

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 99

Changing the title of "Rules of Juvenile Procedure" to "Rules of Children's Procedure"; Amending Rules 1, 2, 3, 4, 12, and 29, Rules of Children's Procedure.

IT IS ORDERED:

The Rules of Children's Procedure, heretofore designated as Rules of Juvenile Procedure are amended as set out below:

Rule 1(a), Rules of Children's Procedure: Is amended to read as follows:

(a) Title. These rules shall be known and cited as the "Rules of Children's Procedure". Wherever in such rules minors under the age of 18, within the meaning of AS 47.10, have been designated as "juvenile" or "juveniles", and wherever the court exercising jurisdiction over these minors has been designated as "juvenile court", the word "child" or "children" or "children's court" shall be substituted therefor and be exclusively used in all proceedings under said statute and under these rules.

Rule 2, Rules of Children's Procedure: Is repealed and re-promulgated to read as follows:

Rule 2. Appointment of Masters -- Authority of District Judges and Magistrates.

(a) Appointment of Masters.

(1) Primary Responsibility of the Superior Court. The primary responsibility for hearing, adjudicating and disposing of children's cases involving delinquency or dependency or children in need of supervision rests on the superior court. Such responsibilities shall be delegated to a master under this rule only in those instances where it is totally impracticable for the superior court to act.

(2) Authority of Master. A master, when appointed in accordance with Civil Rule 53, to hear, adjudicate or dispose of children's cases involving delinquency, dependency or need of supervision shall have authority on his own initiative to receive reports bringing a child within the provisions of Title 47, chapter 10, Alaska Statutes and, in accordance with said statute and with Rule 9 of these rules, cause the filing of petitions or receive petitions for adjudication. The master shall make appointments for preliminary inquiry reports, take

required action thereon, initiate and conduct detention hearings, and conduct all hearings and proceedings, and otherwise exercise all the authority of the superior court conferred upon him by his order of appointment. In all proceedings arising under Title 47, chapter 10, Alaska Statutes and these rules the authority of the master shall be exercised in the manner provided under such statute and rules, unless specifically limited by special or general orders of appointment in any such proceedings.

(3) When Special Order of Appointment Required for Hearing. Unless authority is granted, under a special order of appointment, a master shall not hold adjudication or disposition hearings in any case involving death or serious violence, or in any case involving waiver proceedings under Rule 3 of these rules, or in any case in which the child, parent, guardian, or custodian demands a court appointed attorney under these Rules in an area where no attorney conducts a practice.

(4) Filing of Findings and Recommendations. At the conclusion of all proceedings and hearings the master shall promptly prepare a report upon the matters submitted to him by the order of appointment. He shall promptly submit to the superior court judge from whom his appointment derived, or in the absence of the judge, such other superior court judge as may be designated by the presiding judge of the superior court, the report together with written findings, conclusions and recommendations and with such proposed orders, adjudications, dispositions or commitments as may be required, and all papers relating to the case.

(5) Notice of Master's Proposals -- Hearing by Judge. Written notice of the findings, conclusions and recommendations and of the proposed orders, adjudications, dispositions or commitments submitted by the master shall be given to the parent, guardian or custodian of any child whose case has been heard by a master. Within seven days after being served with the master's written notice, any of the parties so served may apply to the superior court for and shall be allowed a hearing by the judge. Unless a hearing de novo is ordered by the court for good cause shown, the hearing shall be upon the same evidence heard by the master, provided that new evidence may be admitted in the discretion of the judge. After a review hearing if such is held, otherwise after considering the master's report, findings and recommendations, the judge shall enter an appropriate order.

(6) Detention Powers Where Master's Authority Limited. In all cases where the authority of the master has been specially limited under this rule or under the order of appointment, he may nevertheless order the child into temporary detention where the welfare of the child and that of

the public so require. In all such cases it shall be the duty of the master to transfer the matter to the superior court in the most expeditious manner possible.

(b) Emergency Authority of District Judge and Magistrate. If during the unavailability of a judge of the superior court or of a master appointed by the court under Civil Rule 53 and these rules, a child is in a condition or surrounding, dangerous or injurious to the welfare of the child or others, which requires immediate action, a district judge or magistrate not appointed as master has the following emergency duty and authority:

(1) Informal Adjustment. The district judge or magistrate may informally adjust or dispose of the matter without a hearing. Such an informal adjustment or disposition may consist of a discussion of the problem with the child, his parents, guardian, or custodian or a responsible official or other qualified person. No detention, formal supervision, or punishment may be ordered by a district judge or magistrate as a part of any informal adjustment or disposition.

