

## District Court Rules of Criminal Procedure Rule 8. Minor Offenses

### Paragraphs (a) and (b)

Rule	Commentary
<p>(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.</p>	<p>No change.</p>
<p>(b) Minor Offenses <u>Defined</u>. As used in this rule, "minor offenses" means</p> <p>(1) an offense classified by statute as an infraction or a violation; or</p> <p>(2) any offense for which a bail forfeiture amount has been authorized by statute and established by supreme court order <u>notwithstanding any statute or regulation that classifies the offense as a misdemeanor</u>; or</p> <p>(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: <u>notwithstanding any ordinance that classifies the offense as a misdemeanor</u>; or</p> <p>(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</p> <p>(5) any offense under statute or municipal ordinance for which a conviction cannot result in incarceration, a fine greater than \$500, or the loss of a valuable license: <u>or</u></p>	<p>Paragraph (b)(2) and (3): In both paragraphs, we added "notwithstanding any statute or regulation that classifies the offense as a misdemeanor" to clarify that if an offense is on a state bail schedule or city fine schedule that the offense is a minor offense and not a crime even though a statute or ordinance classifies it as a misdemeanor and that the maximum penalty that can be imposed is the amount listed on the bail or fine schedule. The following statute states the maximum penalty that may be imposed is the bail or fine amount:</p> <p>AS12.25.230(c) which applies to all bail schedules, states: "If a person cited for an offense for which an amount of scheduled bail or fine has been established appears in court and is found guilty, the penalty imposed for the offense may not exceed the bail or fine established for the offense."</p> <p>Other statutes that make the bail schedule amount the maximum fine for bail schedule offenses are:  AS 16.05.165(f) [Fish &amp; Game], AS 41.21.960(f) [Parks]  AS 04.16.205(g) [Alcohol], AS 45.75.133(e) [Oversize Vehicles and Weights &amp; Measures], AS 05.45.100(j) [Skiing].</p>

**Paragraph (b) continued**

Rule	Commentary
<p><u>(6) any fish and game offense under 5 AAC charged as a strict liability offense; or</u></p> <p><u>(7) any commercial fishing offense listed in AS 16.05.722 or 5AAC charged as a strict liability offense (classified in AS 16.05.722 as violations).</u></p>	<p>We added new paragraph (6) to incorporate the <u>Constantine</u> decision which determined that the maximum penalty for a fish &amp; game regulation charged as a strict liability offense is the penalty for a “violation” under AS 12.55.035(b)(5) plus forfeiture of any fish or game obtained in violation of a regulation. <u>Constantine v State</u>, 739 P.2d 188, 190 (Alaska App. 1987). Also see <u>Beran v State</u>, 705 P.2d 1280 (Alaska App. 1985) and <u>State v Superior Court</u>, 40 P.3rd 1239, 1243 (Alaska App. 2002).</p> <p>The <u>Constantine</u> decision does not apply to violations of commercial fishing regulations or the commercial fishing statutes listed in AS 16.05.722 when charged as strict liability offenses. The statutory penalties are much higher for these offenses. See AS 16.05.722. Note: This statute was passed in 1988 after the <u>Constantine</u> decision.</p> <p>The fish and game regulations that authorize offenses to be charged as strict liability offenses are:</p> <ul style="list-style-type: none"> <li>5 AAC 39.002 (Commercial Fishing &amp; Subsistence Fishing and Private Nonprofit Salmon Hatcheries)</li> <li>5 AAC 75.002 (Sport Fishing and Personal Use Fishery)</li> <li>5 AAC 92.002 (Game)</li> <li>5 AAC 95.902 (Protection of Fish &amp; Game Habitat)</li> </ul> <p>We added new paragraph (7) to clarify that commercial fishing offenses when charged as strict liability offenses are “minor offenses” because they are classified as “violations,” even though their penalty is greater than the penalty for other types of “violations.”</p>

**Paragraph (c)(1) and old (c)(2)**

Rule	Commentary
<p>(c) <u>Citation.</u><del>Complaint and Summons.</del></p>	<p>We changed the title of this rule to “Citation” because it addresses citations only. A new paragraph (d) was added to address minor offenses not charged on citations.</p>
<p>(1) The charging document for a minor offense may be in the form of a citation. <u>Each citation may name only one defendant and only one offense. Except as provided in (7) below, a citation must name an individual as the defendant.</u> <del>If a citation is used, it must state that the defendant is entitled to a trial, to engage counsel, to confront and question witnesses, to testify and to subpoena witnesses on the defendant's behalf. The citation must also indicate whether a court appearance is mandatory or can be waived, 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 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.</del></p>	<p>We are proposing that the list of required contents of the citation be removed from the (c)(1) of the rule and instead be listed in the Administrative Bulletin which <b>new</b> paragraph (c)(3) below requires.</p> <p>We added the second sentence because there is not enough room on the citation form to list multiple defendants or multiple charges, and the citation can not be properly processed through the court and other agency computer systems. This is a long established policy but on occasion we have police officers who have attempted to file citations listing multiple defendants or charges.</p> <p>We added the third sentence to clarify that citations must be issued to individuals and not to sole proprietorship businesses.</p>
<p><del>(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 must be charged on a citation and must not be filed, numbered, or processed as a criminal case.</del></p>	<p>We eliminated current paragraph (c)(2) requiring all fine schedule and bail schedule offenses to be charged on a citation. By agreement with the Dept. of Law, we are proposing that minor offenses be allowed to be charged on a complaint or information under the circumstances described in proposed new paragraphs (d) and (r).</p>

**Paragraph new(c)(2)**

Rule

Commentary

(2) The citation must include the statute, regulation or ordinance that the defendant is alleged to have violated as identified in the uniform table of minor offenses maintained by the court system.\*

Paragraph (c)(2) is new. It requires offenses to be cited in a standard manner. This will ensure compliance with the bail and fine schedules and will facilitate data exchanges between agencies. It is patterned after the requirement in Criminal Rule 3(c)(7) that criminal offenses be cited as identified in the Uniform Offense Citation Table (UOCT).

The footnote is shown at the end of the rule.

## New Paragraph (c)(3)

### Rule (c)(3)

#### Alternative 1:

(3) The administrative director shall establish content and format requirements for minor offense citations by administrative bulletin, including requirements that the citations include:

(A) the essential facts constituting the offense charged,

(B) notice of the defendant's rights listed in AS 12.25.200,

(C) the procedure for responding to the citation,

(D) the consequences of a failure to respond, and

(E) If forfeiture of seized items is authorized by statute or ordinance, the citation must list the seized items and state that they will be forfeited if the defendant is convicted.

