

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1751

Adding new Delinquency Rules 23.1
and 23.2 concerning restitution
judgments in delinquency cases.

IT IS ORDERED:

1. New Delinquency Rule 23.1 is added to read as follows:

Rule 23.1. Dispute Resolution for Restitution.

In accordance with AS 47.12.120(b), the court may require the minor to use the services of a community dispute resolution center that has been recognized by the commissioner under AS 47.12.450(b) to resolve any restitution dispute between the minor and any person entitled to restitution as to the amount or manner of payment of restitution.

2. New Delinquency Rule 23.2 is added 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 must be made through the clerk of court or the Collections Unit of the Department of Law. Ordinarily, the restitution payment will be made through the Collections Unit of the Department of Law unless (A) the victim or other person entitled to restitution elects to pursue collection without the assistance of the Collections Unit; or (B) the order requires restitution to be made in a form other than payment of a specific dollar amount. When payment is to be made through the Collections Unit, the judgment must state that the court will also accept payments and prepayments of restitution.

(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.

(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) Transfer of Restitution Judgments and Payments to the Department and to the Collections Unit of the Department of Law.

(1) Upon issuance of a judgment for restitution, the court will send, either on paper or electronically, a copy of the judgment to the Division of Juvenile Justice in the department. The department must follow the procedures set out in AS 47.12.170(c), and, unless the person entitled to restitution has elected to proceed without the assistance of the Collections Unit of the Department of Law, the department will forward the restitution judgment to the Collections Unit.

(2) If payment for restitution is tendered to the court, the court shall accept the tendered payment. If the person entitled to restitution has elected to proceed through the Collections Unit, the court shall forward the payment to the Collections Unit within five days after clearance of the payment tendered to the court.

(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 Department of Law, 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, the department, and the Department of Law 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 or of the Collections Unit of the Department of Law 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.

(i) Victim Election. If, after the judgment for restitution has been transferred to the Collections Unit of the Department of Law, the victim or other person entitled to restitution elects to pursue collections without the assistance of the Collections Unit, the Collections Unit shall notify the court of the victim's or other person's election. The Collections Unit and the department shall include with the notice copies of

(1) the judgment for restitution;

(2) the signed election form received from the victim or other person;

(3) a statement of all payments received from the minor and the minor's parents and applied to the restitution judgment; and

(4) any relevant victim or other restitution recipient's and minor and minor's parent identifying information needed by the court system to properly identify and distribute restitution payment.

CROSS REFERENCES

AS 47.12.120 -.170.

DATED: February 25, 2011

EFFECTIVE DATE: October 14, 2011

/s/
Chief Justice Carpeneti

/s/
Justice Fabe

/s/
Justice Winfree

/s/
Justice Christen

/s/
Justice Stowers