

**- HEARD AND HELDALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 14, 2018

1:05 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Jonathan Kreiss-Tomkins
Representative Gabrielle LeDoux
Representative David Eastman
Representative Chuck Kopp
Representative Charisse Millett (alternate)
Representative Louise Stutes (alternate)

MEMBERS ABSENT

Representative Zach Fansler, Vice Chair
Representative Lora Reinbold

COMMITTEE CALENDAR

HOUSE BILL NO. 298

"An Act relating to the number of superior court judges in the first judicial district; and providing for an effective date."

-- MOVED HB 298 OUT OF COMMITTEE

ELECTION OF THE HOUSE JUDICIARY STANDING COMMITTEE VICE CHAIR

[COMMITTEE ON COMMITTEES APPROVED MARCH 9, 2018]

PREVIOUS COMMITTEE ACTION

BILL: HB 298

SHORT TITLE: NUMBER OF SUPERIOR COURT JUDGES

SPONSOR(s): RULES BY REQUEST

01/22/18	(H)	READ THE FIRST TIME - REFERRALS
01/22/18	(H)	CRA, JUD
01/30/18	(H)	CRA AT 3:00 PM BARNES 124
01/30/18	(H)	-- MEETING CANCELED --
02/08/18	(H)	CRA AT 8:00 AM BARNES 124
02/08/18	(H)	Moved HB 298 Out of Committee
02/08/18	(H)	MINUTE(CRA)
02/09/18	(H)	CRA RPT 6DP

02/09/18 (H) DP: TALERICO, DRUMMOND, LINCOLN,
SADDLER, KREISS-TOMKINS, PARISH
02/14/18 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

NANCY MEADE, General Counsel
Administrative Staff
Office of the Administrative Director
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 298, testified and answered questions.

ACTION NARRATIVE

[1:05:48 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:05 p.m. Representatives Claman, Stutes (alternate for Representative Fansler), Kopp, and Kreiss-Tomkins were present at the call to order. Representatives LeDoux, Eastman, and Millett (alternate for Representative Reinbold) arrived as the meeting was in progress.

HB 298-NUMBER OF SUPERIOR COURT JUDGES

[1:06:13 PM](#)

CHAIR CLAMAN announced that the only order of business would be HOUSE BILL NO. 298, "An Act relating to the number of superior court judges in the first judicial district; and providing for an effective date."

[1:06:40 PM](#)

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System, advised that she was speaking today on behalf of the Alaska Supreme Court, and explained that HB 298 increases the allotted number of superior court judges by one in the First Judicial District. This legislation is sponsored by the Alaska Supreme Court and while it is similar to a governor's bill, this is not a governor's bill, it is the means of introducing a bill by another branch of government. The Alaska Court System does not often propose legislation because statutory changes usually call for policy determinations, which is squarely within the

providence of the legislative branch of government. She explained that, 2011 was the last time the court system offered a bill which, amended this same statute to add two additional judges for the Third Judicial District. Typically, she explained, the court system would handle its own staffing changes and classifications of positions because those are internal administrative matters the court deems best for its caseload. Ms. Meade described this situation as unique because AS 22.10.120 determines the number of superior court judges, and the Constitution of the State of Alaska determined that the number of superior court judges are set by the legislature; however, that is not true for district court judges.

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MS. MEADE reminded the committee that last week, Chief Justice Craig Stowers pointed out that, for a number of years, Juneau has had the second highest number of superior court case filings per superior court judge in the state. The highest number of filings is in Anchorage, except comparing those numbers is not exactly apples-to-apples because Anchorage utilizes other resources, and for efficiency reasons some judges hear civil cases and some judges hear criminal cases. Given this high number of cases per each Juneau superior court judge, and despite their best efforts the cases are slowed down wherein they may not have the time on their calendars to schedule the necessary hearings as quickly as they could, and written work products are delayed when coming out of the Juneau Superior Court, she offered.

MS. MEADE related that the court system has recognized this problem for some time and in 2014-2016, it had a capitol budget request to add a new courtroom to the Juneau Courthouse to accommodate visiting judges because sometimes the Juneau sitting judges were using the courtrooms so scheduling for the visiting judges was difficult. Those requests to the legislature were not successful, and instead, the court redistributed those cases and it dealt with the existing courtrooms. In that regard, the Presiding Judge of the First Judicial District has been traveling to Juneau to assist in the Juneau caseload. Except, she said, that judge resides and handles the Ketchikan Superior Court cases, but he has taken about one-third of the civil case filings from the Juneau Superior Court, absorbed all of the administrative appeals in the Juneau Superior Court, and regularly handles large felony cases that would otherwise be handled by the Juneau Superior Court judges. She advised that the presiding judge handles many issues by video, but he does

travels for the hearings that must occur in person, thereby, accruing travel costs the court system hopes to eliminate. She stressed that she was not implying the presiding judge's travel costs would cover the increased costs being absorbed by the new judge.

