

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1309

Amending District Court
Criminal Rule 8 concerning
minor offenses.

IT IS ORDERED:

District Court Criminal Rule 8 is amended to read:

(a) **Scope, Purpose and Construction.**

This rule governs the procedure in cases involving minor offenses. It is 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.

(b) **Minor Offenses.** As used in this rule, "minor offenses" means

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

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

(3) 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

(4) 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

(5) any offense under statute or municipal ordinance for which a conviction cannot result in incarceration, a fine greater than \$300, or the loss of a valuable license.

(c) **Complaint and Summons.**

(1) The charging document for a minor offense may be in the form of a citation. If a citation is used, it ~~shall~~ must state that the defendant is entitled to a trial, to engage counsel, to confront and question witnesses, to testify and to subpoena witnesses ~~in~~ on the defendant's behalf. The citation ~~shall further~~ must also indicate whether a court appearance is mandatory or can be waived, ~~shall state~~ any applicable bail forfeiture amount established by the supreme court or scheduled fine established by municipal ordinance, the procedure the defendant must follow in responding to the citation, and the consequences of a failure to respond. A citation for a fish and game offense ~~shall further~~ must also state that all seized equipment will be forfeited if the appearance is waived. If the form of a citation has been approved by the administrative director, the citation is presumed to provide adequate notice of the

defendant's rights, the procedure for responding to the citation, and the consequences of a failure to respond.

(2) An offense for which a bail forfeiture amount has been established by the supreme court or for which a scheduled fine has been established by municipal ordinance ~~shall~~ must be charged on a citation and ~~shall~~ must not be filed, numbered, or processed as a criminal case.

(d) Disposition Without Court Appearance.

(1) A person 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 ordinance ~~may~~ must within the time period stated on the citation ~~mail or deliver to the location listed on the citation the amount of bail or fine indicated on the citation for the offense, together with a copy of the citation signed by the person indicating either:~~

(A) appear for arraignment at the time and place indicated on the citation; or

(B) mail or deliver a copy of the citation signed by the person to the location listed on the citation, indicating the person's waiver of the right to appear for arraignment and either a plea of no contest or

a plea of not guilty and request for trial.
If the person enters a plea of no contest, the
person must also mail or deliver the bail or
fine indicated on the citation, plus any
surcharge established by statute, and request
that the payment be used to satisfy the
offense.

~~(A) the person's waiver of the right to
appear for arraignment, plea of no contest
and a request that the bail or fine amount
enclosed be used to satisfy the offense; or~~

~~(B) the person's waiver of the right to
appear for arraignment, plea of not guilty
and a request for trial.~~

(2) A person who mails or delivers an
unsigned ~~waiver of right to appear for
arraignment along with the bail forfeiture or
scheduled fine amount shall~~ copy of the
citation with the person's payment will be
deemed to have entered a plea of no contest
unless the person designates otherwise. A
~~person who mails or delivers a plea of not
guilty but fails to forward the bail or
scheduled fine amount is not subject to
issuance of a bench warrant unless the person
also fails to appear for trial.~~

(3) ~~When bail or a scheduled fine has
been used to satisfy the offense~~ a no contest
plea is entered under the provisions of
paragraph Rule 8(d)(1)(B) or (d)(2) of this
rule, a judgment of conviction will be
entered. When trial is requested, the case

~~shall~~ will be set on the calendar and notice sent to the parties.

(4) When a person is charged with a minor offense, and the statute, regulation or ordinance provides that the citation ~~shall~~ will be dismissed upon providing proof to a law enforcement agency of compliance with the requirements of the statute, regulation, or ordinance, the court or municipality shall dismiss the citation upon notification from the agency.

(5) If a person fails to respond as provided in Rule 8(d)(1), the court may enter a judgment of conviction requiring the person to pay the scheduled bail or fine, any surcharge established by statute, court costs in the amount of \$25, and collection costs required under Rule 8(h). At least 15 days before judgment is entered, a notice advising the person of the consequences of a failure to respond must be sent to the person at the address on record with the Division of Motor Vehicles or the address shown on the citation.

~~(5)~~ (6) The court may also enter a judgment of conviction and ~~forfeit the bail of~~ against a person who requests a trial under ~~subparagraph~~ Rule 8(d)(1)(B) if the person has been sent notice of a trial date and then fails to appear on the scheduled date. The notice must ~~state that the court may forfeit bail and enter a conviction~~ advise the person of the consequences if the person fails to appear. No further notice of

~~the forfeiture is necessary. A judgment entered under this subparagraph must require the person to pay the scheduled bail or fine, any surcharge established by statute, court costs in the amount of \$25, and collection costs required under Rule 8(h).~~

(e) **Mandatory Court Appearance.**

(1) Any person charged with a minor offense must appear for arraignment at the time and place indicated on the citation if:

~~(i)~~ (A) the person is charged with an offense for which no bail forfeiture amount has been established in a bail forfeiture schedule or no scheduled fine has been established by municipal ordinance; or

~~(ii) who has not waived appearance and entered a plea under paragraph (d) of this rule; or~~

~~(iii) (B) who the person has failed to provide proof of compliance to a law enforcement agency under a statute, regulation or ordinance that permits dismissal of the citation upon a showing of compliance;~~

~~shall appear for arraignment at the time and place designated on the citation. A person under 18 years of age at the time of the offense must be accompanied by a parent, guardian or legal custodian. Arraignment~~

~~shall~~ must be conducted in accordance with District Court Criminal Rule 1. The ~~defendant~~ person ~~shall~~ must be admitted to bail in accordance with AS 12.30.020 without regard to the bail amounts established in the applicable bail forfeiture schedule and with preference to release on the person's own recognizance. A ~~defendant~~ ~~shall~~ person may not be incarcerated solely for inability to post a the bail amount ~~which~~ ~~may~~ ~~be~~ established.

