

IN THE TRIAL COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

IN THE MATTER OF:

The Filing of Charges for Violating
Conditions of Release

Presiding Judge's Administrative Order
Corrected Number
22-05

**Presiding Judge's Order Requiring VCOR Charges Be Filed With the Underlying
Case or With New Related Criminal Charges**

The foregoing order requires the prosecuting authority or charging entity to file Violating Conditions of Release ("VCOR") charges per AS 11.56.757 as an additional count in the underlying case where bail conditions are alleged to have been violated. If the prosecutor elects to file new charges arising from the same conduct, the VCOR may be filed in the new criminal case. This is in keeping with the practice across the entire Third District in accordance with Presiding Judge's Order¹ and much of the rest of the state by customary practice. This order brings the Fourth Judicial District into line with the majority of the state and is intended to improve administrative efficiency as well as the effective and reasonable setting of bail per the provisions in AS 12.30 in all criminal matters.²

The authority to issue this order is inherent in the Presiding Judge's authority and obligation to "expedite and keep current the business of the court within the district"³ and to "[r]eview the operations of all trial courts to assure adherence to statewide court objectives and policies."⁴ While it is true that prosecutors have broad discretion to make charging decisions, this order merely regulates the procedure, not any substantive

¹ See Third District Amended Presiding Judge's Order # 824 signed June 28, 2021 effective July 1, 2021.

² Currently the Fourth District has hundreds of "stand alone" VCOR cases where bail is set separately and where the proceedings are heard separately, sometimes by different judicial officers. It is not uncommon for a single defendant to accrue multiple VCOR charges as separate matters under the current practice. Indeed, each successive VCOR often constitutes a potential VCOR charge in numerous existing VCOR cases, sometimes with only one original non-VCOR case to start.

³ AS 11.10.130.

⁴ Admin R. 27(b)(5).

charging decision.⁵ Moreover, in those cases where joinder is in some way prejudicial, either party may move to sever the charges per Criminal Rule 8 as improperly joined. In the rare instance that a VCOR charge is brought to a jury trial, the presiding judicial officer can bifurcate the trial or sever the charges to facilitate a fair trial.⁶

Any administrative burden caused by this order will be far outweighed by the benefits that will accrue to the administration of justice in the Fourth Judicial District. Under the current practice, VCOR charges are arraigned and bail is set completely independent of the existing and often more serious case where the defendant is alleged to have violated their conditions. The result is that defendants are routinely re-released on misdemeanor level bail with completely separate court dates before a different judicial officer and bail is never addressed in the more serious case.

In addition, there are currently hundreds of “stand-alone” VCOR cases currently given separate hearings in the District Court at great expense and inconvenience. This extraordinary use of time and resources for judges, court staff, attorneys, the Department of Corrections, defendants, and victims interferes with the effective administration of justice across the district and is significantly ameliorated by the provisions of this Order.

Based on the foregoing, it is ordered as follows:

1. The prosecutor or PED officer⁷ filing a VCOR charge shall file that charge in the underlying case where bail conditions are alleged to have been violated. In those instances where a single course of conduct is alleged to violate conditions in multiple cases, the prosecutor or PED officer may elect to file all the VCOR counts in the most serious pending case.

⁵ Courts only interfere with the prosecutor’s discretion when they obstruct the filing of charges or the discretion not to charge. See e.g. *Surina v. Buckalew*, 629 P.2d 969, 973 (Alaska 1981) (Referencing “the wide discretion afforded to prosecutors under our system in making the critical decision *whether* to institute criminal proceedings in a particular case.” citing *Burke v. State*, 624 P.2d 1240, 1246 (Alaska 1980) (emphasis added)). See also *State v. Carlson*, 555 P.2d 269, 271-72 (Alaska 1976) and *Public Defender Agency v. Superior Court*, 534 P.2d 947, 950-51 (Alaska 1975).

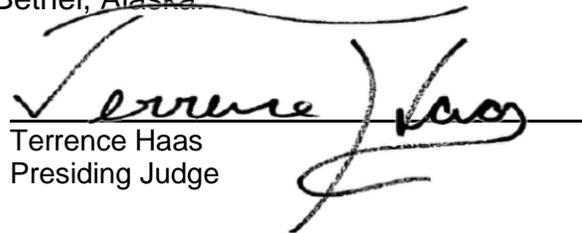
⁶ Only a very small percentage of criminal cases are actually tried before a jury. Of those, a still smaller percentage will be VCOR trials.

⁷ AS 33.07.020(g)(2) permits Pretrial Enforcement Officers to file VCOR charges.

2. If, based upon the same course of conduct, the prosecutor elects to file a new criminal charge in addition to a VCOR, the prosecutor may elect to file the VCOR charge in the new case or the case in which bail conditions are alleged to have been violated.
3. When conduct occurring in a different judicial district is alleged to violate bail conditions set by a judicial officer in a criminal case in the Fourth Judicial District, venue per Alaska Criminal Rule 18 shall be proper before the court assigned to the underlying matter.⁸ Motions to sever and transfer venue⁹ shall be handled by the assigned judicial officer in an expedited fashion if requested.
4. The clerk of court at each court location in the district shall establish policies and procedures to effectively enforce this order. Filings which do not comply with this order shall be returned to the filing party as deficient stating in the criminal deficiency memo “VCOR charges must be filed in the underlying matter or a new related criminal charge per Fourth District PJO 22-05.”
5. This order shall be effective beginning September 1, 2022.

IT IS SO ORDERED.

Dated this 11th Day of August, 2022 at Bethel, Alaska


Terrence Haas
Presiding Judge

Distributed via email:

Chief Justice
Administrative Director
Presiding Judges
Area Court Administrators
Fourth District Everyone

Fairbanks DAO
Bethel DAO
PDA-Attention Lars Johnson
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⁸ AS 22.10.030 indicates that actions are to be brought “under rules adopted by the supreme court.”

⁹ AS 22.10.040 establishes the standards for change of venue as permitted under Criminal Rule 16.