

**SENATE AND HOUSE
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Wednesday

No. 19

STATE OF THE JUDICIARY ADDRESS

BY

THE HONORABLE ALLEN COMPTON

CHIEF JUSTICE

ALASKA STATE SUPREME COURT

BEFORE A JOINT SESSION

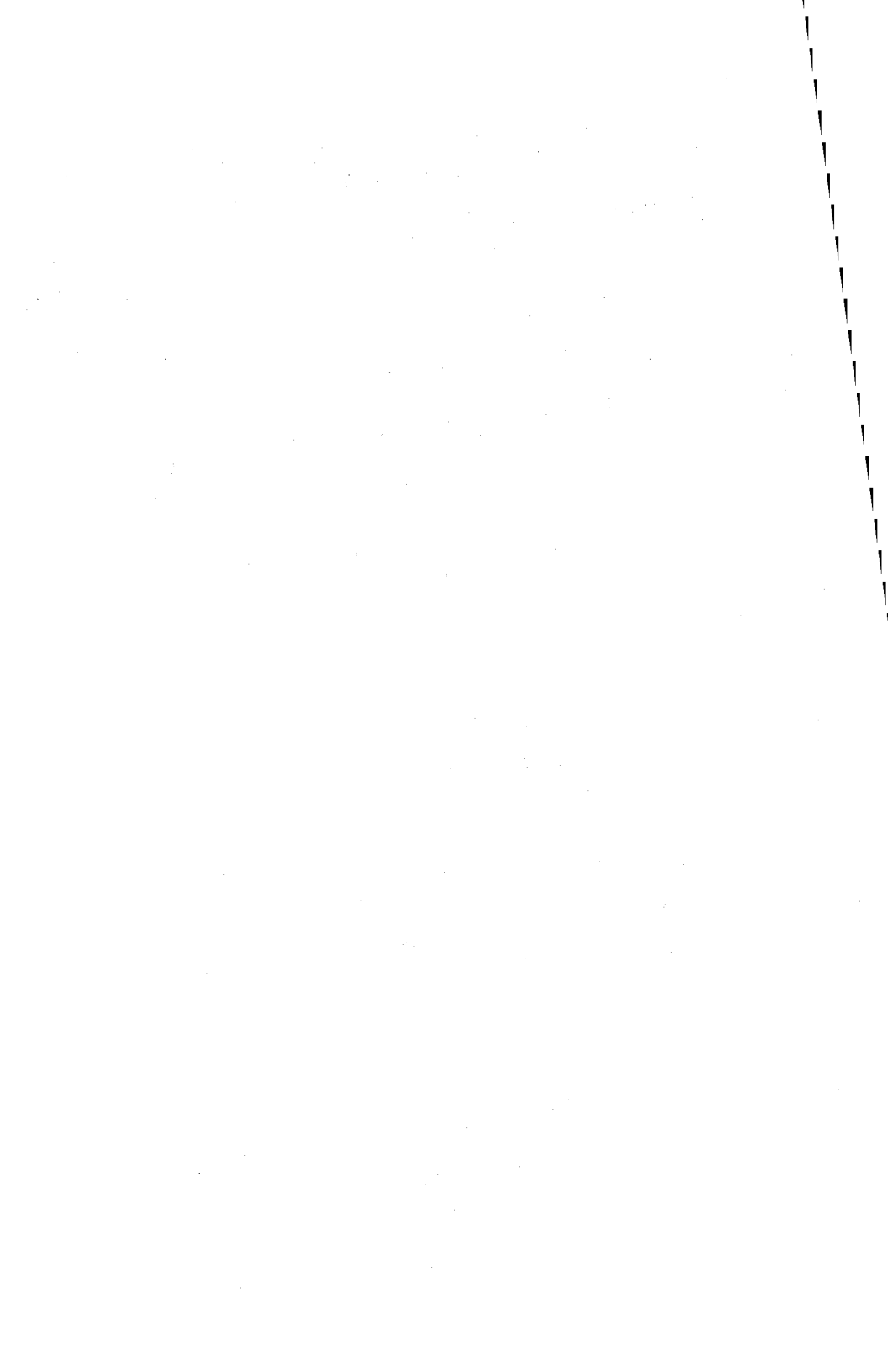
OF THE

SECOND SESSION OF THE

NINETEENTH ALASKA STATE LEGISLATURE

February 21, 1996

Juneau, Alaska



State of the Judiciary Address
by
The Honorable Allen Compton
Chief Justice, Alaska State Supreme Court