(2) The court may enter a judgment of conviction against a person who fails to appear for arraignment under Rule 8(e)(1). At least 15 days before judgment is entered, a notice advising the person of the consequences of a failure to respond must be sent to the person at the address on record with the Division of Motor vehicles or the address shown on the citation. The court may also enter a judgment of conviction and forfeit the any bail of a person who appears for arraignment under Rule 8(e)(1) but fails to appear at either arraignment or trial, if the person has received notice that the court may follow this procedure. No further notice of the forfeiture is necessary. A judgment entered under this subparagraph must impose the maximum penalty for the offense and must require the person to pay any surcharge established by statute, court costs in the amount of \$25, and collection costs required under Rule 8(h).

(f) **Disposition of Records of Conviction.** Notice of conviction will be transmitted to the following agencies:

(1) In the case of a motor vehicle offense, the conviction will be transmitted to the Department of ~~Public Safety Administration,~~ Division of Motor Vehicles, to become a part of the defendant's driving record and for the department to assess points pursuant to statute and regulation.

(2) In the case of a fish and game violation, the conviction will be transmitted to the Department of Public Safety, ~~fish and wildlife division~~ Division of Fish and Wildlife Protection, for the department to determine whether it has a basis for petitioning for license revocation.

(3) In the case of a smoking violation, the conviction will be transmitted to the Department of Environmental Conservation, ~~Division of Environmental Health.~~

(g) **Failure to Respond to Citation, Complaint or Summons.**

(1) A defendant who fails to respond to a citation within the time period stated is subject to arrest on a bench warrant, without issuance of a summons or other notice. If the defendant has failed to respond in a timely fashion to a citation charging a fine

schedule offense initially filed with a municipality, the bench warrant ~~will~~ must be requested by the municipality and must be based on an affidavit from a municipal employee stating that the defendant has failed to respond. The bench warrant shall be signed by a judicial officer, and shall state that the defendant has failed to respond to the citation. A defendant who is served with a bench warrant under this subsection and cannot post bail shall be brought before a judicial officer

~~(i)~~ (A) immediately, if the defendant will be taken to the court which issued the warrant;

~~(ii)~~ (B) without unnecessary delay within a period not to exceed twenty-four hours after arrest on the warrant if the defendant will be taken before a court other than the court which issued the bench warrant.

(2) The court in its discretion may issue a summons or other notice to a defendant before issuing a bench warrant for the defendant's arrest. If the court has issued a summons or other notice to the defendant prior to issuance of the bench warrant, and the person has failed to respond to the summons or notice and is arrested on a subsequent bench warrant, the person shall be taken before a judicial officer without unnecessary delay within a period not to exceed twenty-four hours after arrest on the

warrant.

(h) Costs. A judgment of conviction in a minor offense case must require the person to pay collection costs in the amount of \$25 if a writ of execution is issued to satisfy the judgment. In addition, if a bench warrant is issued, the court shall require the person to pay a bench warrant fee in the amount of \$75 regardless of whether the person is convicted. The court may waive collection costs and the bench warrant fee upon a showing of good cause.

(i) Relief from Judgment. Upon a showing of good cause, the court may vacate or modify a judgment of conviction entered under (d) (5), (d) (6), or (e) (2) of this rule. The court may act on motion filed within one year after entry of the judgment or on its own initiative after reasonable notice.

~~(h)~~ (j) Longevity of Warrants. After a period of two years, the presiding judge for a judicial district may, upon the request of a clerk of court and after notice to the agency which issued the citation, order that warrants for minor offenses which have been outstanding for two years or more shall be quashed and the cases closed statistically.

~~(i)~~ (k) A municipal corporation or the State of Alaska may be represented by an employee for the prosecution of minor offenses under this rule, AS 22.20.040

notwithstanding. However, the employee is limited to giving testimony and may not examine witnesses, make opening and closing arguments, or otherwise act as an attorney.

(l) Authority of Clerk. The clerk is authorized to enter judgments of conviction under Rules 8(d)(3), (d)(5), (d)(6), and (e)(2).

(m) Disposition of Costs and Fees. Court costs and bench warrant fees imposed under this rule are to be deposited in the state general fund. Collection costs belong to the political entity that prosecuted the offense.

~~(j)~~ (n) Temporary Transfer of Minor Offense Cases.

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~~(k)~~ (o) Change of Venue.

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Effective Date: July 15, 1998
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DATED: February 5, 1998

EFFECTIVE DATE: July 15, 1998

/s/
Chief Justice Matthews

/s/
Justice Compton

/s/
Justice Eastaugh

/s/
Justice Fabe

/s/
Justice Bryner