

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 427

Nine Part Order Amending  
Rules 1, 3, 5, 11, 31, 45  
and 56 of the Alaska Rules  
of Criminal Procedure

IT IS ORDERED:

1. Rule 1, Alaska Rules of Criminal Procedure, is amended to read:

RULE 1. SCOPE

These rules govern the practice and procedure in the superior court in all criminal proceedings and, insofar as they are applicable, the practice and procedure in all other courts in criminal proceedings.

2. Paragraph (a) of Rule 3, Alaska Rules of Criminal Procedure, is amended to read:

(a) The complaint is a written statement of the essential facts constituting the offense charged. A citation issued for the commission of a misdemeanor or a violation shall have the same force and effect as a complaint and shall be filed as a complaint; provided, that the citation satisfies the requirements of a valid complaint as provided by these rules. A complaint or citation shall be made upon oath or affirmation before any judge or magistrate, except that the following complaints and citations may be signed before any person authorized by law to administer oaths or affirmations:

1. A complaint or citation for a traffic infraction as defined in Title 28 of the Alaska Statutes.

2. A complaint or citation for a misdemeanor where arrest has been made without a warrant.

3. A citation which the defendant has signed thereby promising to appear.

3. Subparagraph (l) of paragraph (a) of Rule 5, Alaska Rules of Criminal Procedure, is amended to read:

(1) Except when the person arrested is issued a citation for a misdemeanor or a violation and immediately thereafter released, the arrested person shall be taken before the nearest available judge or magistrate without unnecessary delay. Unnecessary delay within the meaning of this paragraph (a) is defined as a period not to exceed twenty-four hours after arrest, including Sundays and holidays.

4. Paragraph (d) of Rule 5, Alaska Rules of Criminal Procedure, is amended to read:

(d) Misdemeanors and Violations. If the charge against the defendant is a misdemeanor or a violation the judge or magistrate shall proceed in accordance with Rule 1 of the Alaska District Court Rules of Criminal Procedure.

5. Paragraph (g) of Rule 11, Alaska Rules of Criminal Procedure, is amended to read:

(g) Record. An electronic recording shall be made of the entire proceedings except that no recording need be made of pleas to offenses for which the maximum possible penalty is a fine.

6. Paragraph (h) is added to Rule 11, Alaska Rules of Criminal Procedure, to read:

(h) Plea Withdrawal.

(1) The court shall allow the defendant to withdraw his plea of guilty or nolo contendere whenever the defendant, upon a timely motion for withdrawal, proves that withdrawal is necessary to correct manifest injustice.

(i) A motion for withdrawal is timely and is not barred because made subsequent to judgment or sentence if it is made with due diligence.

(ii) Withdrawal is necessary to correct a manifest injustice whenever it is demonstrated that:

(aa) The defendant was denied the effective assistance of counsel guaranteed by constitution, statute or rule, or

(bb) The plea was not entered or ratified by the defendant or a person authorized to act in the defendant's behalf, or

(cc) The plea was involuntary, or was entered without knowledge of the charge or that the sentence actually imposed could be imposed, or

(dd) The defendant did not receive the charge or sentence concessions contemplated by the plea agreement, and

(A) the prosecuting attorney failed to seek or opposed the concessions promised in the plea agreement, or

(B) after being advised that the court no longer concurred and after being called upon to affirm or withdraw the plea, the defendant did not affirm the plea.

(iii) The defendant may move for withdrawal of the plea without alleging innocence of the charge to which the plea has been entered.

(2) Once the plea has been accepted by the court and absent a showing that withdrawal is necessary to correct a manifest injustice, a defendant may not withdraw a plea of guilty or nolo contendere as a matter of right. Before sentence, the court in its discretion may allow the defendant to withdraw a plea for any fair and just reason unless the prosecution has been substantially prejudiced by reliance upon the defendant's plea.

(3) A plea of guilty or nolo contendere which is not accepted or has been withdrawn shall not be received against the defendant in any criminal proceeding.

7. Subparagraph (1) of paragraph (e) of Rule 31, Alaska Rules of Criminal Procedure, is amended to read:

(1) Offenses Against Property. When an indictment charges a theft or theft-related offense against property, on conviction of the defendant the jury shall ascertain and declare in the verdict the value of the property that was the subject of the crime.

8. Paragraph (b) of Rule 45, Alaska Rules of Criminal Procedure, is amended to read:

(b) Speedy Trial Time Limits. A defendant charged with a felony, a misdemeanor, or a violation shall be tried within 120 days from the time set forth in paragraph (c) of this rule.

9. Rule 56, Alaska Rules of Criminal Procedure, is amended to read:

RULE 56. DEFINITIONS.

As used in these rules, unless the context otherwise requires:

(a) "Prosecuting Attorney" includes the attorney general, assistant attorneys general, deputy attorneys general and any other attorneys, legal officers and assistants charged by law with the duty of prosecuting the violation of any law, statute or ordinance.

(b) "Magistrate" includes magistrates, district judges, superior court judges and any other judicial officer authorized by law to conduct a preliminary examination of a person accused of a crime.

(c) "Presiding Judge" includes the duly-designated presiding judge of the superior court in each judicial district or, in his absence, the person designated presiding judge pro tem.

(d) "Offense" means conduct for which a sentence of imprisonment or payment of a fine is authorized by law.

(e) "Misdemeanor" means an offense for which a sentence of imprisonment for not more than one year may be imposed.

(f) "Violation" means:

1) an offense as defined in AS 11.81.900

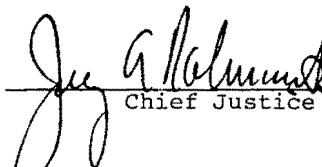
(b) (55);

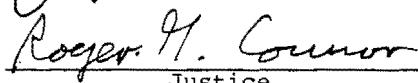
2) a traffic infraction as defined in Title 28 of the Alaska Statutes; or

3) any other offense under state or local law which is punishable only by a fine.

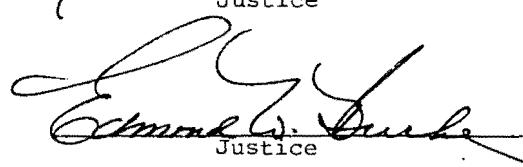
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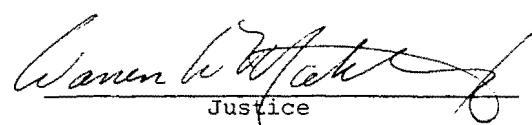
EFFECTIVE DATE: August 1, 1980

  
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Chief Justice

  
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