

HOUSE BILL NO. 486

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced: 2/17/06

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the disqualification of judicial officers and jurors; relating to the
2 rule of necessity; and amending Rules 42(c) and 47, Alaska Rules of Civil Procedure."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 09.20.020 is amended by adding a new subsection to read:

5 (b) A juror in a civil action may not be disqualified because of a personal
6 interest in the matter at issue if there is no other juror available to complete the
7 selection of a jury.

8 * **Sec. 2.** AS 22.20.020 is amended by adding a new subsection to read:

9 (d) A judge in a civil action may not be disqualified because of a personal
10 interest in the matter at issue if there is no other judge in any court of the state
11 available to act in the matter.

12 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 **DIRECT COURT RULE AMENDMENT.** Rule 42(c), Alaska Rules of Civil

1 Procedure, is amended to read:

2 (c) **Change of Judge as a Matter of Right - Rule of Necessity**. In all courts
3 of the state, a judge or master may be peremptorily challenged as follows:

4 (1) Nature of Proceedings. In an action pending in the Superior or
5 District Courts, each side is entitled as a matter of right to a change of one judge and
6 of one master. Two or more parties aligned on the same side of an action, whether or
7 not consolidated, shall be treated as one side for purposes of the right to a change of
8 judge, but the presiding judge may allow an additional change of judge to a party
9 whose interests in the action are hostile or adverse to the interests of another party on
10 the same side. A party wishing to exercise the right to change of judge shall file a
11 pleading entitled "Notice of Change of Judge." The notice may be signed by an
12 attorney, it shall state the name of the judge to be changed, and it shall neither specify
13 grounds nor be accompanied by an affidavit.

14 (2) Filing and Service. The notice of change of judge shall be filed
15 and copies served on the parties in accordance with Rule 5, Alaska Rules of Civil
16 Procedure.

17 (3) Timeliness. Failure to file a timely notice precludes change of
18 judge as a matter of right. Notice of change of judge is timely if filed before the
19 commencement of trial and within five days after notice that the case has been
20 assigned to a specific judge. Where a party has been served or enters an action after
21 the case has been assigned to a specific judge, a notice of change of judge shall also be
22 timely if filed by the party before the commencement of trial and within five days after
23 a party appears or files a pleading in the action.

24 (4) Waiver. A party waives the right to change as a matter of right a
25 judge who has been permanently assigned to the case by knowingly participating
26 before that judge in:

27 (i) Any judicial proceeding which concerns the merits
28 of the action and involves the consideration of evidence or of affidavits;

29 or

30 (ii) A pretrial conference; or

31 (iii) The commencement of trial; or

1 (iv) If the parties agree upon a judge to whom the case
 2 is to be assigned. Such waiver is to apply only to the agreed upon
 3 judge.

4 (5) Assignment of Action. After a notice of change of judge is timely
 5 filed, the presiding judge shall immediately assign the matter to a new judge within
 6 that judicial district. Should that judge be challenged, the presiding judge shall
 7 continue to assign the case to new judges within the judicial district until all parties
 8 have exercised or waived their right to change of judge or until all superior court
 9 judges, or all district court judges, within the judicial district have been challenged
 10 peremptorily or for cause. Should all such judges in the district be disqualified, the
 11 presiding judge shall immediately notify the administrative director in writing and
 12 request that the administrative director obtain from the Chief Justice an order
 13 assigning the case to another judge.

14 If a judge to whom an action has been assigned later becomes
 15 unavailable because of death, illness, or other physical or legal incapacity, the
 16 parties shall be restored to their several positions and rights under this rule as
 17 they existed immediately before the assignment of the action to such judge.

18 **(6) Rule of Necessity. Notwithstanding any other provision in this**
 19 **rule, a judge may not be disqualified because of a personal interest in the matter**
 20 **at issue if there is no other judge available to act in the matter.**

21 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
 22 read:

23 DIRECT COURT RULE AMENDMENT. Rule 47, Alaska Rules of Civil
 24 Procedure, is amended by adding a new subsection to read:

25 (h) **Rule of Necessity.** Notwithstanding any other provision in this rule, a
 26 juror may not be disqualified because of a personal interest in the matter at issue if
 27 there is no other juror available to complete the selection of a jury.

28 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
 29 read:

30 APPLICABILITY. This Act applies to any civil matter pending on or filed on or after
 31 the effective date of this Act in which a jury has not been selected or a judge permanently

1 assigned.

2 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 **CONDITIONAL EFFECT.** This Act takes effect only if secs. 3 and 4 of this Act
5 receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of
6 the State of Alaska.