S B
482

alaska judicial council

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501 (907) 279-2526 FAX (907) 276-5046

EXECUTIVE DIRECTOR
William T. Cotton

NON-ATTORNEY MEMBERS
Hilbert J. Henrickson, M.D.
Leona Okakok
Janis G. Roller

ATTORNEY MEMBERS
Daniel L. Callahan
William T. Council
James D. Gilmore

CHAIRMAN, EX OFFICIO
Warren W. Matthews
Chief Justice
Supreme Court

February 21, 1990

RECEIVED

FEB 23 1990

JAN FAIKS
SENATE OFFICE

Chris Christensen
Office of Senator Jan Faiks
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Chris:

I enjoyed finally meeting you last week. I understand that either Representative Gruenberg or his aide Andy Hemingway have talked to you about adding our proposed legislation on district court judges (see attached memo) to Senate Bill 482 which would raise the district court jurisdiction level to $50,000. I am, of course, available to discuss this proposal or answer questions at the hearings as needed.

I would also be interested in testifying on SB448 (the proposed sentencing commission) when this bill is considered by the Senate Judiciary Committee. The Judicial Council staff believe that the Council is the logical place for the commission staff. This would be more efficient than starting a new bureaucracy and would take advantage of the Judicial Council's expertise in sentencing. I have attached a list of Judicial Council studies and reports for your information.

Please give me a call if you have any questions.

Very truly yours,

William T. Cotton

William T. Cotton
Executive Director

WTC/jmz

Enclosures

alaska judicial council

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501 (907) 279-2526 FAX (907) 276-5046

ACTING EXECUTIVE DIRECTOR
Teresa W. Carns

NON-ATTORNEY MEMBERS
Hilbert J. Henrickson, M.D.
Leona Okakok
Janis G. Roller

ATTORNEY MEMBERS
Daniel L. Callahan
William T. Council
James D. Gilmore

CHAIRMAN, EX OFFICIO
Warren W. Matthews
Chief Justice
Supreme Court

December 12, 1989

M E M O R A N D U M

TO: Judicial Council

FROM: Staff TWC

RE: District Court Judges' Terms (AS 15.35.100)

The purpose of this memo is to suggest that the Judicial Council consider sponsoring legislation to increase the length of district court judges' probationary terms in order to allow more adequate time for evaluation. At present, district court judges must stand for retention at the first general election more than one year after appointment, and every four years thereafter.

These terms were established in 1967, some years preceding the 1975 legislation that authorized the Council to evaluate judges standing for retention. At that time, judges would have been "evaluated" by the electorate at the polls one to two years after their appointment. Today, however, the Council conducts an evaluation of each judge that takes about six months. The results of this evaluation must be submitted to the Lieutenant Governor by August 7 preceding the election for publication in the Official Election Pamphlet. The result is that some district court judges have served less than a year before their evaluation begins.

Two district court judges, Michael Wolverton of Anchorage and Peter Froelich in Juneau, are standing for retention in 1990 for the first time. Judge Wolverton was appointed in August of 1988 and under the proposed change would still stand for retention at this election. He will have been on the bench for about 18 months at the time evaluation starts in February of 1990. Judge Froelich was appointed in June of 1989. He will have been on the bench for just under eight months in February. Under the proposed change, he would not stand for retention until 1992.

Hypothetically, a judge could have an even shorter time before evaluation. A judge appointed on November 5, 1989, for example, would probably not actually start work until a month or so later. The judge could have only two or three months on the bench before being evaluated. This does not seem to be the intent of the legislature in setting the "more than one year after appointment" initial term. Presumably they intended that the judge would be evaluated on the basis of twelve or more months' experience on the bench.

AS 15.35.100 could be revised to make a district court judge "subject to approval or rejection at the first general election held more than <u>two years</u> [one year] after [his] appointment...." This proposal should not create any costs or any other difficulties. A fiscal note of $0 should be submitted with the proposed legislation.

Please let us know your thoughts on this suggestion.

MAJOR STUDIES AND REPORTS RELATING TO SENTENCING
BY THE ALASKA JUDICIAL COUNCIL

1. Sentencing in Alaska. (March, 1975). Statistical analysis of felony sentences imposed in 1973.

2. Bail in Anchorage. (March, 1975). Statistical analysis of bail practices for Anchorage felony cases in 1973.

3. 1973 Sentences of Five Years or Longer. (April, 1975). Analysis of factors contributing to lengthy sentences, and the impact of appellate review of sentencing.

