

**HOUSE
COMMITTEE REPORT**

(11)

Date referred: 4/11/86

FURTHER REFERRALS:

DATE: 4-23-86

The FINANCE Committee has considered HB 516

"An Act relating to the impeachment of judges of the court of appeals and the district court and to disqualification of judges for cause."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS HB 514 (JUD) same title
- new title

and recommends do pass

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature] NO-Rec

[Signature]

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[Signature]

[Signature]

[Signature]
Chairman

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: _____

REQUEST

Bill Resolution No. OSHB 516 (JUD)
 Title: "An Act relating to impeachment of judges of the court of appeals and the district court and to disqualification of judges for cause."
 Sponsor: Gruenberg
 Requestor: House Judiciary
 Date of Request: 4/10/86

FISCAL DETAIL

Agency Affected: Alaska Court System
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

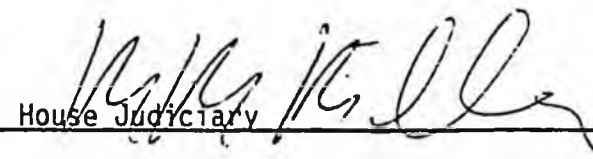
FUNDING : (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: House Judiciary  Phone: _____
 Division: _____ Date: 4/10/86

Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Offered: 4/11/86
Referred: Finance

Original sponsors: Gruenberg, Taylor,
Pettyjohn, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 516 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION
5 A BILL

6 For an Act entitled: "An Act relating to the impeachment of judges of the
7 court of appeals and the district court and to dis-
8 qualification of judges for cause."

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

10 * Section 1. AS 22.07 is amended by adding a new section to read:

11 Sec. 22.07.075. IMPEACHMENT. A judge of the court of appeals is
12 subject to impeachment by the legislature for malfeasance or mis-
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14 originate in the senate and must be approved by two-thirds vote of its
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5 * Sec. 3. AS 22.20.020(a) is repealed and reenacted to read:

6 (a) A judicial officer may not act in a matter in which

7 (1) the judicial officer is a party or is related to a
8 party or a party's attorney by consanguinity or affinity within the
9 third degree;

10 (2) the judicial officer is a material witness;

11 (3) the judicial officer or the spouse of the judicial
12 officer, individually or as a fiduciary, or a child of the judicial
13 officer has a direct financial interest in the matter;

14 (4) a party, except the state or a municipality of the
15 state, has retained or been professionally counseled by the judicial
16 officer as its attorney within two years preceding the assignment of
17 the judicial officer to the matter;

18 (5) the judicial officer has represented a person as attor-
19 ney for the person against a party, except the state or a municipality
20 of the state, in a matter within two years preceding the assignment of
21 the judicial officer to the matter;

22 (6) an attorney for a party has represented the judicial
23 officer or a person against the judicial officer, either in the judi-
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25 years preceding the filing of the action;

26 (7) the law firm with which the judicial officer was asso-
27 ciated in the practice of law within the two years preceding the
28 filing of the action has been retained or has professionally counseled
29 either party with respect to the matter;

1 (8) the Judicial officer feels that, for any reason, a fair
2 and impartial decision cannot be given.

3 * Sec. 4. AS 22.20.020 is amended by adding a new subsection to read:

4 (d) In this section "municipality" has the meaning given in
5 AS 29.71.800.



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
General Counsel

303 K Street
Anchorage, AK 99501

March 24, 1986

Representative Max Gruenberg
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Representative Gruenberg:

The Alaska Supreme Court in its administrative capacity has reviewed your proposed amendments to HB 516, an act relating to the impeachment of certain judges, and to disqualification of judges for cause. The amendments contained in the 2/26/86 draft appear to create no administrative, procedural or fiscal difficulties for the court system.

If you have any questions about the court system's position, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Karla L. Forsythe".