President Pearce, Speaker Phillips, Members of the Nineteenth Alaska Legislature, Representatives of the Fourth Estate, Ladies and Gentlemen;

First I would like to introduce to you my colleagues, here today not only for this Address, but also to hear oral arguments this afternoon in three Southeast cases.

The newest member of our court was appointed last month by Governor Tony Knowles. She became a superior court judge in Anchorage in 1988, a position she held until her appointment to the supreme court. Not only is she the first woman to be appointed to the court, coincidentally she is the first former supreme court law clerk to become a member of the supreme court, Justice Dana Fabe.

Dana's senior by a mere two years was raised here in Juneau, attending Capitol Elementary and Juneau-Douglas High Schools, Justice Robert Eastaugh.

Our next senior justice has been a member of the supreme court since 1977. When time has allowed, he has taken the opportunity to sit also in the superior court in some of the most remote court sites in the state, Justice Warren Matthews.

The senior member of the court was appointed to the superior court in Fairbanks in 1960. He resigned in January 1965, only to be appointed to this court on February 21, 1965, 31 years ago today, Justice Jay Rabinowitz.

Each of you has been given a copy of our 1995 Annual Report. It contains virtually all of the statistical data you could ever want, as well as a narrative description of responsibilities and activities of related agencies. It is among the most comprehensive reports

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produced by any state court system. I am going to touch on a few items in the report. Matters outside the report are also important to discuss in informing you of the state of the judiciary.

The Judicial Article of the Alaska Constitution provides for the establishment of a court system. It also provides for the establishment of a judicial council and the Commission on Judicial Conduct. These agencies are vested with responsibilities that are integral to the successful administration of the Alaska Court System. It is appropriate to include comment about them.

The Alaska Judicial Council is comprised of three lawyers and three laypersons, each of whom has an equal vote. The Chief Justice votes only in case of a tie. The Council is essential to the evaluation for selection to and retention of judicial office. The Constitution mandates that the Council conduct studies for the improvement of the administration of justice. This past year has relatively relaxed as far as evaluation for selection to judicial office is concerned. Applications for and nominations to vacancies on the Ketchikan District Court, the Nome Superior Court, and the Alaska Supreme Court have been processed and completed. Presently applications for vacancies in district or superior court judgeships are in process for Kenai, Valdez, Palmer, and Anchorage. The council has not been without work, however. Using federal and state funds, it has produced a report on Civil Rule 82, which is the relatively unique Alaska court rule relating to attorney's fees, the subject of an article in Monday's Anchorage Daily News, produced a booklet for lawyers and laypersons addressing how to pick a mediator to settle legal disputes, commenced a review of legal problems associated with administering foster care in Alaska, and assisted in development of an appellate court case management program. It has produced a Manual for Victims of Crime, and a related Criminal Justice Manual. The council has already run out of the first printing of 2500 victim's manuals, and is seeking funds to print several thousand more. Each of these studies and the reports and manuals they produce impact the judiciary, directly or indirectly. The need for them, and their benefit, cannot be underestimated. The council and its staff are working hard and working well.

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The Commission on Judicial Conduct is comprised of three lawyers, three laypersons, and three judges. It assists in the establishment of a code by which judicial officers conduct themselves, and provides a forum where complaints against judicial officers may be evaluated. It may privately sanction a judicial officer, or may recommend to the supreme court varying degrees of public sanction, where warranted. The data in our annual report is for 1994. For 1995, the Commission processed 47 complaints against judicial officers. No formal complaints were filed against a judicial officer as a result of complaints processed. The Commission privately sanctioned 5 judicial officers. In FY 95 the Commission's budget was reduced by \$44,000. The Commission is requesting that \$15,000 be restored in FY 96, mainly to cover the cost of contract attorneys working on discipline cases. We cannot stress too strongly the importance of this work in fulfilling responsibilities imposed by the Judicial Article.