4. Report on Repeat Bail Recidivists in 1973. (April, 1975). Case-by-case analysis of defendants who violated bail conditions by committing more than one new crime while on bail for a felony offense.

5. Alaska Felony Sentencing Patterns: A Multivariate Statistical Analysis -- 1974-1976. (April, 1977). Study requested by the legislature and used to structure presumptive sentencing provisions of the new criminal code. Also resulted in the creation of the Sentencing Guidelines Committee.

6. Interim Report on the Elimination of Plea Bargaining. (May, 1977). Summarized effects of the Attorney General's 1975 ban on plea bargaining as reported by attorneys, judges, and defendants.

7. Interim Report of the Alaska Judicial Council on Findings of Apparent Racial Disparity in Sentencing. (Oct., 1978). Summary of data accumulated on felony case dispositions and sentencing patterns from Anchorage, Fairbanks, and Juneau (1974-1976) giving evidence of racial and other disparities in sentencing for certain types of offenses. Resulted in legislation creating the Advisory Committee on Minority Judicial Sentencing Practices, and funding of Judicial Council follow-up studies of felonies and misdemeanors. See text of Tenth Report for other effects.

8. The Effect of the Official Prohibition of Plea Bargaining on the Disposition of Felony Cases in Alaska Criminal Courts. (Dec., 1978). [Reprinted by the Government Printing Office, Washington, D.C. as Alaska Bans Plea Bargaining, 1979]. Evaluates the effectiveness and consequences of the Attorney General's 1975 ban on plea bargaining, including the results of over 400 interviews with attorneys, judges, and criminal justice personnel, and 2-year felony statistical study.

9. Alaska Misdemeanor Sentences: 1974-76 Plea Bargaining. (Aug., 1979). Analysis of misdemeanor sentences to determine effect of plea bargaining ban on sentences imposed after trial or plea.

10. Alaska Misdemeanor Sentences: 1974-76 Racial Disparity. (Nov., 1979). Analysis of existence of racial disparity in misdemeanor sentences; shows significant disparity for several categories of offense.

11. Sentencing Under Revised Criminal Code. (Jan., 1980). Probation Officer training manual for the revised criminal code.

12. Alaska Felony Sentences: 1976-1979. (Nov., 1980). Follow-up study requested by the legislature on felony disparities; shows disappearance of most racial disparities. Additional analysis and findings on sentences in rural areas, effects of attorney type, and possible continuing trends from the plea bargaining ban.

13. A Preliminary Statistical Description of Fish & Game Sentences. (1981). Reviews data from Fish and Wildlife Protection data tapes; finds sufficient disparities to warrant full-scale statistical analysis.

14. Alaska Prison Population Impact Analysis. (1982). Funded by Division of Corrections. Estimates growth in sentenced felon prison populations based on potential and actual legislative changes.

15. Alaska Felony Sentences: 1980. (Dec. 2, 1982). Study requested by the legislature as a continued monitoring of sentence disparities and analysis of the effects of the revised criminal code. Shows disappearance of disparities (racial and attorney type), shortened sentence lengths.

16. Statistical Analysis of Major Fish & Game Offense Sentencing Outcomes. (Dec., 1983). Funded by the legislature in 1982 to study sentences imposed on 1980 and 1981 fish and game violators. Found widespread disparities and fluctuations in charging and sentencing patterns. Recommended complete revision of applicable statutes and codes.

17. Alaska Misdemeanor Sentences: 1981. (Dec., 1983). Funded by the legislature to analyze misdemeanor sentences imposed during 1981. Recommended alcohol treatment programs for convicted defendants and increased legislative sanctions for DWI to reduce the incidence of alcohol-related crime.

18. DWI Sentences: 1981. (March, 1984). Additional analysis of DWI (drunk driving) sentences included in the 1981 Misdemeanor Study data base. Types of sentences imposed for DWI convictions and characteristics of offenders are described.

19. Alaska Felony Sentences: 1984. (March, 1987). Describes felony sentencing patterns for 1984 cases. Analyzes the impacts of presumptive sentencing and other criminal justice system changes between 1980 and 1986.

