

Introduced: 2/25/63
Referred: Judiciary

1 IN THE HOUSE BY MESSRS. SANDERS AND TAYLOR
2 HOUSE BILL NO. 104 AND JOSEPHSON

3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRD LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the disqualification of
7 superior court judges by parties or attorneys;
8 and providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 22.10 is amended by adding new sections to
11 read:

12 Sec. 22.10.200. ESTABLISHING THE PREJUDICE OF A JUDGE.

13 (a) A party to or an attorney appearing in an action pending
14 before a superior court may establish the prejudice of the
15 judge before whom the action is pending by a motion supported
16 by an affidavit which states (1) that the judge is prejudiced
17 against the party or attorney or the interest of either; or
18 (2) that the party or attorney cannot, or believes he cannot,
19 have a fair trial before the judge.

20 (b) The party or attorney must file the motion and
21 affidavit and call them to the attention of the judge before
22 whom the action is pending

23 (1) before he makes any ruling in the action on
24 either

25 (A) a motion of the party or attorney making
26 the affidavit; or

27 (B) a motion of any other party to, or attorney
28 appearing in, the action, if the party or attorney making
29 the affidavit has been given notice of the hearing on the

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motion; and

(2) before the presiding judge of the judicial district makes any order or ruling on the action involving discretion except an order or ruling to

(A) arrange the calendar;

(B) set the action, or a motion in the action, down for trial; or

(C) arraign the accused or set bail in a criminal action, which, for the purposes of this section, are not considered orders or rulings involving discretion.

(c) In a judicial district where there is only one resident judge, (b) of this section is subject to the condition that the party or attorney must file the motion and affidavit on or before the day on which the action is called to be set for trial.

(d) If, after the motion and affidavit have been filed, the parties agree in writing, the judge before whom the action is pending may hear arguments and rule upon any preliminary motion or other matter the parties may present.

(e) No party or attorney may make more than one motion and affidavit under this section in one action.

Sec. 22.10.210. DISQUALIFICATION OF PREJUDICED JUDGE.

If the prejudice of a superior court judge against a party to or an attorney appearing in an action pending before the judge, or his prejudice against the interest of either, is established under sec. 200 of this chapter the judge may not sit to try the action and the presiding judge of the judicial district, except as limited by (b) of this section, shall either

- 1 (1) transfer the action to another department of
2 the same court;
3 (2) call in a judge from another judicial district
4 to try the action;
5 (3) request the chief justice of the supreme court
6 to assign a judge to try the action; or
7 (4) if the action is one for which a change of
8 venue may be made under sec. 40 of this chapter, send the
9 action to the most convenient court in another judicial
10 district.

11 (b) The presiding judge of the judicial district may
12 not send a criminal action, for trial, to a court outside the
13 judicial district over which he presides unless the accused
14 waives his right to a trial by a jury of the judicial district
15 over which the judge presides.

16 * Sec. 2. Effective date. This Act takes effect July 1, 1963.
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