Fee arbitration panels, operating under rules adopted by the supreme court, and administered by the Bar, are comprised of both attorneys and laypersons, who volunteer their time. Only a client can request that his or her dispute over legal fees be judged initially through fee arbitration. Review of a fee arbitration award is limited. Fee arbitration relieves trial courts from the responsibility of adjudicating most fee disputes. Further, it provides clients an inexpensive and quick way to resolve fee disputes. This process serves both the judiciary and the public interest.

The Bar processed 98 fee arbitration cases in 1995. Of those, 50 were disposed of by panels, 29 by settlement, 10 were withdrawn, and 9 not accepted for filing. It must be remembered that the panels, consisting of either one lawyer or two lawyers and one layperson, generally are not compensated for their time. It is volunteered. Additionally, fee arbitration cannot be requested by the lawyer; only the client can request it. This process is working well, also.

One other program which impacts the judiciary deserves special mention, and that is the Alaska Pro Bono Program, administered by Alaska Legal Services Corporation. During 1995, 950 attorneys were called on to contribute time to those unable to afford legal assistance, but also unable to obtain free assistance from Alaska Legal Services.

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Time records show that roughly 8500 hours of time were volunteered by attorneys. Of 1200 newly opened files, 400 became litigated cases, the balance being advice given during free clinics. This is a burden that will fall increasingly on volunteers, as Alaska Legal Services closes offices and reduces staff as a result of budget cutbacks. It is difficult to measure, but not difficult to imagine, the amount of time the court system saves in having attorneys willing and able to assist the disadvantaged. Those clients would have been at our doors, and will be at our doors in the years to come, seeking legal assistance we cannot give them. To the extent possible, funding for such essential legal services must be maintained.

Turning to the Alaska Court System itself, a few statistics from the Annual Report need emphasizing. First, it is not surprising to us that case filings in the supreme court are up by 13% in 1995, 27% over the last two years. The only decreases in our case categories are in those cases which take the least time. A 2% increase in the superior courts' annual case load, and an 8% increase in the district courts' annual case load, either meet or substantially exceed the state's annual population increase.

As a result of dramatic caseload shifts, we transferred a vacant superior court judgeship in Valdez to Palmer in late 1995. The Palmer caseload was grossly out of line with the judicial resources to handle it. We have created a district court judgeship in Valdez to pick up the slack there. In dealing with these positions in this manner, we have saved substantial sums over what it would have cost if instead we had left the superior court judgeship in Valdez, and sought your approval for a new superior court judgeship in Palmer. Our decision was made after consultation with the legislative delegation that represents the areas affected, and ultimately with the delegation's general approval. Representative Kubina from Valdez, and citizens in that community, would have preferred that our decision be otherwise, but they have been understanding of the needs that must be balanced. We appreciate the assistance given us by the delegation, and the understanding shown by those living in Valdez and the other communities that judgeship serves.

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During 1995, special or standing court committees continued to provide invaluable assistance to the judiciary and those it serves. Our standing committees, reviewing civil, criminal, and appellate rules, adoption, delinquency, and probate rules, family and mediation law, and pattern jury instructions, meet regularly, and often frequently. For the most part the attorney's participation is volunteered. Private practitioners cannot bill any client for committee work; it is gratis.

A special court committee, the State Court User Group, has been meeting for 5 years, assisting in the design of the Court Information Processing System. This is hands on design by those who are going to be using this computer and information processing system. Its information will be available to other state agencies as well. Committee members are from our administrative offices and our clerk's offices from around the state. They meet in Anchorage. Initially the committee met 3 successive days each month, but that increased to 5. Frequently meetings spill over into evenings and weekends. Often the members' time amounts to volunteer time, as they are away from their own desks and to the extent possible must make up their other work on weekends. They are away from their families. They are willing to put extra effort to develop what should be best and most comprehensive integrated court information system in the country. Its value to us is inestimable.