(2) Emergency Detention. The district judge or magistrate may order the temporary detention of a child when the child is in a condition or surroundings dangerous or injurious to the welfare of the child or others which requires immediate action. Where necessary, the detention so ordered may be continued until reviewed by the superior court or by a master appointed by the court provided, however, that it is the duty of the district judge or magistrate to immediately notify the superior court of the detention of the child and of the facts surrounding it and to make arrangements for an expeditious transfer of the child and the file of the case to the superior court or to a location where a master appointed to hear the case is available.

(3) Transfer to Superior Court. Whenever it appears to the district judge or magistrate that informal adjustment or disposition of a child matter is inappropriate or not feasible, it is his duty to immediately notify the superior court or a master appointed by the court of the facts concerning the child and to make all necessary arrangements for an expeditious transfer of the child, whether or not such child was ordered detained, and of the file of the case to the superior court or to a location where a master appointed to hear the child's case is available.

Rule 3, Rules of Children's Procedure: Is amended to read as follows:

Rule 3. Waiver of Children's Procedure --
Waiver Hearing -- Right to Counsel -- Hearing
on Master's Recommendations.

(a) Hearing. Where a petition alleges that a child committed an act which if committed by an adult would be a crime, and it appears to the court from the petition or upon testimony heard in connection therewith that there may be probable cause for believing that the act alleged in the petition was committed by the child and that he is not amenable to treatment, a hearing must be held for the purpose of determining if the child shall be prosecuted as if he were an adult. Such a hearing shall be designated as a waiver hearing.

(b) Notice of Hearing. Notice of the waiver hearing must be given by summons served upon the interested parties, as defined under these rules, including a representative of the State Department of Health and Welfare. Service of summons shall be made in the manner provided in these rules. The summons must state that at the hearing it may be determined that the proceedings against the child shall be conducted in the same manner and may result in the same disposition as an adult criminal proceeding.

(c) Right to Counsel. Unless counsel was theretofore retained or appointed to represent the child, the court shall advise the child and his parents, guardian or custodian of his right to representation by counsel at this hearing. To the extent applicable Rules 14 and 15 of these rules shall govern.

(d) Access to Social Reports. Counsel is entitled to full access to all social reports, police reports, court records, and all other reports and records not privileged by statute, relevant to the child and to the facts alleged in the petition or developed by testimony.

(e) Procedure for Waiver Hearing. The provisions of these rules concerning witnesses, testimonial privileges, and admissibility of evidence for the adjudicative phase of child hearings shall be applicable to his hearing. The court shall not rely on any reports, information, or recommendation not made available to counsel. A continuance shall be granted, at counsel's request, if any report, information or recommendation not theretofore available, is introduced or developed at the hearing, and the interests of justice require a continuance.

(f) Waiver Order. If probable cause is established at the hearing for believing that the child committed the act with which he was charged would constitute a crime and the child is not amenable to the treatment provided under AS 47.10 Article I and under these rules, the court shall issue an order waiving and terminating the treatment provided thereunder and close the children's case. The child may then be prosecuted for the act or acts charged in the petition as if he were an adult.

(g) Further Proceedings. If the conditions required for closing the children's case have not been established at the hearing, the court shall further proceed in accordance with AS 47.10 Chapter I and these rules.

(h) Findings of Fact. The order closing the case must be accompanied by written findings of fact clearly demonstrating that:

(1) The court made full inquiry into the allegations of the petition,

(2) The question of waiver of children's proceedings and closing the children's case were given careful consideration by the court, and

(3) All statutory conditions for waiver of child proceedings and closing the case were established.

(i) Hearing by Superior Court. The superior court may not enter an order closing the case on the basis of a master's recommendation. If waiver of children's proceedings is recommended by a master's report, a hearing on the recommendation must be held by the superior court in accordance with this rule.

Rule 4, Rules of Children's Procedure: Is repealed and re-promulgated to read as follows:

Rule 4. Preliminary Investigation -- Intake.

