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STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
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LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 9, 1983

SUBJECT: Assignment of judges
(SB 159)

TO: Senator Bill Ray

FROM: Keith B. Levy *KBL*
Legislative Counsel

Under SB 159, AS 22.15.190(c) would limit assignment of district judges to a period of 90 days unless the judge consents. Upon reflection, I believe that this provision may be unconstitutional. Article IV, section 16 of the state constitution provides, in part,

The chief justice of the supreme court shall be the administrative head of all courts. He may assign judges from one court or division thereof to another for temporary service.

In effect, the constitution gives the power to assign judges to the chief justice of the Supreme Court, which the chief justice may presumably delegate to the presiding judge in each judicial district. However, since that power is expressly granted to the Supreme Court and the doctrine of separation of powers is recognized in the state constitution, it is probably unconstitutional for the legislature to assume that power.

Subsections (a), (b), and (d) probably do not present this constitutional problem since they merely define the court's ability to assign judges rather than limiting it as subsection (c) does.

If I may be of further assistance, please advise.

KBL:ljb
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April 25, 1983

Senator Bill Ray
State Capitol
Pouch V
Juneau, Alaska 99811

Re: CSSB 159 (Reassignment of Judges without their permission).

Dear Bill:

To clarify any misconceptions where I'm coming from, let me explain my thoughts regarding the above Bill, and reference the applicable law that bears on the subject -- and refute some of the arguments I understand were made before the Senate Judiciary Committee.

I support this Bill because:

(1) It will put District Court judges in the same category as Superior Court Judges insofar as judge assignment is concerned. A.S. 22.10.140 reads as follows:

22.10.140. Chief justice may assign superior court judges. The chief justice may assign a superior court judge for temporary duty from time to time not to exceed 90 days annually anywhere in the state except to permit completion of hearings in progress. A judge may be temporarily assigned for longer and additional periods with the consent of that judge.

The underlining portions makes my comment self-evident. At present this law only applies to Superior Court Judges. It is equally appropriate that District Judges not be assigned for other than temporary assignment without their consent, and the Legislature can so decree.

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(2) Passage of the Bill will manifest that if the preemption rights against judges are to be continued (and I don't see much chance that they will be repealed), then defense attorneys are not to have a weapon against judges such as is being imposed against Judge Hornaday in Homer. In other words, if the preempt is used to such an extent by these attorneys that a presiding judge feels administratively he has to remove a judge to another area, then these attorneys are a threat to an independent judiciary. This Bill will make it clear the system will not allow Judges to be threatened by the pre-empt tactic. Certainly, Superior Court Judges are not so threatened.

(3) It will solve a lawsuit proceeding, thus clarify the existing law and save the State considerable expense to litigate the above issues.

As to the applicable law: It's almost self-explanatory.

The only direct applicable State Constitutional provision is Article IV §16 and it reads:

§16 Court Administration. The Chief Justice of the Supreme Court shall be administrative head of all courts. He may assign judges from one court or division thereof to another for temporary service.***(Emphasis added).

That the Legislature has involved itself in assigning Superior Court Judges, and District Judges and Magistrates is apparent from the Statute referred to above (A.S. 22.10.140) and A.S. 22.15.190 (See copy attached), the only problem is they're treated differently.

Thus, the State Constitution says the Judges may only be assigned to another Court or "division" on a temporary basis. The Statutes as interpreted by the local presiding judge restricts Superior Court Judges to temporary assignments, but allows District Judges to be reassigned permanently. It is a precedent, because it has never been done before in Alaska. And it is playing havoc with the man (Judge Hornaday) and his family, four children and a wife. The youngsters have to be pulled out of school, the family home has to be sold, etc.

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If you have any further questions about any of the above, please do not hesitate to contact me.

Very truly yours,

CAMAROT, SANDBERG & HUNTER

By

George S.

Sec. 22.15.190. Assignment of district judges and magistrates. Each district judge and each magistrate shall hold court at such times and places as are assigned by the presiding judge of the superior court of the district. The presiding judge in any judicial district may assign any district judge or magistrate within the district to serve temporarily in any other judicial districts. Rules and procedures for temporary assignment including the emergency situation where a superior court judge is not readily available to assign a district judge or magistrate shall be as prescribed by the supreme court. § 14 ch 154 SLA 1959, am § 3 ch 24 SLA 1966.

Editor's notes. This section was with AS 22.15.190 and § 4 Chapter 58 redrafted by the revisor of statutes § 3 SLA 1952. remove personal pronouns in conformity

NOTES TO DECISIONS

Stated in *Treadwell v. State*, Sup. Ct. 1965, cert. denied 384 U.S. 931, 56 S.Ct. Op. No. 305, File No. 550-407 P.2d 182, 1570, 16 L.Ed.2d 547, 1966.