#### Alternative 2:

(3) The administrative director shall establish content and format requirements for minor offense citations by administrative bulletin, including requirements that the citations include:

(A) the essential facts constituting the offense charged,

(B) notice of the defendant's rights listed in AS 12.25.200, **the right to remain silent and that remaining silent cannot be used against the defendant,**

(C) the procedure for responding to the citation,

(D) the consequences of a failure to respond, and

(E) If forfeiture of seized items is authorized by statute or ordinance, the citation must list the seized items and state that they will be forfeited if the defendant is convicted.

### Commentary to New Paragraph (c)(3)

Proposed new paragraph (c)(3) requires the administrative director to establish by bulletin the required contents and format of minor offense citations. This replaces the last sentence of existing rule (c)(1) which states "if 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."

The reasons for establishing the content and format of a citation by bulletin are:

1. The current rule authorizes the administrative office to review proposed citations to determine if they meet the requirements of the rule. The proposal removes the need for the Administrative Office to approve all new citation forms. Listing the requirements in a bulletin makes it easier for agencies and court personnel to find all of the court's citation requirements in one place instead of having to ask a person in the administrative office what the requirements are.

## Paragraph (c)(3) Commentary continued

### Commentary to New Paragraph (c)(3) Continued

2. Current District Court Criminal Rule 8 does not include all the requirements for a minor offense citation. Currently, some of the requirements are in Criminal Rule 3 and in various statutes. Furthermore, Criminal Rule 3 does not make it clear which requirements in the rule apply to minor offense citations. For example, the requirements in Criminal Rule (3)(c)(1), (c)(2) & (c)(4) apply to minor offense citations, but (c)(3), (c)(5), (c)(6) & (c)(7) do not.
3. Administrative Bulletin allows more flexibility in keeping the content requirements current when the needs of other agencies dictate a change. For example, when the police training surcharge was created by AS 12.55.039, the rule was not updated to require the citation to list it. This change will allow for future changes to be made quickly without rule change.

In addition, the new (c)(3) lists certain requirements that must be included in the administrative bulletin because these originally came from court rules.

- (A) The “essential facts” language comes from Criminal Rule 3(a).
- (B) Notice of the defendant’s rights. Current Rule 8(c)(1) requires citations to “state that the defendant is entitled to a trial, to engage counsel, to confront and question witnesses, to testify and to subpoena witnesses on the defendant’s behalf.” These five rights are the ones that AS 12.25.200(b)(5) requires to be listed on citations. The “right to remain silent” is **not** one of those rights.
- District Court Judge Schally requested that the citation read: “...right to testify or to remain silent and a brief notation to the effect that keeping silent wouldn’t be used against them.”
- It is not clear that this right should be added since it is not included in the list of rights that the statute requires to be included on the citation. Both the Alaska and U.S. Constitutions limit the protection from self incrimination to criminal cases and *State v. Clayton*, 584 P.2d 1111 (Alaska 1978), makes it clear that these minor offenses are quasi-criminal, not criminal offenses. (See Article I, Section 9 of the Alaska Constitution and the 5<sup>th</sup> Amendment to the U.S. Constitution. In *Clayton*, the court concluded that, even though defendants in these cases are not entitled to certain constitutional rights such as the rights to counsel and to jury trial, criminal enforcement procedures [such as issuance of warrants] can be used.)
- Assuming the right to remain silent does exist in minor offense cases, what is the extent of the right? Can remaining silent be used against the defendant (as it could in a civil case). In addition, would adding this right to the rule infer that officers must advise the defendant of this right before questioning?
- Because of our uncertainty about this, our proposal lists two alternatives for paragraph (B). Alternative 1 limits the rights that must be listed on the citation to those listed in the statute. Alternative 2 adds “the right to remain silent and that remaining silent cannot be used against the defendant.”
- (C) The “procedure for responding to the citation” language comes from existing DCCrR 8(c).
- (D) The “consequences of a failure to respond: language comes from existing DCCrR 8(c).

### **Paragraph (c)(3) Commentary continued**

(E) The “forfeiture” language also comes from existing DCCrR 8(c). However, we made two changes in the current rule:

- (1) We removed reference to fish and game because there are other statutes and ordinances that require the forfeiture of seized items. E.g. Several cities have ordinances requiring the forfeiture of seized drug paraphernalia and AS 04.16.205 requires seizure by the police and forfeiture of alcohol possessed in violation of a local option election.
- (2) We changed the requirement that the citation warn the defendant that the seized items will be forfeited if the defendant “waives court appearance” to “if the defendant is convicted.” Seized items are required to be forfeited when the defendant is convicted, which includes default judgment when the defendant fails to respond or conviction at trial in addition to when the defendant waives court appearance and pleads no contest.

**Paragraphs (c)(4 & 5)**

Rule	Commentary
<p><u>(4) If a citation meets the requirements set forth in the bulletin, it is presumed to provide adequate notice of the charges, defendant's rights, the procedure for responding to the citation, and the consequences of a failure to respond. In addition, all citations filed with the court must be provided or prescribed by the Department of Public Safety under AS 12.25.175.</u></p>	<p>The first sentence in new paragraph (c)(4) restates the existing last sentence of (c)(1) but refers to the bulletin instead of review by the administrative director.</p> <p>The last sentence of (c)(4) references the statute enacted in 2010 (sec. 21 chapter 29 SLA 2010).</p>
<p><u>(5) The defendant's social security number may not appear on a citation. This paragraph applies to citations issued on or after (EFFECTIVE DATE OF THIS RULE).</u></p>	<p>Paragraph (c)(5) is new. It prohibits Social Security Numbers from appearing on citations after the effective date of this rule. This mirrors the same requirement in Criminal Rule 3(f).</p>

## Paragraphs (c)(6)

### Rule

(6) The officer must state on the citation that the officer has reasonable grounds to believe the defendant committed the offense and must certify, under penalty of perjury, that the information in the citation is true and that the officer personally served the citation on the defendant. A citation is not required to contain a statement that there is probable cause to believe that the offense has been committed and that the defendant has committed it.

### Commentary to paragraph (c)(6)

Paragraph (c)(6) is new. The **first** sentence has three parts:

1<sup>st</sup> It requires the officer to state that the officer has “reasonable grounds to believe the defendant committed the offense”. This has been the standard language on citation forms for many years.

