

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1907

Amending Criminal Rule 32.6 and Delinquency Rule 23.2 to update the procedures for restitution judgments as the court system assumes the collection functions previously performed by the Department of Law.

IT IS ORDERED:

1. Criminal Rule 32.6 is amended to read as follows:

Rule 32.6. Judgment for Restitution.

(a) **Definition.** When a sentence includes a requirement that the defendant pay restitution, the judge shall either enter a separate judgment for restitution or shall include the order of restitution as a separate section of the criminal judgment. For the purpose of these rules, either of these constitutes a “judgment for restitution.”

(b) **Content.** The judgment for restitution must:

- (1) Identify each victim or other person entitled to restitution and the amount of restitution owed to each.
- (2) State the date restitution is due or, if the court schedules installment payments, the amount and due date of each payment. If no due date is stated, the restitution amount is due immediately.
- (3) State whether payment will be made through the clerk of court or otherwise. The restitution payment will be made through the clerk of court unless (A) the court orders restitution to be made in a form other than payment of a specific dollar amount or (B) the

court orders payment to be made directly to the victim or through another entity.

(4) Identify by name and case number any defendants who are jointly and severally liable for the restitution owed to each victim or other person.

(5) State whether post-judgment interest is owed on the judgment and, if so, when it begins to accrue.

(c) **Entering the Judgment for Restitution.**

(1) *At Sentencing.* If the amount of restitution and the names of the victims are known at the time of sentencing, the court shall enter the judgment for restitution at the time of sentencing.

(2) *After Sentencing.* If the amount of restitution and the names of the victims or other persons seeking restitution are not known at the time of sentencing, the prosecutor shall file and serve within 90 days after sentencing a proposed judgment for restitution on a form designated by the Administrative Director, and a notice that includes information concerning the identity of any victims or other persons seeking restitution, whether any victim or other person expressly declines restitution, the nature and amount of any damages together with any supporting documentation, a restitution amount recommendation, and the names of any co-defendants and their case numbers. Within 30 days after receipt of the proposed judgment for restitution, the defense shall file any objection to the proposed judgment and a statement of grounds for the objection. If ordered, the defense shall also file a financial statement on a form designated by the Administrative Director under AS 12.55.045(j). If the defendant does not file an objection, the court may enter the judgment for restitution without further proceedings. If the defendant

files an objection and either party requests a hearing, the court shall schedule a hearing.

(3) *Victim Information.* In addition to the requirements of (c)(1) and (2) above, the prosecutor shall submit an *ex parte* restitution victim information statement on a form provided by the Administrative Director, which includes information concerning the identity and addresses of the victims. The restitution victim information statement shall be filed within 30 days after entry of the restitution judgment under (c)(1) above or at the time the prosecutor submits a proposed judgment to the court under (c)(2) above. The restitution victim information statement is not a permanent record and will not be retained in the case file. It must not be served on the defendant or disclosed to anyone other than court personnel for purposes of collecting restitution.

(d) **Hearing Regarding Payment Schedule.** A defendant who is unable to pay restitution because of financial circumstances may request a hearing to ask the court to modify the restitution payment schedule. If the court holds a hearing and the defendant proves by a preponderance of the evidence that the defendant is unable through good faith efforts to satisfy the payment schedule in the judgment for restitution, the court may modify the payment schedule, but may not reduce the amount of restitution.

(e) **Execution.** Civil execution to enforce the judgment may issue if restitution is ordered to be paid by a specified date and defendant fails to make full payment by that date. If restitution is ordered to be paid in specified installments and defendant fails to make one or more installment payments, civil execution to collect the entire remaining balance may issue. The automatic stays on enforcement

provided in Civil Rule 62(a) and District Court Civil Rule 24(a) do not apply to the enforcement of restitution judgments.

(f) **Victim's Options for Collection.** The collections unit established within the court system will execute on the defendant's permanent fund dividend as needed to collect the restitution judgment. A victim who wants to pursue collection more broadly under Civil Rule 69, including the use of general writs of execution or writs of execution for garnishment of earnings, may elect to proceed without the collections unit's assistance. Notice of this election shall be provided on a form designated by the Administrative Director.