20. Plea Bargaining Ban/Presumptive Sentencing (I/P). (December, 1990). Follow-up evaluation of Alaska's ban on plea bargaining and its interaction with presumptive sentencing. Describes the evolution of the Attorney General's policy between 1975 and 1990; analyzes statutes and case law affecting sentencing; and provides detailed statistical data about case dispositions and sentences between 1984 and 1987.

BILL NO: SB 522 DATE: March 22, 1990

TITLE: An Act authorizing the Alaska Court System to establish a mediation pilot project

CONTACT: Barbara Miklos 465-4356

SB 522 authorizes the Court System to establish and evaluate a mediation pilot project. The Council on Domestic Violence and Sexual Assault appreciates and supports the following provisions in the bill agreed upon by the Court System: the exclusion from the project of cases involving domestic violence; limiting mandatory mediation to one session, after which either party may choose to withdraw; ensuring that cases participating in mediation will not be delayed by the court; informing all parties of their rights, and the scope and purpose of the mediation project before mediation begins; disqualifying the mediator from making recommendations to the court about the disposition of the controversy should mediation fail; and allowing parties to consult with their attorneys at any point during the mediation process.

It is very important to exclude domestic violence cases from mediation. Mediation depends on equality of personal, social and economic power between the disputing parties. Violence severely distorts the balance of power in a relationship. Violent men physically and psychologically coerce women, by domination and intimidation. Women who are severely intimidated and frightened of the violence will not be able to make independent decisions in their own best interests or those of their children. It is important to note that violence often does not decrease after a separation and, in fact, may increase in severity.

The Council has concerns about the pilot project being mandatory. To be effective, mediation must be voluntary. Research on conflict resolution indicates that to the extent that one or both parties to mediation feels coerced, negotiations will be deadlocked, or agreements that are reached are likely to fail to be implemented.

Another concern about the project is that it will not exclude property from mediation. There are built-in protections in our legal system for addressing financial and property matters. Mediation will occur behind closed doors, without legal protections, and may be done by persons with no expertise in financial matters. It has been known that, in divorce cases, some women have bargained away financial assets in order to retain custody of minor children. We believe that this could be a serious problem under the pilot project, leading to unfair settlements.

We believe that the evaluation criteria need to be revised. The primary goal of mediation, when there are children, should be the best interests of the children; therefore, this needs to be an evaluation criteria. If property is included in mediation, criteria need to be developed to evaluate the settlements to insure they are just for both parties.

The Council is generally neutral about this project. Our major concern, that all cases of domestic violence be excluded from the project, has been addressed in this legislation.

for Arthur English
Commissioner

DEPARTMENT OF PUBLIC SAFETY

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 522
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: An Act ... to establish and evaluate a mediation pilot project
Sponsor: Senate Judiciary
Requestor: Senate Judiciary

Agency Affected: Public Safety
BRU: Council on Domestic Violence and Sexual Assault
Component:

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
CAPITAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
REVENUE	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This bill is expected to have no fiscal impact on the Department of Public Safety.

BJM

Prepared by: Barbara Miklos, Executive Director
Phone: 465-4356
Division: Council on Domestic Violence and Sexual Assault
Date: 3/22/90
Approved by Commissioner: Arthur English A.C.A.
Date: 3-22-90
Agency: Department of Public Safety

Alaska Court System
State of Alaska

STEPHANIE J. COLE
Deputy Administrative Director

OFFICE OF ADMINISTRATIVE DIRECTOR
303 K STREET
ANCHORAGE, ALASKA 99501

(907) 264-8230

March 8, 1990

FAXED

Barbara Miklos
Executive Director
Council on Domestic Violence and
Sexual Assault
P. O. Box N
Juneau, Alaska 99811

Dear Ms. Miklos Barbara

I believe that, as a result of our phone conversation this morning (March 8), we agreed that the court, in a mediation pilot project, shall:

(3) exclude from the scope of the project cases involving domestic violence on any family members;

(4) limit mandatory participation of parties to one (1) mediation session, after which either party may choose to withdraw from mediation;

(5) ensure that the resolution of cases chosen to participate in the mediation project are not delayed by the court because of the mediation, should the attempts to reach a mediated agreement fail;

(6) inform all parties of their rights and the scope and purpose of the pilot project before mediation begins;

(7) disqualify the mediator from making recommendations to the court about the disposition of the controversy, should mediation fail;

(8) allow parties to consult with their attorneys at any point during the mediation process.