Judicial officers and others serving as magistrate trainers volunteer for this additional responsibility, again often at personal sacrifice. They understand the absolute need for providing training to magistrates working in far flung communities, who have no direct access to judges, yet are called upon to be judicial officers with considerable responsibility. Magistrates, most of whom are not law trained, make decisions requiring both sound judgment and a familiarity with the law that exceeds that of the usual layperson. Their training is just as essential to a well functioning judiciary as is the training judges receive at the National Judicial College. This program continues to function admirably. Our program for magistrates is outstanding.

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During this past year the new trial courts building in Anchorage neared completion. Trial courts will move into the building in May. We believe that the building will serve well the needs of community. It has an excellent prisoner security system, designed with direct input from Public Safety. Juror amenities are far more comfortable than has been the case in the dingy basement of the Boney Courthouse. Courtrooms have good sound systems. Handicapped access has been built in. The facility is one which Alaskans should be proud of.

In respect to these functions, the judiciary is working well. We make mistakes; we hope that we do not repeat them. Many of the problems we do have are internal, and steps are taken regularly to resolve them satisfactorily. We must continue every reasonable effort to make the Alaska Court System, and the judiciary which it houses, more efficient, and more responsive to the needs of the people. As the state grows, and it surely will, the demands on the judiciary become greater. Furthermore, each time this body makes significant statutory changes, either by amending existing statutes, or enacting entirely new ones, the demands on the judiciary become greater. For example, I am informed that at least 50 felony DWI's have been filed in Anchorage alone since September. These used to be misdemeanors. We cannot process 50 felonies at the same cost we can process 50 misdemeanors. This is not to say that increasing the penalty for third time DWI offenders was not wise. It is simply that there are costs, in time and money, that reverberate throughout the justice system. We are affected. We will do our best to absorb as much of this as humanly possible, before seeking legislative relief.

There are a couple of areas that are of concern. Article IV, section 15 of the Alaska Constitution places primary responsibility for making court rules of practice and procedure in the supreme court. There is reserved to the legislature the power to amend a rule "only upon a two-thirds vote of the members elected to each house." Increasingly legislation is introduced that would, and does, amend court rules. As best we can count, there are presently 42 bills in the Senate or House that would amend one or more court rules.

During constitutional debate on this issue, Delegate McLaughlin observed:

The Committee did not desire to follow the New Jersey rule where you have absolute rule-making power by the court, for fear that there might be at some time or another, an arbitrary excess, and it was the belief of the Committee that there should be some check by the legislature, but the Committee was wary of the practice in most states that when attorneys discovered that the rules work to their disadvantage in certain types of cases, they promptly tried to have the rules amended by the act of the legislature. One reason why we put in the provision requiring two-thirds of the elective members of each house to vote upon it separately was the desire to prevent actions or revisions of the supreme court rules while in the heat of passion. And in substance this amendment, and I think the Committee agrees with me, does water down the protection the supreme court has from hasty impromptu action in revising its rules. We desire to give the right, leave vested in the legislature the right to amend, but we desire to curb it because of prior experiences in other states.

A proposed legislative change to our rules may be one that was presented to one of our standing rules committees, or to the supreme court, and not adopted. It may be one none of us has ever seen before. Legislative adoption of the proposal, thereby amending the court rule, may have consequences for courts and litigants not foreseen by its proponent. If a proposal has been before a rules committee or the court, the legislature may be able to obtain valuable information regarding the advisability of the proposal, or even how the proposal might be improved both to achieve the desired result, while at the same time avoiding problematic consequences. We urge you to seek information from our court rules attorney, or other court staff who observe and are familiar with the rules and legislative processes, when considering amending court rules. As a matter of comity between our separate branches of government, the spirit of the constitutional grant of power, and limitation on that grant, suggests no less.