Karla L. Forsythe
General Counsel

KLF:smh

cc: Chief Justice Jay A. Rabinowitz
Arthur H. Snowden, II

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 22, 1986

SUBJECT: Judges
(Work Order No. 14-1356)

TO: Representative Max Gruenberg

FROM: Richard A. Bradley
Legislative Counsel 

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Sections 1 and 2 of the bill amend AS 22 by adding sections that make explicit the authority of the legislature to impeach judges of the court of appeals and district court judges. The sections track verbatim the existing sections regarding justices of the supreme court (AS 22.05.120) and judges of the superior court (AS 22.10.170). The actual source of the legislative power to impeach all judges is art. III, sec. 12 of the Alaska Constitution.

Section 3 of the bill amends AS 22.20.020(a) and deals explicitly with the situations where a judge "may not act" as a judge.

Section 4 of the bill amends AS 22.20.020 by adding a new subsection that references the municipal code's definition of municipality for the usage of that term in sec. 20(a).

If I may be of further assistance, please advise.

RAB:mkr
M2:067

*Judge
Helli*

AS 22.20.020

THE QUESTION OF THE DISQUALIFICATION OF A JUDGE BECAUSE OF A RELATIONSHIP TO A PARTY IN LITIGATION BEFORE THE JUDGE IS CONSIDERED.

The Supreme Court of Alaska held that under a law requiring a judge to disqualify himself when he is related to a "party" to litigation before him, if the person is not a named party, but merely the business associate of a named party, the judge is not required to disqualify himself in that case. The Court interpreted sec. 20 as an "objective test" but noted that in 1974, Congress decided that disqualification is appropriate as to the Federal judiciary "when a relative has an interest that could be affected" by the litigation and Congress required disqualification in these cases. The Court then stated: "While making this a required ground for disqualification may be a sound measure, the Alaska legislature has not, as yet, chosen to do so." Blake v. Gilbert, 702 P.2d 631.

Review is recommended.

NOTES TO DECISIONS

Magistrates are "judges of other courts" within the meaning of Alaska Const., art. IV, § 4. *Buckalew v. Holloway*, Sup. Ct. Op. No. 1988 (File No. 4058), 604 P.2d 240 (1979).
 Applied in *Larson v. State*, Sup. Ct. Op. No. 1430 (File No. 2433), 564 P.2d 365 (1977).

Sec. 22.20.020. Disqualification of judicial officer for cause. (a)
 A judicial officer may not act as such in a court of which the judicial officer is a member in an action in which

- (1) the judicial officer is a party or is directly interested;
- (2) the judicial officer was not present and sitting as a member of the court at the hearing of a matter submitted for its decision;
- (3) the judicial officer is a material witness;
- (4) the judicial officer is related to either party by consanguinity or affinity within the third degree;
- (5) either party has retained the judicial officer as their attorney or has been professionally counseled by him in any matter within two years preceding the filing of the action;
- (6) the judicial officer feels that, for any reason, a fair and impartial decision cannot be given.

(b) In an action specified in (a) (4) and (5) of this section the disqualification may be waived by the parties and is waived unless a party raises the objection.

(c) If a judicial officer disqualifies himself or herself or consents to disqualification, the presiding judge of the district shall immediately transfer the action to another judge of that district to which the objections of the parties do not apply or are least applicable and if there is no such judge, the chief justice of the supreme court shall assign a judge for the hearing or trial of the action. If a judicial officer denies disqualification the question shall be heard and determined by another judge assigned for the purpose by the presiding judge of the next higher level of courts or, if none, by the other members of the supreme court. The hearing may be ex parte and without notice to the parties or judge. (§ 54-2-1 ACLA 1949; am § 1 ch 48 SLA 1967)

Cross references. — For other statutory provisions concerning disqualification of judges, see AS 22.30.070 (a). As to when a judge should disqualify himself, see Canon 3C of the Code of Judicial Conduct.

Editor's notes. — This section was redrafted by the revisor of statutes to

remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Legislative history reports. — For report on ch. 48, SLA 1967 (SB 66), see 1967 House Journal, p. 311.

NOTES TO DECISIONS

- I. General Consideration.
- II. Basis for Disqualification.
 - A. Paragraph (a)(2).
 - B. Paragraph (a)(5).
 - C. Paragraph (a)(6).

