

**IN THE SUPREME COURT OF THE STATE OF ALASKA**  
**ORDER NO. 1975**

Rescinding note to Criminal Rule 23;

Amending Criminal Rule 23(a) to clarify the procedures for waiver of a jury trial in a misdemeanor case;

Amending Criminal Rule 23(c) to specify the findings required in a nonjury trial; and

Amending Criminal Rule 24(b)(2) to allow up to four undesignated alternate jurors and mid-deliberation juror substitution.

**IT IS ORDERED:**

1. The note to Criminal Rule 23 is rescinded.

~~\*See Chapter 119 SLA 1972 effective September 10, 1972.~~

2. Criminal Rule 23 is amended to read as follows:

**Rule 23. Trial by Jury or by the Court.**

(a) **Trial by Jury\***. ~~A case~~ Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial with the government's consent and the court's approval. ~~In felony cases, the waiver must be in writing with the approval of the court and the consent of the state. In a misdemeanor casecases, the defendant's waiver must~~ may be in writing or made on the record in open court. In a felony case, the defendant's waiver must be in writing.

\* \* \* \*

(c) **Trial Without a Jury.** In a case tried without a jury, the court shall ~~make a general finding and shall, in addition, on request, find the facts specially~~ state, orally or in writing, the elements of each offense charged and find whether the prosecution has proved each element beyond a reasonable doubt. The court shall also state the burden of proof for any defense asserted by the defendant and whether the burden has been met. ~~If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.~~

3. Criminal Rule 24 is amended to read as follows:

**Rule 24. Jurors.**

\* \* \* \*

(b) **Alternate Jurors.**

\* \* \* \*

(2) *Procedures.*

(A) The court may direct that not more than four jurors in addition to the regular panel be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become disqualified ~~unable~~ or unable ~~disqualified~~ to perform their duties. ~~An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict.~~ The additional peremptory challenges allowed by section (b)(1)(B) may be used against an alternate juror ~~jury~~ only, and the other peremptory challenges allowed by these rules may not be used against an alternate juror; or ~~-~~

(B) The court may direct that not more than four ~~one or two~~ jurors be called and impaneled in addition to the number of

jurors required by law to comprise the jury. The court may excuse jurors who, prior to the time the jury retires to consider its verdict, become disqualified ~~unable~~ or ~~unable~~ disqualified to perform their duties. If more than the required number are left on the jury when the jury is ready to retire, the clerk in open court shall select at random the names of a sufficient number of jurors to reduce the jury to the number required by law. ~~The jurors selected for elimination shall be discharged after the jury retires to consider its verdict.~~

(C) The court may retain and renumber alternate jurors selected under (b)(2)(A) or (B) after the jury retires to deliberate. The court shall instruct all retained alternate jurors that, until discharged, the jurors must not:

- (i) communicate with any person, including other jurors, on any subject connected with the trial;
- (ii) allow any other person to discuss the case in the juror's presence;
- (iii) conduct any investigation or research concerning the case;
- (iv) read, view, or listen to any reports about the case in any form; and
- (v) form any conclusions about the case.

(D) If a juror becomes disqualified or unable to perform juror duties after deliberations have begun, the court has the discretion, after giving the parties an opportunity to present arguments for or against juror substitution, to replace the juror with an alternate juror. The parties' consent is not required.

The court must ensure that the alternate juror has complied with the court's instructions. The court must ensure that the alternate juror will set aside any opinion formed about the

case. The court must instruct the jury to begin its deliberations anew. The court must also inquire of each juror individually, outside the presence of the other jurors, and determine whether each juror can set aside any opinion formed during deliberations, and consult and exchange views with the other jurors, including the alternate, when deliberations begin anew.

(c) **Challenges for Cause. \* \* \* \***

DATED: September 16, 2021

EFFECTIVE DATE: April 15, 2022

/s/  
Chief Justice Winfree

/s/  
Justice Maassen

/s/  
Justice Carney

/s/  
Justice Borghesan

/s/  
Justice Henderson