



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 237
March 8, 2000

DOMESTIC VIOLENCE PROTECTIVE ORDER **NOT FORMALLY SERVED**

Reference: Jack A. MacDonald, Sr. Alaska Court of Appeals
v. Opinion No. 1665
State of Alaska P.2d
March 3, 2000

FACTS:

Ruth Kern applied to the court for a domestic violence protective order against MacDonald. The court issued the order, which stated MacDonald was not to contact Kern and he was to stay away from her residence. Police attempted to serve the order on MacDonald, but were unable to locate him. A police officer did contact MacDonald by telephone and told him about the order. In the meantime, MacDonald told several friends that he was aware of police attempting to contact him about the order, but he was purposefully avoiding them.

MacDonald was charged with, and subsequently convicted of, five counts of violating a domestic violence protective order. He argues that the court should have dismissed the case, because police did not personally serve him with the order as is required by Rule 4 of the Alaska Rules of Civil Procedure.

ISSUE:

Can an individual be prosecuted for the crime of "violating a domestic violence protective order," AS 11.56.740(a), when he has actual knowledge of the protective order, but has not been formally served with a written copy of that order?

March 8, 2000

HELD: Yes.

REASONING:

1. Courts have consistently held that, in criminal contempt proceedings, formal or personal service of an injunction or restraining order is not required for the defendant to be bound by the order.

2. MacDonald was subject to prosecution for violating a domestic violence protective order, pursuant to AS 11.56.740(a), because it is uncontested that he had actual knowledge of the protective order issued against him. (emphasis added)

3. The text of Alaska Rule 65(d) states that those "who receive actual notice of the order by personal service or otherwise" may be bound.

NOTES:

In cases where someone is avoiding service, you can assist the prosecutor by taking statements from friends or associates who are aware that the defendant knows about the order and is purposefully avoiding service.

NOTICE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section Q, "Miscellaneous Cases of Interest," of your Contents and Text. File Legal Bulletin No. 237 numerically under Section R of the manual.