2<sup>nd</sup> It requires the officer to certify under penalty of perjury that the information is true. This is one of the options under Criminal Rule 3(a), and is the most practical option for officers issuing citations in the field.

3<sup>rd</sup> It requires the officer to certify that the officer personally served the citation. This is a new provision, and reflects the intent of the statute. The statutes that authorize officers to issue citations contemplate that the citation will be issued when the person is stopped or contacted by a peace officer. AS 12.25.180 and 190. Also, AS 12.25.175(a)(2) requires that citations signed under penalty of perjury state that the citation “was personally served on the person charged.”

➤ We recognize that this means that parking tickets left on vehicles will not satisfy this requirement. The Holloway Committee discussed this problem and concluded that the issue would require a statute change.

\_\_\_\_\_ . Currently the State of Alaska has no mechanism to cite violators except by “personal service”. This creates exceptionally high costs due to the efforts required to personally serve violators. A trooper on a remote stretch of highway cannot cite an abandoned vehicle that may be causing a traffic hazard. An airport police officer cannot cite illegally parked vehicles unless he uses a local ordinance. Alaska wildlife troopers and other resource officers cannot send a citation by mail. An out of state violator must be tracked down and served by a local officer, causing many cases to be dropped due to cost and the inability to coordinate service. The working group recommends that service for minor offenses be extended to service by mail and service on a vehicle to the registered owner. This will require a statute change. (Legislation required and a small interdisciplinary working group should be formed to determine which minor offense violations should fit these two criteria.)”

**Note:** There are means other than citations to charge a minor offense. Under current procedures and proposed new rule (d), a minor offense may be charged on an information and a summons may be served by certified mail.

## Paragraphs (c)(6) Commentary continued

### Commentary to paragraph (c)(6)

The **second** sentence states that the citation does not need to contain a probable cause statement. The purpose of this is to eliminate inconsistencies among judicial officers as to whether or not a probable cause statement is required on the citation.

This discussion has been going on for some time among magistrates. Most recently, it came up during the creation of the new Uniform Citation form between the Administrative Office and DPS. A number of magistrates have indicated that they would like to see a rule to address this issue. We strongly feel the rule needs to address this issue because some magistrates dismiss minor offense citations that do not contain a probable cause statement and other magistrates do not. We are proposing that probable cause not be required for the following reasons:

#### **1. Inconsistent with Statutory Scheme**

Requiring a probable cause statement in every citation would be inconsistent with the statutes that authorize issuance of citations (AS 12.25.180-.190) and the statutes requiring the supreme court to create bail forfeiture schedules (e.g., AS 28.05.151, AS 16.05.165(b), AS 41.21.960(b), etc). These statutes create a fairly simple summary process for non-criminal offenses, allowing the police to issue citations instead of arresting defendants and allowing those defendants to enter their pleas by mail. AS 12.25.195.

To insert a probable cause review requirement for every citation would make the process neither simple nor summary. If a court must review every citation for probable cause, defendants could no longer mail in their no contest pleas with their payments, or if they did and the court then found no probable cause the court would have to return the money.

If a court must review every citation for probable cause would result in a substantial increase in work for judicial officers. It would also result either in: (1) defendants not being able to mail in their pleas and payments, or (2) substantial increase in work for clerks who would have to return payments for citations dismissed for lack of probable cause.

#### **2. Inconsistent Treatment of Defendants.**

None of the magistrates seem to believe they should review every citation for probable cause. But some magistrates believe that they should review for probable cause any minor offense citation that comes before them for arraignment. If probable cause is not provided, these magistrates dismiss the citation.

Most minor offense citations are never reviewed by the court because either: (1) the defendant mails in a plea and payment, or (2) the clerk enters default judgment for defendant's failure to respond to the citation. When a magistrate requires probable cause only when a defendant chooses to appear for arraignment, it results in inconsistent treatment of defendants and possible unfair treatment of the plaintiffs.

#### **3. Current Rules Do Not Require Probable Cause for Citations**

Criminal Rule 3 on complaints does not require probable cause. Criminal Rule 4(a)(1) requires the judicial officer to determine probable cause before issuing a warrant or summons. But when a citation is issued, there no request for warrant or summons. If the minor offense is charged on an information or complaint, instead of a citation, it may be necessary to issue a summons or warrant. In such cases, probable cause is required.

Criminal Rule 5(d) states that if a defendant was arrested, the court must determine at the defendant's first appearance if there was probable cause. This does not apply to citations because the defendants are not arrested when they are issued a citation. (See Minutes of Criminal Rules Committee, October 20, 1995, page 8, Item 4.)

**Paragraphs (c)(7 & 8)**

Rule	Commentary
<p><u>(7) The officer must deliver the citation to the defendant personally in accordance with AS 12.25.175 -.190.</u></p>	<p>New paragraph (c)(7) clarifies what personal service of a citation requires. A citation may not be served by certified mail. Nor is leaving a citation on a parked vehicle considered personal service under the statute or proposed rule.</p>
<p><u>(8) Corporations and Limited Liability Companies. A citation issued to a corporation or limited liability company must list the name of the business as the defendant. The officer must personally deliver the citation to a person listed in Civil Rule 4(d)(4).</u></p>	<p>New paragraph (c)(8) clarifies the requirements for naming corporations and limited liability companies as defendants as well as the service requirements. The issuance of minor offense citations to companies has become common practice and there have been numerous questions about service requirements.</p>