Although this does not resolve all of the issues we discussed, I believe the above is correct. (Please let me know if it's not!)

Very truly yours,

Stephanie

Stephanie J. Cole
Deputy Administrative Director

SJC:bh

cc: Senator Jan Faiks

Alaska State Legislature

Senate Judiciary Committee

February 28, 1990

MEMORANDUM

TO: Judiciary Committee Members

FROM: Senator Jan Faiks, Chairman

SUBJECT: SB 482 "An Act relating to the judiciary."

SB 482 revises the jurisdictional amount of the district court. As you know, the district court has jurisdiction in civil cases not exceeding $35,000; cases exceeding that amount must be tried in superior court. SB 482 would raise the jurisdictional amount to $50,000.

The jurisdictional amount of the district court for many years was $10,000. In 1985, the Legislature raised this to $25,000, and in 1987 it was raised to the current level. For years there has been significant support for raising the jurisdictional amount to $50,000; however, it was felt that the civil justice system would be better served if the level was raised in increments.

The primary effect of raising the jurisdictional amount to $50,000 would be to move many marginal cases from superior court to district court. This is advantageous for several reasons. First, general civil cases come to trial more quickly in district court than in superior court. For example, in Anchorage the time to disposition of a civil case (excluding small claims) in district court is 286 days; in superior court it is 453 days.

Second, and more importantly, there has been a reduction in the district court caseload in recent years, while the superior court caseload has remained steady or increased. For example, the district court caseload in Anchorage was down 10% in 1989, while the superior court civil caseload remained steady, and its felony and children's caseload increased. SB 482 will increase the efficiency of the court system by allowing many civil cases to be heard in the system with the declining caseload.

A committee substitute has been prepared and is in the

Post Office Box V • Juneau, Alaska 99811

member's files. This substitute adds two sections to the bill at the request of the Court System and the Judicial Council.

First, section one provides that a district judge is subject to approval or rejection at the first general election held more than two years after appointment to the bench. Current law requires a district court judge to stand for retention at the first general election held more than one year after appointment.

The Judicial Council has requested this change because of the conflict current law has with the council's retention evaluation of district court judges. The one year period was established in 1967, and it was intended that the judge would serve at least one year before his or her performance was "evaluated" at the polls by the voters; in 1975, however, the council was authorized to evaluate judges for retention, to provide guidance to voters. Results of this evaluation must be submitted to the lieutenant governor by August 7 preceding the election. Since the council's evaluation takes six months, this means that the council can start evaluating a district court judge for retention after only two or three months on the bench. This defeats the purpose of the one year evaluation time period set up in 1967. By changing this period to two years, a judge will serve at least one year before the council begins its evaluation.

The second addition to the committee substitute is found in section three. This section, added at the request of the Court System, sets up a one year mediation pilot project in Anchorage and Fairbanks. The Court System intends to use this project to channel certain contested domestic relations cases to mediation, rather than directly to court. Such procedures in other states have been credited with reducing judicial workload and court overcrowding, reducing disputant's costs and lowering barriers to their access to justice, and achieving more satisfactory resolution of disputes. The project must be evaluated for cost effectiveness, efficiency, and participant satisfaction.

If there are any questions or comments about this legislation, please do not hesitate to contact my office.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

Bill Version: SB 482
Publish Date: 2/12/90

FISCAL NOTE

REQUEST:

Revision Date:
Agency Affected: Alaska Court System
Title: An Act relating to the judiciary
BRU: Trial Courts

Sponsor: Falks
Components:
Requestor:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel
Phone: 264-8228
Division: Alaska Court System
Date: 02/23/90

Approved by: Arthur H. Snowden, II, Administrative Director
Date: 02/23/90
Agency: Alaska Court System

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)

STATE OF ALASKA
1990 LEGISLATIVE SESSION

Bill Version: CSSB 482
Publish Date: 2/12/90

FISCAL NOTE

REQUEST:

Revision Date 3/5/90
Agency Affected: Alaska Court System
Title: An Act relating to the judiciary
BRU: Trial Courts

Sponsor: Falks
Components:
Requestor:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services		107.5				
Travel						
Contractual						
Supplies						
Equipment		3.3				
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	110.8	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

General Funds	0.0	110.8	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	110.8	0.0	0.0	0.0	0.0

POSITIONS:

