging the security gives notice that the forfeiture is contested, the court shall schedule a hearing within 45 days of the filing of the notice. However, if the defendant has been charged with the offense of violation of a condition of release under state or municipal law, or has been charged with a new criminal offense, the court shall not hold a hearing on the petition for forfeiture until the criminal charges are resolved.

(5) *Disposition.* The prosecuting attorney has the burden of proving by a preponderance of the evidence that the defendant violated a condition of the performance bond knowingly or with reckless disregard for the fact that the conduct violated the condition. If the court finds that the defendant violated a condition of the performance bond, then the court may forfeit all or part of the security. If the defendant is found guilty or enters a plea of guilty to the crime of violation of a condition of release under state or municipal law, or to a new criminal offense, the court shall consider the finding or plea conclusive evidence that the defendant violated these conditions of the performance bond. An appeal may be taken from the judgment of forfeiture in the manner of other appeals.

(6) *No Effect on Bail.* Nothing in this rule is intended to affect procedures regarding bail release or remand.

DATED: February 8, 2001

EFFECTIVE DATE: February 8, 2001

/s/ _____
Chief Justice Fabe

/s/ _____
Justice Matthews

/s/ _____
Justice Eastaugh

/s/ _____
Justice Bryner

/s/ _____
Justice Carpeneti