(a) Intake Officer. Any person having information that a child has engaged in conduct within the purview of AS 47.10.010 or who, by reason of the conduct of his parents, guardian or custodian, or other person, requires the attention and protection of the superior court, shall be referred to an intake officer entrusted with preliminary investigation of child matters assigned to that court, and should there not be assigned to such court an intake officer, then to any probation officer available to such court who, for the purpose of the rule, shall be deemed an intake officer. On behalf of the court the intake officer shall make a preliminary investigation to determine whether the facts are sufficient to require further action. He shall report such facts to the court with a recommendation that the matter be handled on a formal or an informal basis.

(b) Intake Interview. For the purpose of such investigation the intake officer shall arrange to interview the child, his parents, guardian, or custodian and any other persons having information as to the facts. Notice to attend the interview shall be given to such parties by letter or telephone and they shall be further informed that their attendance is voluntary.

(c) Parties Advised of Rights. If the parties attend the interview they shall be advised of their rights to counsel at subsequent stages of the proceedings as provided by these rules, to remain silent, and to examine any witness who may testify against them.

(d) Informal Disposition. If the intake officer, after investigation, believes that in the best interest of the child the matter should be handled on an informal basis, he may thereafter refrain from filing a petition and shall thereafter on behalf of the court, counsel with the child and parents, guardian or custodian, and with their consent and cooperation establish such informal supervision or disposition of the child matter as the circumstances may require.

(e) Formal Procedure. If the matter involving the child is deemed by the intake officer to be of a nature so serious that it should be handled formally, then he shall recommend to the court that a petition be filed bringing the child within the formal jurisdiction of the court and shall thereafter file a petition in accordance with the provisions of Rule 8 of these rules.

(f) Authority of Court. Nothing contained herein shall preclude the court from appointing persons other than the intake officer to make investigations, file reports, and to make recommendations with respect to the formal or informal handling of a child brought to the attention of the court under the provisions of AS 47.10.010.

Rule 12, Rules of Children's Procedure: Is amended by changing the entry in the title of said rule reading: "Delinquency or Dependency" to read:

"Delinquency, Dependency or Need of Supervision"

Rule 12, Rules of Children's Procedure: Is further amended by inserting in the first sentence of paragraph (1) of subdivision (a) of the said rule 12, after the word "both," the words:

"or need of supervision,"

Rule 12, Rules of Children's Procedure: If further amended by deleting subdivision (b) of said rule and substituting therefor new subdivision (b) as follows:

(b) Delinquency, Dependency or Need of Supervision. The subject of inquiry at the child hearing will be whether the child is delinquent, dependent, delinquent and dependent or in need of supervision.

A minor under the age of 18 years who (1) is habitually truant from school or home, or habitually so conducts himself as to injury or endanger the morals or health of himself; or (2)

by reason of being wayward or habitually disobedient is uncontrolled by his parent, guardian or custodian may be designated as a child in need of supervision and the procedure provided under these rules for the determination and disposition of dependency shall apply to him.

Rule 29, Rules of Children's Procedure: Is repealed and re-promulgated to read as follows:

Rule 29. Appeal and Review -- Appellate Procedure -- Orders Not Suspended Pending Appeal -- Bail Not Required -- Findings That Acts of Delinquency Not Committed Not Appealable.

- (a) Right of Appeal or Review. An interested party aggrieved by any order of the court may appeal to or file a petition for review in the Supreme Court on all grounds on which an appeal or a petition for review can be based in a civil or criminal proceeding.
- (b) Procedure. The procedure for such an appeal or review shall be governed by the same provisions applicable to appeals or reviews from the superior court except that where the order affects the custody of a child, the appeal shall be heard at the earliest practicable time. The time within which an appeal may be taken shall be as provided by Supreme Court Rule 7(a). The record on appeal shall be given a fictitious title to safeguard against publication of the names of children.
- (c) Order Not Suspended Pending Appeal. The pendency of an appeal or application therefor shall not suspend the order of the court regarding a child, and it shall not discharge the child from the custody of the court or of the person, institution, or agency to whose care he has been committed, unless otherwise ordered by the Supreme Court on application of appellant.
- (d) Bail or Supersedeas Not Required. No bail, supersedeas, or cost bond shall be required of any party to a child proceeding or appeal.
- (e) Finding that Delinquent Acts Not Committed Not Appealable. Neither the petitioner nor an agency of the state may appeal from a finding that the child did not commit the act or acts of delinquency alleged in a petition for adjudication.

EFFECTIVE DATE: March 1, 1969.

/s/ Buell A. Nesbett
Chief Justice

/s/ John H. Dimond
Associate Justice

/s/ Jay A. Rabinowitz
Associate Justice

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