**New Paragraph (d)**

Rule	Commentary
<p><u>(d) Minor Offenses Not Charged on a Citation.</u></p> <p><u>(1) If a minor offense is charged on an information or complaint without any related criminal charges, the information or complaint must include the information required by (c)(2) and the administrative bulletin issued under paragraph (c)(3) of this rule. Each information or complaint may name only one defendant. Except as provided in (5) below, an information or complaint must name an individual as the defendant.</u></p> <p><u>(2) A summons shall be issued by a judge or magistrate only if probable cause has been established as provided in Criminal Rule 4(a)(1). The summons must meet the requirements of the administrative bulletin authorized in (c)(3) of this rule.</u></p> <p><u>(3) If the offense charged is on a bail forfeiture schedule or fine schedule, the defendant must, within 30 days after being served with the summons, respond to the summons using one of the options provided in paragraph (e).</u></p> <p><u>(4) A summons may be served as provided in Criminal Rule 4(c).</u></p> <p><u>(5) An information or complaint charging a corporation or limited liability company must list the name of the corporation or company as the defendant. The summons must served on a person listed in Civil Rule 4(d)(4).</u></p>	<p>This is a new provision to address minor offenses filed by complaint or information.</p> <p>The old rule requires bail and fine schedule offenses to be filed on a citation to ensure that defendants are notified of their rights and the option to mail in their plea. On occasion, however, prosecutors file complaints or informations after an investigation instead of having an officer issue a citation.</p> <p>Paragraph (d)(1): This new provision requires minor offense informations and complaints to include the same defendant and offense information required for citations. The second sentence was added confirm current long-standing policy regarding charging document. See Admin. Bulletin 7 on Case Numbering.</p> <p>Paragraph (d)(2): This provision requires the issuance of a summons when a complaint or information is filed if probable cause is found as required by Criminal Rule 4. This provision also provides that the summons must include the information in paragraph (c)(1) and must meet the requirements of the Administrative Bulletin on the contents of citations. This will ensure that the defendant is given the same notice of rights and procedures that is included on citations.</p> <p>Paragraph (d)(3): The purpose of this provision is to establish the defendant's responsibility to respond to the summons in the same manner as a defendant must respond to a citation or face the consequences of failure to respond described in (j)(2). The requirement that defendant must respond within 30 days comes from HB 386 (Chapter 29, SLA 2010). See, for example, AS 12.25.195(a).</p> <p>New paragraph (d)(4) clarifies that a summons for a minor offense is served as provided in the Criminal Rule 4(c) on service of criminal summonses.</p> <p>New paragraph (d)(5) clarifies the requirements for naming corporations and limited liability companies as defendants as well as the service</p>

	requirements.
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**New paragraph (e)(1)**

Rule	Commentary
<p><del>(d)</del>(e) <u>Optional Disposition Without</u> Court Appearance.</p>	<p>Paragraph (e) used to be paragraph (d). The title was changed to reflect the terminology used on the citation form for offenses for which a bail or fine amount has been established</p>
<p>(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 <u>statute or ordinance</u> must within <del>the time period stated on the citation</del> <u>30 days after the citation was issued</u>:</p>	<p>We added “by statute” in the first sentence because AS 46.06.080 (Littering 5#s or Less) establishes a specific fine amount and authorizes the defendant to pay the fine without a court hearing in response to the citation. There may be other similar statutes.</p> <p>Paragraph (e)(1): The requirement that defendant must respond within 30 days comes from HB 386 (Chapter 29, SLA 2010). See, for example, AS 12.25.195(a).</p>

**New paragraph (e)(1)(A-C)**

Rule	Commentary
<p><del>(A) <u>enter a plea of not guilty and a request for trial by mailing or delivering a signed plea as directed on the citation, or appear for arraignment at the time and place indicated on the citation; or</u> (B) <u>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.</u></del></p> <p><u>(B) enter a plea of no contest and submit payment of the citation, plus any surcharge established by statute, as directed on the citation, or</u></p> <p><u>(C) provide proof of compliance to a law enforcement agency if a statute, regulation, or ordinance permits dismissal of the citation upon a showing of compliance, except that proof of compliance also may be made to the court for violation of AS 28.15.131 (failure to carry or exhibit license) or AS 28.22.019 (proof of insurance). The court or municipality shall dismiss the citation upon notification from the agency or proof of compliance.</u></p>	<p>We propose eliminating arraignments as recommended by the Holloway committee. The report states (on page 4): "Survey respondents largely favored eliminating arraignments in minor offense cases. At present, not all courts even offer arraignments. The working group SUPPORTS the idea of eliminating arraignments in minor offense cases."</p> <p>We think that many times defendants appear for arraignment solely so the defendants can explain their conduct in order to request a reduced fine. The advantage of continuing the current arraignment procedure is that the judge reads the actual law to the defendant to help the defendant understand the charges. However, the prosecution is not represented at these hearings and has no opportunity to respond to the defendant's claims.</p> <p>Some courts have established a policy eliminating minor offense arraignments. In those courts, defendants who appear for arraignment are told by the clerks office that they have the option of either pleading no contest or pleading not guilty and going to trial.</p> <p>We deleted the requirement that the defendant request that payment be used to satisfy the offense. AS 12.25.195 does not require this and there is no apparent purpose in requiring it.</p> <p>Paragraph (e)(1)(A)&amp;(B) come from (d)(1)(B). We made a separate paragraph for each plea. It is no longer accurate that a defendant must deliver or mail a copy of the citation to the court because defendant's can now pay online.</p> <p>Paragraph (e)(1)(C) regarding correctable offenses comes from (d)(4). It has been slightly reworded to work with the structure of the new (e). It clarifies that it is a defendant's second option for responding to a citation if the offense is correctable. We added the two situations where proof can be made to the court instead of law enforcement: AS 28.15.131 (failure to carry or exhibit license) or AS 28.22.019 (proof of insurance.)</p>

**Paragraph (e)((2))**

Rule	Commentary
(2) A person who mails or delivers an unsigned 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.	No change.

**New paragraph (e) continued...[Old Paragraph (d)]**

Rule	Commentary
<p><del>(3) When a no-contest plea is entered under Rule 8(d)(1)(B) or (d)(2), a judgment of conviction will be entered. When trial is requested, the case will be set on the calendar and notice sent to the parties.</del></p> <p><del>(4) When a person is charged with a minor offense, and the statute, regulation or ordinance provides that the citation 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.</del></p> <p><del>(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.</del></p> <p><del>(6) The court may also enter a judgment of conviction against a person who requests a trial under 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 advise the person of the consequences if the person fails to appear. 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).</del></p>	<p>Old paragraph (d)(3) moved to (g)(1)&amp;(2).</p> <p>Old paragraph (d)(4) moved to (e)(1)(c) &amp; (i).</p> <p>Old paragraph (d)(5) moved to (j)(1) &amp; (k).</p> <p>Old paragraph (d)(6) moved to (j)(3) &amp; (k).</p>