Full-time		2.0				
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Jan Strandberg, General Counsel
Phone: 264-8228
Division: Alaska Court System
Date: 03/05/90

Approved by: Arthur H. Snowden, II, Administrative Director
Date: 03/05/90
Agency: Alaska Court System

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)

Alaska Court System
CSSB 482
Fiscal Analysis

Personal Services

	Salary	Benefits	Total
1 – Mediator, PFT, 18A, Anchorage	$37,548	$12,900	$50,448
1 – Mediator, PFT, 18A, Fairbanks	42,984	14,096	57,080
Total Personal Services			107,528

Equipment

File cabinet, typewriter and dictating machine for each position	3,270
Total one-time cost	$110,798

Fiscal Analysis of Mediation Pilot Project

Purpose of Project

The only section of this bill that has a fiscal impact is section three of the mediation pilot project. The purpose of this pilot project is to determine the effectiveness of mediation in divorce cases in Anchorage and Fairbanks. In the 1988 court system budget the legislature stated its intent:

> that the court system educate judges, attorneys and the public on the potential benefits of mediation. The court system should evaluate and quantify the potential benefits to the consumers as well as the court system of mediation, as an option.

Scope of Project

During the period of the project, contested domestic relations cases would be assigned to one of two "tracks" upon filing. Cases assigned to the "trial track" would be handled under current procedures, which focus on readying the case for trial before a judge. Cases assigned to the "mediation track" would be transferred to the office of the mediator, where the parties would be scheduled for mediation sessions. Should mediation not be successful in an individual case, the case will be assigned a trial date.

Guidelines for assignment of cases to the tracks will insure that a number of each type of dispute (custody, visitation and/or property issues) will be assigned to both tracks. Information will be gathered about the resolutions of the cases handled on each track, through the use of questionnaires and statistics from case files. The court should be able to compare the two tracks to determine:

1. the time to resolution of the dispute
2. the parties' satisfaction with the process
3. the parties' satisfaction with the result
4. the cost to the parties

At the end of the pilot period, information about the value of mediation services in domestic relations disputes in Anchorage and Fairbanks will be available. Using this information, a determination can be made whether mediation services should continue to be provided.

Other states have found that mediation is most successful in jurisdictions where there is some degree of court support. Because the pilot project will require some but not all parties in domestic disputes to participate in mediation, it is not feasible to assess a cost to the parties for the mediation services during the pilot period. However, should mediation be expanded to require that all domestic disputes attempt mediation prior to proceeding to trial, systems could be developed to require the parties to bear the cost of mediation. Charges could also be assessed if a system is developed in which parties have the option to enter mediation, but it is not required.

Costs of Project

The costs associated with the project would be incurred only once as the project would last one year. The project would consist of a mediator in Anchorage and a mediator in Fairbanks. Their personal services and associated equipment costs would total $110,798.

If the pilot project were to be limited to one mediator in Fairbanks, the cost would be $58,715.

If the pilot project were to be limited to one mediator in Anchorage, the cost would be $52,083.

If section three is deleted in its entirety, the bill has no fiscal impact.

alaska judicial council

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501 (907) 279-2526 FAX (907) 276-5046

ACTING EXECUTIVE DIRECTOR
Teresa W. Carns

NON-ATTORNEY MEMBERS
Hilbert J. Hennickson, M.D.
Leona Okakok
Janis G. Roller

ATTORNEY MEMBERS
Daniel L. Callahan
William T. Council
James D. Gilmore

CHAIRMAN, EX OFFICIO
Warren W. Matthews
Chief Justice
Supreme Court

December 12, 1989

M E M O R A N D U M

TO: Judicial Council

FROM: Staff /WC

RE: District Court Judges' Terms (AS 15.35.100)

The purpose of this memo is to suggest that the Judicial Council consider sponsoring legislation to increase the length of district court judges' probationary terms in order to allow more adequate time for evaluation. At present, district court judges must stand for retention at the first general election more than one year after appointment, and every four years thereafter.

These terms were established in 1967, some years preceding the 1975 legislation that authorized the Council to evaluate judges standing for retention. At that time, judges would have been "evaluated" by the electorate at the polls one to two years after their appointment. Today, however, the Council conducts an evaluation of each judge that takes about six months. The results of this evaluation must be submitted to the Lieutenant Governor by August 7 preceding the election for publication in the Official Election Pamphlet. The result is that some district court judges have served less than a year before their evaluation begins.