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MS. MEADE pointed out that the Ketchikan judge's caseload does not stop when he is on-the-road handling Juneau cases. She pointed out that due to the presiding judge's expansive sense of responsibility toward his Juneau colleagues and litigants, he works "pretty much" all Saturdays and rarely gets a break because he still has his normal caseload while taking on these extra cases. The presiding judge tries to limit a Juneau judge's caseload travel to have one of the other judges in the district travel. This, she described, is a stop-gap measure to stop the problem from progressing too fast, but it is not a sustainable model. The court system is looking for a true solution to the problem rather than just the current band-aid fix in utilizing visiting judges.

MS. MEADE advised that the solution presented itself with great timing in that Juneau currently has two superior court judges and two district court judges, and one of the existing district court judges announced his plan to retire effective June 29, 2018, at the end of the fiscal year. The Alaska Supreme Court decided this was ideal timing to seek to have that district court judge seat filled by a superior court judge rather a district court judge. In the event HB 298 is enacted, the Alaska Judicial Council will advertise for a superior court judgeship for that retiring district court judge's seat, and three superior court judges and one district court judge will be the model. Superior court judges have statewide jurisdiction over all trial level work, whereas the district court judges have a subset of that jurisdiction. Generally, she explained, superior court judges handle felonies, child in need of aid (CINA) cases, domestic relations, and civil cases where the amount being argued is over \$100,000, which is where the bottleneck is in Juneau. By comparison, district court judges handle only misdemeanors, domestic violence protective orders - not domestic relations, and civil cases below \$100,000, as well as minor offenses such as citations, traffic or fish and game tickets. Changing this seat to a superior court judgeship means those judges will, and have agreed to, handle some district court casework, she said.

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MS. MEADE explained that the change from that district court judge to a superior court judge will also mean a big drop in the number of filed cases assigned to each superior court judge, and that those three superior court judges will assist in district court cases. Moreover, she offered, for the past many years, Juneau's magistrate judge position has basically performed "master work" in assisting the superior court judges with preliminary hearings and case file preparations to lighten their workload. In the event HB 298 is enacted, that magistrate judge position will segway into more typical magistrate judge duties, which is helping district court judges with citations and minor offenses. Therefore, she pointed out, with these two additional ways of handling the district court's cases, the court system does not anticipate any negative impact to the district court. Indeed, she offered, this change will put Juneau almost exactly the same as Kenai, the three and one model, in terms of both superior and district court case filing numbers.

MS. MEADE referred to fiscal impacts and explained that this current timing makes it possible for the court system to make these changes with a zero-fiscal note. The only additional cost this change would cause is the difference in salary between the district court judge and the superior court judge, and the required benefits. She offered that that amounts to approximately \$35,500 and the court system is willing to absorb that cost. Typically, she explained, when the court system requests a new judge, the new judge receives a judicial assistant, law clerk, in-court clerk, and sometimes construction funds for the new chambers. In this case, she pointed out, because the change is due to the retirement of a district court judge, the change will not require any additional resources at this time in terms of office space, security officers, in-court clerk, existing judicial assistants, and law clerks. The \$35,500 figure can be absorbed within the court system through the savings it has achieved through attrition and where it tightened its budget. The Supreme Court, the presiding judge, and the Juneau judges all believe this will work, it is a "terrific solution" which will benefit litigants and everyone without any downside, she stressed.

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REPRESENTATIVE KREISS-TOMKINS offered appreciation for the court system's usual orientation toward efficiency and frugality. Without fail, he said, he has found the court system to be

inspiring, if not a lesson, to how a branch of government delivers responsible essential services to Alaskans. He asked whether this is the one-time Ms. Meade is testifying on a piece of legislation that the court system is not neutral.

MS. MEADE advised that the court system is not neutral, it is in favor of this legislation that the court system is sponsoring.