I. GENERAL CONSIDERATION.

The right of an impartial tribunal is embodied in this section. *Amidon v. State*, Sup. Ct. Op. No. 1999 (File No. 3664), 604 P.2d 575 (1979).

The fact that a judge, as a trier of fact in a pretrial motion, found defendant's testimony "not believable" does not in itself preclude his presiding at the subsequent trial. *Coffey v. State*, Sup. Ct. Op. No. 1732 (File No. 3002), 585 P.2d 514 (1978), modified on rehearing on other grounds, 596 P.2d 10 (1979).

Defendant to request appointment of another judge for disqualification question. — Under subsection (c) of this section, it is incumbent on defendant to request the chief justice, as presiding judge of the next higher court, to appoint another judge to determine the question of disqualification. *Coffey v. State*, Sup. Ct. Op. No. 1732 (File No. 3002), 585 P.2d 514 (1978), modified on rehearing on other grounds, 596 P.2d 10 (1979).

Where no request was made to appoint another judge to determine the disqualification question, the fact that defendant was faced with imminent commencement of trial did not justify his failure to pursue his rights under subsection (c) of this section since the entrapment ruling which provided the basis for the allegation of bias was entered nearly three months before trial. *Coffey v. State*, Sup. Ct. Op. No. 1732 (File No. 3002), 585 P.2d 514 (1978), modified on rehearing on other grounds, 596 P.2d 10 (1979).

Quoted in *Wamser v. State*, Sup. Ct. Op. No. 1768 (File No. 4166), 587 P.2d 232 (1978).

Cited in *Peterson v. State*, Sup. Ct. Op. No. 1411 (File No. 2642), 562 P.2d 1350 (1977); *Halligan v. State*, Sup. Ct. Op. No. 2299 (File No. 5035), 624 P.2d 281 (1981); *Deivert v. Oseira*, Sup. Ct. Op. No. 2357 (File No. 4910), 628 P.2d 575 (1981).

II. BASES FOR DISQUALIFICATION.

A. Paragraph (a)(2).

Issuing orders based on both live and recorded testimony. — Where, in a superior court proceeding to terminate

parental rights in which the judge sat as the trier of fact, one judge presided over the first part of the adjudication hearing, observed the testimony of two of the state's witnesses, and neither made written findings of fact or conclusions of law with respect to this testimony, nor entered an adjudication order; and another judge presided over the continuation of the hearing, observed the testimony of one witness for the state, listened to the tape recorded testimony given before the first judge, and on the basis of both the recorded and live testimony, issued both the order adjudicating the child a neglected child and the order of disposition, the supreme court noted that the terms of paragraph (a)(2) of this section might prohibit the practice adopted by the superior court. In *re C.L.T.*, Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

B. Paragraph (a)(5).

The purposes of paragraph (a)(5) are to ensure the actual impartiality of a judge and to eliminate any possible appearance or suspicion of bias, thereby preserving the integrity of the judicial process and the confidence of the public. *Keel v. State*, Sup. Ct. Op. No. 1290 (File No. 2883), 552 P.2d 155 (1976).

By expanding paragraph (a)(5) in 1967, Alaska's legislature evidenced concern about a somewhat distinct problem: namely, that any professional relationship between a judge and one of the parties, formed or nurtured in any manner during the months preceding the judge's elevation to the bench, might create a risk of partiality or the appearance of partiality. *Keel v. State*, Sup. Ct. Op. No. 1290 (File No. 2883), 552 P.2d 155 (1976).

Disqualification where judge previously employed by state government. — The legislature did not intend, in enacting paragraph (a)(5), to disqualify a judge because of his prior employment by the state government from all cases in which the state appears as a party during the prohibited period of time. *Keel v. State*, Sup. Ct. Op. No. 1290 (File No. 2883), 552 P.2d 155 (1976).