(g) **Priority of Payments.** Unless the court finds good cause to order a different priority, payments received from or on behalf of a defendant will be allocated as follows:

(1) If a defendant makes a voluntary payment and designates how or to what criminal or civil judgments the payment should be applied, the payment will be applied as designated by the defendant.

(2) Payments received as the result of execution on the defendant's permanent fund dividend will be applied to judgments according to the priorities stated in AS 43.23.065.

(3) If a defendant makes a voluntary payment but does not designate how the payment is to be applied or if a payment is received as a result of execution by the collections unit established within the court system or a comparable unit of a municipality, the payment will be applied using the following rules:

(A) Judgments for restitution will be paid in full before any amounts collected from the defendant will be applied to criminal or civil judgments owed to the state or a municipality.

(B) If restitution is owed to the state or a municipality, amounts collected from the defendant will be applied first to judgments for restitution owed to victims other than the state or a municipality.

(C) When restitution is ordered to be paid by a defendant to victims in the same criminal case, amounts collected from the defendant will be allocated among the victims based on the percentage of the amount of restitution owed to each victim to the total amount of restitution owed by the defendant to all of the victims; except that if a payment is less than \$100, the payment may be paid to a single victim if such payments are paid to all victims on an alternating basis.

(D) When restitution is ordered to be paid by a defendant to victims in different criminal cases, amounts collected from the defendant will be applied to the judgment that is first in time.

(4) If a payment is received as a result of execution by a victim, the payment will be applied to the judgment for restitution owed to that victim.

(h) **Financial Statement.**

(1) At any time after sentencing, the probation officer or prosecuting authority may request that the defendant be ordered to provide a financial statement pursuant to AS 12.55.045(k).

(2) If the defendant fails to submit a completed financial statement as ordered, the probation officer or prosecuting authority may notify the court by affidavit. Upon receipt of an affidavit under

this paragraph, the court shall schedule a hearing for the defendant to show cause why the defendant should not be held in contempt for failure to comply with the order to submit the financial statement.

(i) **Suspended Imposition of Sentence.** The judgment for restitution remains civilly enforceable after the expiration of the period of probation or the set-aside of conviction in a case where imposition of sentence is suspended.

Note: Information for victims about collecting on judgments for restitution is provided on the court system's website at: www.courts.alaska.gov/trialcourts/restitution.htm

2. Delinquency Rule 23.2 is amended to read as follows:

Rule 23.2. Judgment for Restitution.

(a) **Definition.** When a disposition includes a requirement that the minor or the minor's parent pay restitution, the judge shall enter a separate judgment for restitution.

(b) **Content.** The judgment for restitution must:

(1) Identify each victim or other person entitled to restitution and the amount of restitution owed to each.

(2) State the date restitution is due or, if the court schedules installment payments, the amount and due date of each payment. If no due date is stated, the restitution amount is due immediately.

(3) State whether payment will be made through the clerk of court or otherwise. The restitution payment will be made through the clerk of court unless (A) the court orders restitution to be made in a form other than payment of a specific dollar amount or (B) the court

orders payment to be made directly to the victim or through another entity.

(4) Identify by name and case number any other delinquent minors, criminal defendants, or parents who are jointly and severally liable for the restitution owed to each person.

(5) State whether post-judgment interest is owed on the judgment, and, if so, when it begins to accrue.

(c) **Entering the Judgment for Restitution.**

(1) *At Disposition.* If the amount of restitution and the names of the persons entitled to restitution are known at the time of disposition, the court shall enter the judgment of restitution at the time of disposition.