[1:19:32 PM](#)

REPRESENTATIVE LEDOUX related that she likes HB 298, and if all of the departments ran their budgets in the same manner as the court system, the state would probably have much less of a fiscal problem. She described that the court system is "so proactive about things" and this bill is doing what is discussed all of the time, which is looking outside of the box.

MS. MEADE thanked Representative LeDoux and advised that she will pass her comments on to those who make the budget decisions.

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REPRESENTATIVE EASTMAN asked that if estimates were overly optimistic and additional staff was required after this change, would the court system come back to the legislature to fix that issue or could it be handled internally.

MS. MEADE answered that the court system is currently able to handle this change. Possibly, in a couple of years if the caseloads differ significantly or something happens and the court system decides an additional law clerk is appropriate, it could take that on without coming back to the legislature, she advised. The court system is in front of the legislature today solely due to the fact that superior court judge positions are set by law under the constitution. The court system's other positions can be readily filled or not filled as the court system deems appropriate and efficient, she remarked.

[1:21:48 PM](#)

REPRESENTATIVE EASTMAN surmised that this is Plan A and asked her to explain Plan B if this bill does not pass.

MS. MEADE reiterated that with the district court judge retiring, if the legislature does not pass this bill, the court system will advertise that position as a district court

judgeship again and will continue as it has in the past. Probably, she said, that Ketchikan presiding judge will continue to be willing to travel to Juneau to take on some of that caseload. Except, the court system believes that plan may cause it to get even deeper into the backlog hole. Plan B could carry a heavier fiscal impact next year that the court system would not be able to absorb, she pointed out.

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REPRESENTATIVE EASTMAN asked whether Plan C would be to have the current positions filled and then adding one additional judge. He asked her to contrast this bill with Plan C.

CHAIR CLAMAN asked whether he meant the fiscal difference between adding a superior court judge and having to fund that superior court position as opposed to doing it without a fiscal note.

REPRESENTATIVE EASTMAN said that he understands there would be a fiscal note there, and he asked whether there are any other factors that would weigh against "going that route," other than the fiscal impact.

MS. MEADE stated that she may not understand his question fully, but if HB 298 does not pass, the court system would fill that retiring judge's seat with another district court judge, and next year the court system would try again for a superior judge. However, she reiterated, [that plan] might require the addition of a judge's chambers and additional resources causing the court system to not accomplish that "for free."

CHAIR CLAMAN instructed Representative Eastman that he concurred with Ms. Meade in that his question was vague and ambiguous beyond the fiscal impacts.

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REPRESENTATIVE EASTMAN opined that, if the state had all of the money in the world and had all the judges the state might need, and "we were to have both a district and a superior court judge, that under this bill we wouldn't be having because we would just be choosing to have one of those options," he asked what would be some of the benefits or downsides both for and against that option.

MS. MEADE pointed out that the more judges the state has the faster cases could be handled. Except, she further pointed out, the justice system is an intricate web and if the legislature determined the court system should have additional superior court judges and district court judges, that decision would impact all of the different agencies practicing in front of those judges. Therefore, it may not move cases faster if there were not enough public defenders, district attorneys, OCS attorneys, and so forth, to bring those cases. At this time, she reiterated, it is the decision of the presiding judge and the Supreme Court that HB 298 will best help the court system to efficiently handle the Juneau caseload, and that is the number one priority in terms of where the resource is needed that will most impact the overall caseloads.

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REPRESENTATIVE EASTMAN said he understands that the court system is making projections based on its best information available. He said that there have been other testimonies that the state does not have enough prosecutors or enough resources in the Department of Law (DOL) to handle all of the complaints coming forward. He asked how much extra bandwidth is offered under HB 298 if next year and in the future, there is a significant increase in complaints and prosecutions coming from the DOL.

MS. MEADE said that she thinks she understands his question to be asking whether, even if this were to pass, the court system had enough resources to handle what might be an increase in cases. She advised that the court system determined that the existing statewide judgeships are sufficient in handling what it believes will take place. In the event that does not happen, she said that she supposes it will be handled in the court system's ordinary course of business, assess what was happening, and think of a solution in terms of budget increments for the next year. Currently, she said, looking at what the court system understands to be the other agencies requests and caseload trends, this judgeship is all that is needed in terms of judicial resources to handle what may be coming in the future.

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REPRESENTATIVE LEDOUX asked that because there are two superior court judges in Juneau whether the court system is ever faced with litigation wherein the judges were preempted out, which ends up costing more money.