Superior court judge who had been employed as an assistant district attorney was not disqualified in a case brought by the state against a defendant where there was no possibility that he might have learned of the facts of the alleged crime while serving in his prosecu-

torial role. *Keel v. State*, Sup. Ct. Op. No. 1290 (File No. 2883), 552 P.2d 155 (1976).

C. Paragraph (a)(6).

Maintenance of appearance of impartiality. — Paragraph (a)(6) of this section does not provide for disqualification where the sole concern is maintenance of the appearance of impartiality. However, in light of the importance of promoting public confidence in the integrity and impartiality of the judiciary, it would be well to permit disqualification under such circumstances. *Amidon v. State*, Sup. Ct. Op. No. 1999 (File No. 3664), 604 P.2d 575 (1979).

Review of decisions under paragraph (a)(6). — The supreme court rejected the argument that the disqualification standards under paragraph (a)(6) are wholly subjective and therefore not amenable to appellate review. Clearly, review is contemplated on a challenge for cause grounded in bias. The supreme court's duty to assure that judicial proceedings comply with due process mandates appellate scrutiny of allegations of bias. *Coffey v. State*, Sup. Ct. Op. No. 1732 (File No. 3002), 585 P.2d 514 (1978), modified on rehearing on other grounds, 596 P.2d 10 (1979).

Since the initial determination under paragraph (a)(6) of this section has been placed in the discretion of the trial judge, that judge's decision should be given substantial weight. When the judge does not recuse himself or herself, the decision should be reviewable on appeal only if it amounted to an abuse of discretion. *Amidon v. State*, Sup. Ct. Op. No. 1999 (File No. 3664), 604 P.2d 575 (1979).

Sec. 22.20.022. Peremptory disqualification of a superior court judge. (a) If a party or a party's attorney in a district court action or a superior court action, civil or criminal, files an affidavit alleging under oath the belief that a fair and impartial trial cannot be obtained, the presiding district court or superior court judge, respectively, shall at once, and without requiring proof, assign the action to another judge of the appropriate court in that district, or if there is none, the chief justice of the supreme court shall assign a judge for the hearing or trial of the action. The affidavit shall contain a statement that it is made in good faith and not for the purpose of delay.

(b) No judge or court may punish a person for contempt for making, filing or presenting the affidavit provided for in this section, or a motion founded on the affidavit.

Collateral references. —

Disqualification of judge by relative's ownership of stock in corporation which is a party to action. 8 ALR 295; 110 ALR 472.

Right of party in course of litigation to challenge title or authority of judge. 114 ALR 1207.

Disqualification of judge in pending case as subject to revocation or removal. 162 ALR 641.

Relationship of judge to one who is party in an official or representative capacity as disqualification. 10 ALR2d 1307.

Mandamus as remedy to compel assertedly disqualified judge to recuse self or to certify his disqualification. 45 ALR2d 937.

Relationship to attorney as disqualifying judge. 50 ALR2d 143.

Disqualification of judge in proceedings to punish contempt against or involving himself or court of which he is a member. 64 ALR2d 600.

Prior representation or activity as attorney or counsel as disqualifying judge. 72 ALR2d 443.

Time for asserting disqualification. 73 ALR2d 1238.

Intervenor's right to disqualify judge. 92 ALR2d 1110.

Disqualification of judge for bias against counsel for litigant. 23 ALR3d 1416.

Disqualification of original trial judge to sit on retrial after reversal or mistrial. 60 ALR3d 176.

Disqualification of judge by state, in criminal case, for bias or prejudice. 68 ALR3d 509.

Membership in fraternal or social club or order affected by a case as ground for disqualification of judge. 75 ALR3d 1021.

Offered: 4/11/86
Referred: Finance

Original sponsors: Gruenberg, Taylor,
Pettyjohn, et al

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2 CS FOR HOUSE BILL NO. 516 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION
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Introduced: 1/27/86
Referred: Judiciary and
Finance

BY GRUENBERG, TAYLOR, PETTYJOHN,
SUND, PHILLIPS AND MARROU

1 IN THE HOUSE

HOUSE BILL NO. 516

2

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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23 a person as attorney for the person against a party, except the state
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