**New paragraph (f)**

Rule	Commentary
<p><del>(e)</del><u>(f)</u> Mandatory Court Appearance.</p> <p><u>(1) A person charged with a minor offense for which no bail forfeiture amount has been established by supreme court order and for which no scheduled fine amount has been established by statute or ordinance must appear for arraignment at the time and place indicated on the citation if ——— (1) 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 appear for arraignment at the time and place indicated on the citation. Arraignment must be conducted in accordance with District Court Criminal Rule 1.;</u> <del>or</del></p> <p><del>——— (2) 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. within the time period stated on the citation, provide proof of compliance to a law enforcement agency if a statute, regulation, or ordinance permits dismissal of the citation upon a showing of compliance.</del></p>	<p>The new paragraph (f) comes from old paragraph (e)(1)(A). It was reworded to follow the format and language of new paragraph (e) on optional court appearance offenses to make it easier to see the differences between optional and mandatory court appearances.</p> <p>The last sentence of paragraph (f) comes from the old unnumbered paragraph in (e).</p> <p>Current rule (e)(1)(B) is being eliminated. It required the defendant to appear in court if the defendant did not provide proof of compliance for a correctable offense. However, a number of years ago, all state correctable offenses were made optional court appearances if the correction was not made. We do not think there are any city offenses that are both mandatory and correctable. It really doesn't make sense to make a correctable offense a mandatory court appearance.</p>

**New paragraph (f) continued...[Old paragraph (e)]**

Rule	Commentary
<p><del>A person under 18 years of age at the time of the offense must be accompanied by a parent, guardian or legal custodian. Arraignment must be conducted in accordance with District Court Criminal Rule 1. The person 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 person may not be incarcerated solely for inability to post the bail amount.</del></p>	<p>Unnumbered Paragraph after old paragraph (e)(1)(B):</p> <p>The first sentence, regarding persons under 18 years of age, was moved to new (h) because it applies to both mandatory &amp; optional court appearance offenses.</p> <p>The second sentence, regarding arraignments, was moved to (f)(1) for mandatory appearances. Since we are proposing eliminating arraignments for option court appearance offenses, this sentence is not repeated in paragraph (e).</p> <p>We eliminated the last two sentences, regarding bail. In 1998, the requirement for posting bail for optional court appearance offenses was eliminated. We are not sure why it was not eliminated for mandatory court appearances, but to our knowledge no one is requiring bail in these cases. The bail provision for mandatory court appearances should be removed to ensure consistency of treatment for all defendants. New provision (g)(2) provides that bail is not required to be posted for any minor offense.</p>
<p><del>(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 any bail of a person who appears for arraignment under Rule 8(e)(1) but fails to appear at 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).</del></p>	<p>Old paragraph (e)(2) was moved to the following sections (with changes):</p> <p>(j)(1)&amp;(2)&amp;(3) Failure to Respond or to Appear and (k) Judgment, Costs and Fees</p>

**Old paragraph (f)**

Rule	Commentary
<p><del>(f) Disposition of Records of Conviction. Notice of conviction will be transmitted to the following agencies:</del></p> <p><del>(1) In the case of a motor vehicle offense, the conviction will be transmitted to the Department of 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.</del></p> <p><del>(2) In the case of a fish and game violation, the conviction will be transmitted to the Department of Public Safety, Division of Fish and Wildlife Protection, for the department to determine whether it has a basis for petitioning for license revocation.</del></p> <p><del>(3) In the case of a smoking violation under AS 18.35.300-.365, the conviction will be transmitted to the Department of Environmental Conservation, Division of Environmental Health.</del></p>	<p>Moved to (l).</p>

**Old paragraph (g)**

Rule	Commentary
<p><del>(g) Failure to Respond to Citation, Complaint or Summons.</del></p> <p><del>(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 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.</del></p> <p><del>(A) immediately, if the defendant will be taken to the court which issued the warrant;</del></p> <p><del>(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.</del></p> <p><del>(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.</del></p>	<p>Moved to (j)(5).</p>

**Old paragraph (h), (i), & (j)**

<p><del>(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.</del></p>	<p>Moved to (k)(3)&amp;(4).</p>
<p><del>(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.</del></p>	<p>Moved to (j)(6) Relief from Judgment.</p>
<p><del>(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.</del></p>	<p>Moved to (j)(5)(C) Longevity of Warrants.</p>

**New paragraphs (g), (h), and (i)**

Rule	Commentary
<p><u>(g) Pleas.</u></p>	<p>Paragraph (g) Pleas. We created a separate section on pleas because the plea provisions apply to both optional and mandatory court appearance offenses.</p>
<p><u>(1) When a no contest plea is entered, a judgment of conviction will be entered.</u></p>	<p>New paragraph (g)(1) is from the first sentence of old paragraph (d)(3) on optional court appearance offenses</p>
<p><u>(2) When a plea of not guilty is entered, the defendant is not required to post bail pending trial. When trial is requested, the case will be set on the calendar and notice sent to the parties.</u></p>	<p>New paragraph (g)(2):</p> <p>The first sentence is new language to clarify that bail is not required in minor offense cases. See explanation in the commentary for new paragraph (f) on page 9.</p> <p>The second sentence is from old paragraph (d)(3) on optional court appearance offenses.</p>
<p><u>(h) Persons Under 18. A person under 18 years of age at the time of the offense must be accompanied by a parent, guardian, or legal custodian at any court appearance for a minor offense.</u></p>	<p>This comes from the unnumbered paragraph in old paragraph (e)(1) on mandatory court appearance. We created a separate paragraph because it applies to both mandatory &amp; optional court appearance offenses.</p>
<p><u>(i) Correctable Offenses. When a person is charged with a minor offense, and the statute, regulation or ordinance provides that the citation 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.</u></p>	<p>This comes from old paragraph (d)(4) on optional court appearance offenses. We created a separate paragraph for it because it applies to both optional &amp; mandatory court appearance offenses. There were no changes made to this provision.</p>