Two district court judges, Michael Wolverton of Anchorage and Peter Froelich in Juneau, are standing for retention in 1990 for the first time. Judge Wolverton was appointed in August of 1988 and under the proposed change would still stand for retention at this election. He will have been on the bench for about 18 months at the time evaluation starts in February of 1990. Judge Froelich was appointed in June of 1989. He will have been on the bench for just under eight months in February. Under the proposed change, he would not stand for retention until 1992.

Hypothetically, a judge could have an even shorter time before evaluation. A judge appointed on November 5, 1989, for example, would probably not actually start work until a month or so later. The judge could have only two or three months on the bench before being evaluated. This does not seem to be the intent of the legislature in setting the "more than one year after appointment" initial term. Presumably they intended that the judge would be evaluated on the basis of twelve or more months' experience on the bench.

AS 15.35.100 could be revised to make a district court judge "subject to approval or rejection at the first general election held more than <u>two years</u> [one year] after [his] appointment...." This proposal should not create any costs or any other difficulties. A fiscal note of $0 should be submitted with the proposed legislation.

Please let us know your thoughts on this suggestion.

6-2186E
Chenoweth
3/2/90

Original sponsor(s): SEN. FAIKS

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 482 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act amending the jurisdiction of the district court, increasing the period during which a district court judge serves under an initial appointment before being subject to voter approval, and authorizing the Alaska Court System to establish and evaluate a mediation pilot project."

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

* Section 1. AS 15.35.100(a) is amended to read:

(a) Each district judge shall be subject to approval or rejection at the first general election held more than <u>two years</u> [ONE YEAR] after the judge's appointment under the provisions of AS 22.15.170. If approved, the judge shall thereafter be subject to approval or rejection in a like manner every fourth year.

* Sec. 2. AS 22.15.030(a) is amended to read:

(a) The district court has jurisdiction of civil cases, including foreign judgments filed under AS 09.30.200 and arbitration proceedings under AS 09.43.170, as follows:

(1) for the recovery of money or damages when the amount claimed exclusive of costs, interest, and attorney fees does not exceed <u>$50,000</u> [$35,000];

(2) for the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed <u>$50,000</u> [$35,000];

(3) for the recovery of a penalty or forfeiture, whether

given by statute or arising out of contract, not exceeding $50,000 [$35,000];

(4) to give judgment without action upon the confession of the defendant for any of the cases specified in this section, except for a penalty or forfeiture imposed by statute;

(5) for establishing the fact of death of any person in the manner prescribed in AS 09.55.020 - 09.55.060;

(6) for the recovery of the possession of premises in the manner provided under AS 09.45.070 - 09.45.160 when the value of the arrears and damage to the property does not exceed $50,000 [$35,000];

(7) for the foreclosure of a lien when the amount in controversy does not exceed $50,000 [$35,000];

(8) for the recovery of money or damages in motor vehicle tort cases when the amount claimed exclusive of costs, interest, and attorney fees does not exceed $50,000 [$35,000];

(9) over civil actions for taking utility service and for damages to or interference with a utility line filed under AS 42.20.-030;

(10) over cases involving injunctive relief for domestic violence under AS 25.35.010 and 25.35.020.

* Sec. 3. MEDIATION PILOT PROJECT. The Alaska Court System shall

(1) create a pilot project for mediation using a court mediator in Anchorage and Fairbanks for specified cases; and

(2) evaluate the project created under (1) of this section for cost effectiveness, efficiency, and participant satisfaction.

* Sec. 4. Section 3 of this Act is repealed one year after the effective date of this Act.

* Sec. 5. The provisions of AS 15.35.100(a), as amended by sec. 1 of this Act, apply to district court judges who enter into the duties of the

office on or after the effective date of this Act.

6-2186E
Chenoweth
2/23/90

Original sponsor(s): SEN. FAIKS

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 482 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the judiciary."