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The last matter I am going to discuss is the most difficult matter affecting the judicial branch of government. It is the matter of compensation, not only for judicial officers, but also for every employee of the Alaska Court System. It is not only how much compensation is paid, but also how compensation is determined.

No employee of the court system has had even a Consumer Price Index increase since January 1, 1991, half a decade ago. Although many employees in the other branches of government have received at least a modest increase in salary during this period, employees of the court system aren't treading water. They are drowning. 75% of the employees of the court system are Range 15 or lower. For them to lose 12% of the purchasing power of their dollar is becoming a significant burden.

Regarding salaries for judicial officers, as of January 1, 1996, only one state, Hawaii, has gone longer without increasing salaries than has Alaska. Applying the American Chamber of Commerce Researchers Association cost of living index to judicial salaries, nationally our supreme court, court of appeals, and superior courts rank 37th, 34th, and 35th respectively, out of the 46 states for which information is available. A superior court judge in Anchorage is paid \$96,000 per annum. He or she has lost \$29,849 in the purchasing power of his or her salary since 1991. This is based on the Alaska Department of Labor CPI. Were that judge on the bench in 1975, the judge would have seen his or her salary double, but at the same time would have lost over \$200,000 to the Consumer Price Index. Out of that 20 year period, there have now been two 5 year periods with no increase in compensation. Further, health benefits are less.

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No state judicial officer in Alaska has a salary greater than the salary for a United States Magistrate, \$122,900 per annum, much less a United States District Judge, who is paid \$133,600.¹

We need two things. First, there must be a forum for establishing what fair judicial compensation should be. There is not now a working compensation commission. We need a commission comprised of independent, responsible appointees to evaluate judicial compensation, and make recommendations to this body. Whether this body accepts or rejects those recommendations is another matter. The integrity of the figures can be relied on, and the determination of what is fair will be removed from the political arena. House Bill 437 would provide such a mechanism. We urge you to give it favorable consideration.

Second, we need help now. By "we," I am referring not just to judges, but all court system employees. If the court system and the union now representing some employees can come to terms in time, you will be requested to ratify a contract that will call for approximately a 5.2% pay increase. This represents belated parity with those who have had increases these past five years, leaving aside

¹ One United States District Judge in Alaska, formerly a superior court judge in Anchorage, remarked in a recent decision that "When I was on the State superior court, I had a civil caseload of up to 1,000. Today I have about 250. Then I had one law clerk, today I have two law clerks and an extern. In short, in state court I had more cases and fewer resources. Necessarily, a federal judge in this district will have more time to spend deciding cases of this kind than will his counterpart in state court." (footnotes omitted.) In footnotes, he stated that he was "not suggesting that [his] weighted caseload in state court was five times what it currently is. [He thought] a better estimate would be about double." Additionally, he observed that "[The United States District Court] is also aided by two full time magistrate judges and a number of part time magistrate judges who are willing to preliminarily review dispositive motions in civil cases. . . . No comparable assistance exists in state superior court."

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what has been lost. At a minimum, this percentage should be applied to all court system employees, regardless of whether a contract is submitted. It still is only half of the CPI increase over the period. A 10% increase in judicial salaries would be fully justified, both in relationship to CPI increases which exceed that amount, and in comparison to judicial salaries in other states.

There was, is, and always will be a tension between the judiciary and the legislature, just as there is between the judiciary and the executive, and the legislature and the executive. This is part and parcel of the system of checks and balances between three co-equal branches of government. We will do our best to discharge our constitutional responsibilities and carry our load, as efficiently and economically as possible. At times you will believe that we are your adversary, when we hold that you may not do as you have done, just as we say that to the executive at times, and to private litigants all the time. That is our function. But we are not your adversary. We are your co-equals in a common endeavor.

In the first instance we must look to you as stewards of those who try to meet the public demand for judicial service. The people of this state deserve the best judiciary we can provide. With your help, they can have it. Without it, the future is problematic.

Thank you for your time. And thank you for your support.