**New paragraph (j)(1)**

Rule	Commentary
<p>(j) <u>Failure to Respond or to Appear</u></p>	<p>We decided to create this new section to consolidate the various provisions relating to failure to respond from several old paragraphs</p>
<p><b>Alternative 1 – Keep 15-Day Warning Notice</b></p> <p><u>(1) Failure to Respond to Citation. If a person fails to respond as provided in Rule 8(e) or (f), the court may, without finding probable cause to believe the defendant committed the offense, enter a judgment of conviction. The judgment must require the person to pay the scheduled bail or fine amount if the offense is an optional court appearance offense or the maximum penalty if the offense is a mandatory court appearance, plus any surcharge established by statute, court costs and collection costs required under Rule 8(k). 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.</u></p>	<p>This paragraph comes from old (d)(5) and parts of old (e)(2) with the following changes:</p> <p>We added the probable cause provision for the reasons set forth in the commentary to new paragraph (c)(6) beginning on page 10.</p> <p>We removed the amount of court costs because it has been moved to a separate section in new paragraph 8(k).</p> <p><b>Note:</b> Also see proposed new (k)(3) which would add a new \$25 fee for issuance of warning notices.</p>
<p><b>Alternative 2 – Remove 15-Day Warning Notice (Holloway Committee’s Recommendation). The differences from Alternative 1 are shown in legislative style.</b></p> <p>(1) Failure to Respond to Citation. If a person fails to respond as provided in Rule 8(e) or (f) <u>and the citation notified the defendant of the consequences of failure to respond as required in (c)(3)</u>, the court may, without finding probable cause to believe the defendant committed the offense, enter a judgment of conviction. The judgment must require the person to pay the scheduled bail or fine amount if the offense is an optional court appearance offense or the maximum penalty if the offense is a mandatory court appearance, plus any surcharge established by statute, court costs and collection costs required under Rule 8(k). <del>At least 15 days before</del></p>	<p>Alternative 2 makes the same changes as described in Alternative 1. In addition, it eliminates the 15-day warning notice requirement as recommended by the Traffic Court and Minor Offense Working Group (Holloway Committee). See paragraph I.4 in the attached report from that committee.</p> <p>As required by paragraph (c)(1) of the current rule, citations contain a notice explaining the consequences of failure to appear or respond. The consequences include entry of default judgment, assessment of additional costs, and seizure of the defendant’s PFD. The 15-day warning notice repeats the same warning, and it is expensive in terms of personnel costs to produce. The Holloway Committee feels that the warning notice on the citation is adequate notice.</p> <p><b>Note:</b> In the first sentence, we added a requirement that default judgment can be entered only if the citation notified the defendant of the consequences of failure to respond as required in (c)(3).</p>

**Paragraph (j)(1) continued and paragraphs (j)(2-3)**

Rule	Commentary
<p><del>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.</del></p>	
<p><u>(2) Failure to Appear After Summons. If a defendant who has been served a summons issued under paragraph (d) fails to appear, the court may enter a judgment of conviction as provided in paragraph (1) above. Alternatively, the court may issue a bench warrant for failure to appear as provided in paragraph (5) below.</u></p>	<p>We added this paragraph to clarify that the consequences for failure to appear in response to a summons include either entry of a default judgment or a bench warrant for failure to appear. Since issuance of a summons requires a finding of probable cause, we did not include the probable cause sentence in this paragraph. See new paragraph (d) on issuing a summons if the minor offense is charged on a complaint or information.</p>
<p><u>(3) Failure to Appear for Trial. If a person has been sent notice of a trial date and then fails to appear on the scheduled date, the court may, without finding probable cause to believe the defendant committed the offense, enter a judgment of conviction. The judgment must require the person to pay the scheduled bail or fine amount if the offense is an optional court appearance offense or the maximum penalty if the offense is a mandatory court appearance offense, plus any surcharge established by statute, court costs, and collection costs required under Rule 8(k). The notice of a trial date must advise the person of the consequences if the person fails to appear.</u></p>	<p>This paragraph comes from old paragraphs (d)(6) and parts of (e)(2) with the following changes:</p> <p>We changed the order of sentences to be parallel to new paragraph (j)(1).</p> <p>We added the probable cause provision for the reasons set forth in the commentary to new paragraph (c)(6) beginning on page 10.</p> <p>We removed the amount of court costs because it has been moved to a separate section in new paragraph 8(k).</p> <p>We do <u>not</u> propose to eliminate the requirement that the trial notice advise the defendant of the consequences of failure to appear even if the 15-day warning notice is eliminated.</p>

**New paragraph (j)(4-5)**

Rule	Commentary
<p><u>(4) Authority of Clerk. The clerk is authorized to enter judgments of conviction when a defendant mails or delivers to the clerk a plea of no contest, fails to respond to a citation or summons, or fails to appear for trial.</u></p>	<p>This paragraph comes from old paragraph (l). Instead of listing the paragraphs authorizing entry of a judgment of conviction, we describe those situations. This way, the reader will not have to refer to other paragraphs of the rule.</p>
<p><u>(5) Bench Warrant.</u></p> <p><u>(A) Issuance. 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. The bench warrant for failure to respond may be issued without probable cause to believe the underlying offense has been committed. 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 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</u></p> <p><u>(i) immediately, if the defendant will be taken to the court which that issued the warrant;</u></p> <p><u>(ii) 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 that issued the bench warrant.</u></p>	<p>These paragraphs come from (g)(1) &amp; (2) with the following changes:</p> <p>In paragraph A, the only change is the italicized second sentence regarding probable cause. The issuance of a bench warrant for failure to appear is based on the court's knowledge that the defendant did not appear as instructed on the citation. It is unrelated to the underlying offense charged on the citation.</p>

Paragraph (j)(B) and (j)(C)

Rule	Commentary
<p><u>(B) Summons. Before issuing a bench warrant for the defendant's arrest, the court in its discretion may issue a summons or other notice to a defendant who has failed to respond to a citation or a previous summons. <i>A summons for failure to respond may be issued without probable cause to believe the underlying offense has been committed.</i> 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.</u></p>	<p>In paragraph B, we made the following changes:</p> <ol style="list-style-type: none"> <li>1. In the first sentence, we clarified that the summons in this paragraph is for defendants who have failed to respond to a citation or a previous summons.</li> <li>2. We added the italicized second sentence regarding probable cause.</li> </ol>
<p><u>(C) 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.</u></p>	<p>New paragraph (j)(5)(C) comes from old paragraph (j) with no changes.</p>