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

* Section 1. AS 15.35.100(a) is amended to read:

(a) Each district judge shall be subject to approval or rejection at the first general election held more than <u>two years</u> [ONE YEAR] after the judge's appointment under the provi s of AS 22.15.-170. If approved, the judge shall thereafter bject to approval or rejection in a like manner every fourth ye

* Sec. 2. AS 22.15.030(a) is amended to read:

(a) The district court has jurisdiction civil cases, including foreign judgments filed under AS 09.30.200 nd arbitration proceedings under AS 09.43.170, as follows:

(1) for the recovery of money or damages when the amount claimed exclusive of costs, interest, and attorney fees does not exceed <u>$50,000</u> [$35,000];

(2) for the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed <u>$50,000</u> [$35,000];

(3) for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding <u>$50,000</u> [$35,000];

(4) to give judgment without action upon the confession of the defendant for any of the cases specified in this section, except for a penalty or forfeiture imposed by statute;

(5) for establishing the fact of death of any person in the manner prescribed in AS 09.55.020 - 09.55.060;

(6) for the recovery of the possession of premises in the manner provided under AS 09.45.070 - 09.45.160 when the value of the arrears and damage to the property does not exceed $50,000 [$35,000];

(7) for the foreclosure of a lien when the amount in controversy does not exceed $50,000 [$35,000];

(8) for the recovery of money or damages in motor vehicle tort cases when the amount claimed exclusive of costs, interest, and attorney fees does not exceed $50,000 [$35,000];

(9) over civil actions for taking utility service and for damages to or interference with a utility line filed under AS 42.20.-030;

(10) over cases involving injunctive relief for domestic violence under AS 25.35.010 and 25.35.020.

* Sec. 3. MEDIATION PILOT PROJECT. The Alaska Court System shall

(1) create a pilot project for mediation using a court mediator in Anchorage and Fairbanks for specified cases; and

(2) evaluate the project created under (1) of this section for cost effectiveness, efficiency, and participant satisfaction.

* Sec. 4. Section 3 of this Act is repealed one year after the effective date of this Act.

* Sec. 5. The provisions of AS 15.35.100(a), as amended by sec. 1 of this Act, apply to district court judges who enter into the duties of the office on or after the effective date of this Act.

last fiscal - FY 89

Anch - district is Yasko - 286
- 453 - superior ct

general civil w/o small claims

Barrow - 234
418

BCM 528
177

Fbks

When take traffic out
d.c. is down 1802.
- marginal superior ct cases

super ct is the same.
- help super. ct rt
- up in felony + children's
-

FY 89

W/o small claims, general civil cases:
- time to disposition in Anchorage:
(a) district court - 286 days
(b) superior court - 453 days

3/6/90

SEN. JUD SB ~~482~~

3/2/90 CS adopted

Held until Thursday

3-1-90

SB 482

Cq:
- Tighten title
- Fiscal note
- authority to charge fee?

the judge shall designate the district where the judge has served the major portion of the judge's term. (§ 7.56 ch 83 SLA 1960)

NOTES TO DECISIONS

Scope of vote. — Art. IV, § 6 of the state constitution, dealing with retention of judges, does not specify that the vote will be held on a district-wide basis even though this section currently provides that retention of superior court judges will be decided by the voters of the judge's judicial district, and AS 15.35.100(b) sets forth the same rule for district court judges. Hornaday v. Rowland, Sup. Ct. Op. No. 2761 (File No. 7810), 674 P.2d 1333 (1983).

Sec. 15.35.090. Placing name of superior court judge on ballot. The director shall place the name of a superior court judge who has properly filed a declaration of candidacy for retention on the judicial ballot in the judicial district designated in the declaration of candidacy for the general election at which approval is sought. (§ 7.57 ch 83 SLA 1960; am § 3 ch 18 SLA 1969; am § 154 ch 100 SLA 1980)

Sec. 15.35.100. Approval or rejection of district judge. (a) Each district judge shall be subject to approval or rejection at the first general election held more than one year after the judge's appointment under the provisions of AS 22.15.170. If approved, the judge shall thereafter be subject to approval or rejection in a like manner every fourth year.

(b) The district judge shall seek approval in the judicial district in which the judge was originally appointed, or in the district where the judge has served the major portion of the judge's term. The district judge shall designate on the declaration of candidacy the judicial district in which the judge was appointed, or the district where the judge has served the major portion of the judge's term. (§ 1 ch 138 SLA 1966; am § 1 ch 164 SLA 1968)

NOTES TO DECISIONS

Scope of vote. — Art. IV, § 6 of the state constitution, dealing with retention of judges, does not specify that the vote will be held on a district-wide basis even though AS 15.35.080 currently provides that retention of superior court judges will be decided by the voters of the judge's judicial district, and subsection (b) of this section sets forth the same rule for district court judges. Hornaday v. Rowland, Sup. Ct. Op. No. 2761 (File No. 7810), 674 P.2d 1333 (1983).