(2) *After Disposition.* If the amount of restitution and the names of persons seeking restitution are not known at the time of disposition, the state shall file and serve within 90 days after disposition a proposed judgment for restitution on a form designated by the Administrative Director, and a notice that includes information concerning the identity of any victims or other persons seeking restitution, whether any victim or other person expressly declines restitution, the nature and amount of any damages together with any supporting documentation, a restitution amount recommendation, the names of any other delinquent minors, criminal defendants, and parents who might be jointly and severally liable for the restitution, and any case numbers for those persons, if applicable. Within 30 days after receipt of the proposed judgment for restitution, the delinquent minor and the minor's parents, if applicable, shall file any objection to the proposed judgment, and a statement of grounds for the objection. If the delinquent minor or parent does not file an objection, the court may enter the judgment

for restitution without further proceedings. If the delinquent minor or parent files an objection and any party requests a hearing, the court shall schedule a hearing.

(3) *Victim Information.* In addition to the requirements of (c)(1) and (2) above, the state shall submit an *ex parte* restitution victim information statement on a form provided by the Administrative Director, which includes information concerning the identity and addresses of the victims. The restitution victim information statement shall be filed within 30 days after entry of the restitution judgment under (c)(1) above or at the time the state submits a proposed judgment to the court under (c)(2) above. The restitution victim information statement is not a permanent record and will not be retained in the case file. It must not be served on the delinquent minor or parent or disclosed to anyone other than court personnel for purposes of collecting restitution.

(d) **Hearing Regarding Payment Schedule.** A minor or a minor's parent, if applicable, who is unable to pay restitution because of financial circumstances may request a hearing to ask the court to modify the restitution payment schedule. If the court holds a hearing and the minor or the minor's parent, if applicable, proves by a preponderance of the evidence that the minor or, if applicable, the minor's parent is unable through good faith efforts to satisfy the payment schedule in the judgment for restitution, the court may modify the payment schedule.

(e) **Execution.** Civil execution to enforce the judgment may issue if restitution is ordered to be paid by a specified date and the minor or the minor's parent, if applicable, fails to make full payment by that date. If restitution is ordered to be paid in specified installments and the minor or the minor's parent, if applicable, fails to make one or

more installment payments, civil execution to collect the entire remaining balance may issue. The automatic stay on enforcement provided in Civil Rule 62(a) does not apply to the enforcement of restitution judgments. The civil judgment for restitution remains enforceable after the expiration of the court's jurisdiction over the minor, as provided in AS 47.12.170(a).

(f) **Victim's Options for Collection.** The collections unit established within the court system will execute on the minor's permanent fund dividend or on the minor's parent's, if applicable, as needed to collect the restitution judgment. A victim who wants to pursue collection more broadly under Civil Rule 69, including the use of general writs of execution or writs of execution for garnishment of earnings, may elect to proceed without the collections unit's assistance. Notice of this election shall be provided on a form designated by the Administrative Director.

(g) **Priority of Payments.** Where the allocation and application of payments received from or on behalf of a delinquent minor or a minor's parents is uncertain, the court shall apply the priority provisions of Criminal Rule 32.6(g).

(h) **Financial Statement.**

(1) As provided in AS 47.12.120(b)(4)(C), at the request of the department, the victims' advocate, or on its own motion, the court shall, at any time, order the minor and the minor's parent, if applicable, to submit financial information on a form approved by the Administrative Director to the court and the department for the purpose of establishing the amount of restitution or enforcing an order of restitution.

(2) If the minor or the minor's parent, if applicable, fails to submit a completed financial statement as ordered, the minor's probation

officer or a representative of the department may notify the court by affidavit. Upon receipt of an affidavit under this paragraph, the court shall schedule a hearing for the minor or the minor's parent, if applicable, to show cause why the minor or the minor's parent should not be held in contempt for failure to comply with the order to submit the financial statement.

Note: Information for victims about collecting on judgments for restitution is provided on the court system's website at: www.courts.alaska.gov/trialcourts/restitution.htm

DATED: April 5, 2017

EFFECTIVE DATE: April 5, 2017

/s/
Chief Justice Stowers

/s/
Justice Winfree

/s/
Justice Maassen

/s/
Justice Bolger

/s/
Justice Carney