**New paragraph (k)(1)**

Rule	Commentary
<p><u>(k) Judgment, Costs, Fees and Relief from Default Judgment.</u></p>	<p>In the old rule there is no single paragraph about the required contents of minor offense judgments. Some of the requirements are not mentioned and some are mentioned only with respect to default judgments. We created paragraph (k) to consolidate in one section the requirements that apply to all judgments.</p>
<p><b>Alternative #1:</b>  <u>(1) Mandatory Penalty. For offenses listed on a bail forfeiture schedule or municipal fine schedule, the scheduled amount is the mandatory sentence and may not be increased or decreased.</u></p> <p><b>Alternative #2:</b>  <u>(1) Presumptive Penalty. For offenses listed on a bail forfeiture schedule or municipal fine schedule, the scheduled amount is the presumptive sentence and may only be reduced by the sentencing judge for good cause. Pursuant to AS 12.25.230(c), the scheduled amount may not be increased.</u></p>	<p>The maximum penalty that can be imposed for any minor offense is the amount listed on the bail or fine schedule. AS12.25.230(c) which applies to all bail schedules, states: “If a person cited for an offense for which an amount of scheduled bail or fine has been established appears in court and is found guilty, the penalty imposed for the offense may not exceed the bail or fine established for the offense.”</p> <p>The courts disagree about the circumstances under which they can reduce the fine. Some think the scheduled amount is the “presumptive” amount and should only be reduced for good cause. Others think that the scheduled amount is the “maximum” and therefore should be given only to the worst offenders.</p> <p>In its December 2010 recommendation, the Holloway committee recommended that for offenses listed in bail forfeiture schedules and municipal fine schedules, the scheduled amount be mandatory. See page 4, Section II.2.iii of the Holloway committee’s report.</p> <p>Alternative #1 adopts the proposal of the Holloway committee.</p> <p>Alternative #2 proposes that the scheduled bail/fine amount be the presumptive sentence but allows judges to reduce the bail or fine for good cause.</p> <p>Also Susan Miller’s August 12, 2008, Memo to Nancy Meade supporting Admin Rule 43.1 changes, paragraph 9 re discretion to vary fine amounts.</p> <p>If the court adopts either alternative, we propose that similar language be added to all of the bail schedules in Administrative Rules.</p>

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**New paragraph (k)(2-5)**

Rule	Commentary
<p><u>(2) Surcharge and Forfeiture. In addition to any fine, a judgment of conviction in a minor offense case must order payment of any applicable surcharge, and</u></p> <p><u>(A) forfeiture of all items seized, as authorized by statute or ordinance, and listed on the citation.</u></p> <p><u>(B)</u></p> <p><u>(3) Court Costs. A judgment entered for failure to appear or respond under subparagraphs (j)(1) and (2) must require the person to pay court costs in the amount of \$25. Court costs imposed under this rule must be deposited in the state general fund.</u></p> <p><u>(4) Collection 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. The court may waive collection costs upon a showing of good cause. Collection costs imposed under this rule belong to the political entity that prosecuted the offense.</u></p> <p><u>(5) Bench Warrant Fee. 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 the bench warrant fee upon a showing of good cause. Bench warrant fees imposed under this rule must be deposited in the state general fund.</u></p>	<p>Paragraph (k)(2)(A): We added the provision that a minor offense judgment must include payment of any applicable surcharge required by statute. In the old rule, the surcharge requirement is only mentioned in the default judgment paragraphs.</p> <p>Paragraph (k)(2)(B): We added the provision that a minor offense judgment must include forfeiture of all seized items authorized by statute or ordinance. The old rule only requires that the citation “state that all seized equipment will be forfeited if the appearance is waived.” There is no old rule requiring that the judgment include the forfeiture of such items. This is particularly important for default judgments entered by clerks.</p> <p>Paragraph (k)(3) Court Costs comes from old (d)(5), (d)(6), (e)(2) and (m)</p> <p>Paragraph (k)(4) Collection Costs comes from old (d)(5), (d)(6), (e)(2), (h) and (m).</p> <p>Paragraph (k)(5) Bench Warrant Fee comes from old (h) and (m).</p>

**New paragraph (k)(6)**

Rule	Commentary
<p><u>(6) Relief from Default Judgment.</u></p> <p><u>(A) Upon a motion filed within one year after entry of a default judgment under (j)(1), (2) or (3), the court may vacate the judgment if the defendant shows that either</u></p> <p>= <u>(i) there is a good reason for the failure to respond or appear and the defendant has a meritorious defense to the offense charged, or</u></p> <p><u>(ii) the proceedings were not fair to the defendant because the defendant did not receive notice of the charge or the procedure for responding to the charge or that a default judgment would be entered if defendant did not respond to the charge.</u></p> <p><u>(B) If the judgment is vacated, the case must be set for trial unless the prosecution dismisses the case or, if the offense is correctable, the defendant shows proof of compliance with the law.</u></p>	<p>Paragraph (k)(6) about Relief from Judgment comes from old paragraph (i). We changed this provision to incorporate case law interpreting old paragraph (i): Zok v Municipality of Anchorage, 41 P.3d 154 (Alaska App 2001); Case v Municipality of Anchorage, 128 P.3d 193 (Alaska App 2006); Davis v Municipality of Anchorage, COA A-10088 (December 10, 2008 Unpublished Opinion); Pew v Foster, 660 P.2d 447 (Alaska 1983).</p> <p>We eliminated the language allowing the court to act “on its own initiative after reasonable notice” to be consistent with Civil Rule 60(b).</p> <p>We added new (6)(B) to clarify what is to happen when a judgment is vacated.</p>

**New paragraph (l) and (m)**

Rule	Commentary
<p><u>(l) Disposition of Records of Conviction. The clerk must transmit notice of conviction to the following agencies:</u></p> <p><u>(1) In the case of a motor vehicle offense, the conviction will be transmitted to the Department of 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.</u></p> <p><u>(2) In the case of a fish and game violation, the conviction will be transmitted to the Department of Public Safety, Division of Fish and Wildlife Protection, for the department to determine whether it has a basis for petitioning for license revocation.</u></p> <p><u>(3) In the case of a smoking violation under AS 18.35.300-.365, the conviction will be transmitted to the Department of Environmental Conservation, Division of Environmental Health.</u></p>	<p>This paragraph comes from old paragraph (f). The only change we made was to revise the first sentence from passive to active.</p>
<p><u>(k)(m) Non-Attorney Representation.—Representation of State or Municipality by Non-Attorney.</u> A municipal corporation or the State of Alaska may be represented by an employee of the state, the municipality, or other political subdivision of the state for the prosecution of minor offenses under this rule, AS 22.20.040 notwithstanding. However, The representative may give is limited to giving testimony, offer exhibits, and call witnesses for examination by the court, but and may not examine witnesses, make opening and closing arguments, or otherwise act as an attorney. The representative need not be employed by the same government entity represented, but must be authorized by the entity to represent it.</p>	<p>This paragraph comes from old paragraph (k). The only change we made was to change the title.</p>