MS. MEADE agreed, and she said that this legislation should prevent other judges from traveling to Juneau when both parties exercise their preemptory challenge. She related that, currently if both judges get "bumped or challenged" by the two different parties, a judge from elsewhere in the district would travel to Juneau. Having three superior court judges cuts down on the possibility that would take place, she remarked.

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REPRESENTATIVE KREISS-TOMKINS requested a ballpark figure for the frequency in which both judges are preempted in Juneau.

MS. MEADE answered that, "big ballpark," it is not a common occurrence at all. The Juneau judges do not experience "blanket bumps" where an agency decides it will always bump a certain judge out. She said that that might happen in other parts of the state at times, but currently [Juneau] judges are not routinely or often challenged by the parties.

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CHAIR CLAMAN opened public testimony on HB 298. After ascertaining no one wished to testify, closed public testimony on HB 298.

[1:30:36 PM](#)

REPRESENTATIVE EASTMAN commented that he will be supporting the bill at present. He voiced a concern about what happens when the "7,000 or so cases" not prosecuted this past year, are prosecuted once there are enough to resources to prosecute. He said he has concern the judicial resources necessary are not appropriately anticipated. While this is somewhat cosmetic as far as the change, he described that he understands the number of judges is not particularly being reduced. There are aspects of that which speak to the fact that the state does not need more judges, and he was unsure that would be case going forward, he said.

[1:31:35 PM](#)

REPRESENTATIVE MILLETT echoed Representative LeDoux's comments in that she also wishes all of the departments in the state ran as efficiently and aware as the Alaska Court System. The court system does a fantastic job, it is always open, and she trust

that when it comes to the legislature to ask for something that it out of a true need. She expressed appreciation for the openness of the court system with the judicial branch of government bringing a bill to the legislative branch of government. That openness is important and she will be supporting HB 298 as it moves forward and that she understands the judges are under constant time constraints while performing an excellent job. She reiterated admiration for the judicial branch and how it works together with the legislative branch.

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REPRESENTATIVE KOPP said that he echoes Representative Millett and clearly, the only real cost down the road will be a small offset for the judicial retirement system increase. That is a modest price to pay for the efficiency of that upgraded position and what it will mean to Southeast Alaska, he remarked. He suggested that if Representative Eastman was sincere, that Representative Eastman could bring a \$250,000 House of Representative floor amendment to add another judge.

[1:33:16 PM](#)

CHAIR CLAMAN commented that on a more personal level, when he was younger and working in Juneau in the court system, there were two superior court judges, one district court judge, and one magistrate judge. The district court would see a fair bit of the magistrate and a fair bit of the district court judge, and there was the sense that if things got busy and more complicated that adjustments would have to be made. That model led the court system, several years ago, to add a district court judge to address that caseload. This legislation, he described, is a pro-active recognition of the realities of the Juneau caseload and it addresses that issue effectively "without having to do a build out to the court system" or start leasing a courtroom in another building and all of the building that might be required to make that take place. He complimented the court system in being pro-active and figuring out solutions consistent with the financial challenges the state faces. He said he is pleased to support HB 298.

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REPRESENTATIVE KREISS-TOMKINS moved to report HB 298, Version 30-LS1279\A out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 298 passed from the House Judiciary Standing Committee.

ELECTION OF THE HOUSE JUDICIARY STANDING COMMITTEE VICE CHAIR

[1:34:38 PM](#)

CHAIR CLAMAN advised that the final order of business is the election of a vice chair in light of the resignation of Representative Zach Fansler pursuant to Mason's Manual Section 612.

[1:34:48 PM](#)

REPRESENTATIVE STUTES moved to elect Representative Jonathan Kreiss-Tomkins as vice chair of the House Judiciary Standing Committee. There being no objection, Representative Kreiss-Tomkins is the vice chair.

[1:35:03 PM](#)

REPRESENTATIVE MILLETT lightheartedly advised Representative Kreiss-Tompkins that vice chair comes with great responsibility and she wants him to study the bills before they arrive in committee and she is expecting amendments from him on a regular basis. As the vice chair, she said, it is his duty to make sure the members do not have anything leave this committee that is "not fit for the floor."

REPRESENTATIVE KREISS-TOMKINS responded that he will do his best to honor the namesake of this committee room.

CHAIR CLAMAN commented that the committee can rest assured that, in light of the comments on the floor today, Representative Kreiss-Tomkins probably will not be leading the "Bacon Caucus."

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 1:35 p.m.