**Old paragraphs (l) and (m) and (n)**

Rule	Commentary
<p><del>(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).</del></p>	<p>Moved to (j)(4) Authority of Clerk</p>
<p><del>(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.</del></p>	<p>Moved to:                      (k)(2) Court Costs.                      (k)(3) Collection Costs.                      (k)(4) Bench Warrant Fee.</p>
<p>(n) Temporary Transfer of Minor Offense Cases.</p> <p>(1) For purposes of this rule, the term "original court" means the court in which a minor offense case is pending. The term "second court" means the court to which the defendant requests that the case be temporarily transferred.</p> <p>(2) A minor offense case may be temporarily transferred from the original court to a second court for purposes of arraignment under the circumstances described below:</p> <p style="padding-left: 40px;">(A) If there is a mandatory court appearance for the minor offense, the defendant may request a temporary transfer from the original court to the court nearest the place where the defendant resides or is employed; or</p> <p style="padding-left: 40px;">(B) If a warrant relating to the minor offense is outstanding, the defendant may request a temporary transfer from the original court to the nearest court; or</p> <p style="padding-left: 40px;">(C) If the defendant is arrested on a bench warrant relating to the minor offense, the defendant may request a temporary transfer from the original court to the court where the defendant was arrested.</p> <p>(3) The request for temporary transfer may be made in writing or in person to the clerk of court in the original court or to the clerk of court in the second court.</p> <p>(4) If the requirements of subparagraph (2) are satisfied, the clerk shall grant the request for temporary transfer. Approval of the prosecuting authority at the original court is not required.</p>	<p style="text-align: center;">No change.</p>

**Old paragraph (n) continued... Old paragraphs (o) and (p)**

Rule	Commentary
<p>(5) The clerk who grants the request shall immediately notify the other court of the temporary transfer. Following notification, the clerk in the original court shall quash any outstanding warrants relating to the minor offense. If the request is granted by the second court and the original court cannot immediately be contacted, the clerk in the second court shall quash any outstanding warrants relating to the minor offense.</p> <p>(6) The defendant may be arraigned in the second court on a copy or facsimile of the citation.</p> <p>(7) If the defendant enters a plea of guilty or no contest in the second court, the defendant shall be sentenced in the second court. If the defendant enters a plea of not guilty, the second court shall return the case to the original court for trial setting.</p> <p>(8) After the plea has been entered, the second court shall, within 10 working days, return all papers to the original court.</p>	<p>Rule 8(n) continued:</p> <p>No change.</p>
<p>(o) Change of Venue.</p> <p>Change of venue of minor offense cases is governed by Criminal Rule 19.</p>	<p>No change.</p>
<p>(p) Speedy Trial - When Time Commences to Run. The right to speedy trial on minor offenses is governed by Criminal Rule 45. A defendant charged with a minor offense must be tried within 120 days from the date the defendant's request for trial is received by the court or the municipality, whichever occurs first.</p>	<p>No change.</p>

**Old paragraph (q) and new paragraph (r)**

Rule	Commentary
<p>(q) Peremptory Challenges. A judge in a minor offense case may not be peremptorily challenged under either Criminal Rule 25(d) or AS 22.20.022.</p>	<p>No change.</p>
<p><u>(r) Minor Offense Joined with Related Criminal Offense.</u></p> <p><u>(1) If the prosecuting authority chooses to join a minor offense with a related criminal charge that arose out of the same incident, the minor offense charge must be included on the criminal complaint or information and not filed separately on a citation in the criminal case.</u></p> <p><u>(2) If a citation was issued for a minor offense that is later joined with a criminal charge, the prosecutor must file the citation and a notice of joinder with the court. The administrative director shall establish by administrative bulletin the procedures for joining citations with related criminal charges.</u></p>	<p>This is a new section. Old paragraph (c)(2) provides that minor offenses on bail or fine schedules must be “charged on a citation and must not be filed, numbered, or processed as a criminal case.” We are changing this policy at the request of the Dept. of Law. Paragraph (r) reflects an agreement establishing procedures between the court and the Dept. of Law to ensure that proper record keeping procedures and notification to DPS and DMV are followed.</p>

**New paragraph (s) and (t)**

Rule	Commentary
<p><u>(s) Minor Offenses that Must be Filed as a Criminal Case.</u></p> <p><u>The offenses listed in Administrative Bulletin 7, section D.2 on Minor Offenses, must be filed as criminal cases and must be assigned criminal case numbers, even though these offenses are not classified by statute as criminal offenses.</u></p>	<p>This is a new section and is based on an existing policy reflected in Administrative Bulletin 7 on Case Numbering. These bulletins state that all minor offense cases must be numbered in a separate minor offense number sequence except the following offenses which must be assigned criminal case numbers:</p> <p>(1) Commercial fishing strict liability offenses charged as violations as described in AS 16.05.722;</p> <p>(2) Minor consuming alcohol and repeat minor consuming charged under AS 04.16.050(b) or (c);</p> <p>(3) Minor Operating Vehicle after Consuming (AS 28.35.280), Minor Refusing To Submit to Chemical Test (AS 28.35.285), and Minor Operating Vehicle Within 24 Hours of Being Cited for Offenses Under AS 28.35.280 or .285 (AS 28.35.290).</p>
<p><u>(t) Telephonic Participation in Minor Offense Cases.</u></p> <p><u>In any proceeding the defendant may waive the right to be present and request to participate by telephone. The defendant's waiver of the right to be physically present may be obtained orally on the record or in writing. The court may allow telephonic participation of one or more parties, counsel or the judge at any proceeding in its discretion. The court may allow telephonic participation of witnesses at trial with the consent of the prosecution and the defendant. The court may allow telephonic participation of witnesses at other hearings in its discretion.</u></p>	<p>This new rule is similar to Criminal Rule 38.1 but has been modified to fit the minor offense process.</p>

**New Notes At End of Rule**

Rule	Commentary
<p><u>* The uniform table of minor offenses was developed by the court system in cooperation with prosecutors, law enforcement, and other agencies. It is available at <a href="http://www.ajsac.state.ak.us/majic/">http://www.ajsac.state.ak.us/majic/</a>.</u></p>	<p>This footnote refers to the offense table referred to in paragraph (c)(2).</p>
<p><u>NOTE: Subsection (c)(3) refers to Administrative Bulletin <b>xx</b> “Form of Citation” available on the court system website at <a href="http://www.state.ak.us/courts">www.state.ak.us/courts</a>.</u></p> <p><u>NOTE: Subsection (r)(2) refers to Administrative Bulletins <b>xx</b> “Procedures for Joining Citations with Related Criminal Charges” on the court system website at <a href="http://www.state.ak.us/courts">www.state.ak.us/courts</a>.</u></p>	<p>We added these notes to assist readers in locating the Administrative Bulletins referred to in the new rule.</p>