Quoted in Delahay v. State, Sup. Ct. Op. No. 648 (File No. 1252), 476 P.2d 908 (1970).

Cited in Stephens v. Hammersley, Sup. Ct. Op. No. 1275 (File No. 2505), 550 P.2d 1268 (1976); Kochutin v. State, Sup. Ct. Op. No. 3194 (File No. S-1894), 739 P.2d 170 (1987).

required for a judgment of impeachment. The judgment may not extend beyond removal from office, but does not prevent proceedings in the courts on the same or related charges. (§ 28 ch 50 SLA 1959)

Sec. 22.10.180. Restrictions. A superior court judge while holding office may not practice law, nor engage in the conduct of any other profession, vocation, or business for profit or compensation, which conduct would interfere with the performance of the judicial duties of the judge, nor may a judge hold office in a political party, or hold any other office or position of profit under the United States, the state or its political subdivisions. A superior court judge filing for another elective public office other than delegate to a constitutional convention of this state or the United States forfeits the judicial position. (§ 29 ch 50 SLA 1959; am § 2 ch 30 SLA 1971; am § 11 ch 12 SLA 1989)

Opinions of attorney general. — Because the University of Alaska is an instrumentality of the state and membership on its Board of Regents is necessarily an office under the state, a judge may not sit as a regent while holding judicial office. December 27, 1976 Op. Att'y Gen.

When a judge sits as a regent, the judge is not sitting in a representative capacity of the judicial branch or exercising judicial power but rather is exercising certain executive powers of control vested in the regents over the state's sole institution of higher learning. Thus, the judge may not do pursuant to Alaska Const., art. IV, § 14. December 27, 1976 Op. Att'y Gen.

NOTES TO DECISIONS

Cited in Begich v. Jefferson, Sup. Ct. Op. No. 461 (File No. 894), 441 P.2d 27 (1968).

Collateral references. — Propriety and permissibility of judge engaging in the practice of law. 89 ALR2d 886.

Validity and application of statute regarding prohibition of judge from practicing law. 17 ALR4th 229.

Sec. 22.10.190. Compensation. (a) The monthly salary for each superior court judge is equal to Step E, Range 28 of the salary schedule in AS 39.27.011(a) for Juneau, Alaska.

(b) A salary warrant may not be issued to a superior court judge until the judge has filed with the state officer designated to issue salary warrants an affidavit that no matter referred to the judge for opinion or decision has been uncompleted or undecided by the judge for a period of more than six months.

(c) In addition to annual salary, a superior court judge is entitled to receive a geographic cost-of-living adjustment, based on the location of the judge's primary office assignment, equal to 3.5 per cent of the judge's annual salary times the number of pay step increases provided under AS 39.27.020 for a state employee working in the same election

district in those districts for which AS 39.27.020 specifies zero-to-five pay step increases. In an election district for which AS 39.27.020 specifies more than five pay steps, the number of pay step increases under this section is limited to five. Any retirement benefits to which a superior court judge may be entitled shall be computed only on the annual salary. (§ 30 ch 50 SLA 1959; am § 5 ch 115 SLA 1965; am § 4 ch 83 SLA 1967; am § 2 ch 101 SLA 1969; am § 2 ch 193 SLA 1970; am § 2 ch 34 SLA 1974; am § 2 ch 205 SLA 1975; am § 3 ch 148 SLA 1976; am § 4 ch 203 SLA 1976; am § 5 ch 80 SLA 1978; am §§ 4, 19 ch 3 SLA 1980)

Editor's notes. — Chapter 205, SLA 1975, which amended this section, was submitted to the voters by referendum and was rejected.

A reference to AS 39.27.020 was changed to AS 39.27.020 in subsection (c), by the revisor of statutes pursuant to AS 01.05.031.

Legislative history reports. — For report on ch. 83, SLA 1967 (HB 141), see 1967 House Journal, pp. 339-340.

NOTES TO DECISIONS

Cited in Kochutin v. State, Sup. Ct. Op. No. 3194 (File No. S-1894), 739 P.2d 170 (1987).

Chapter 15. District Courts.

Article
1. District Judges and Magistrates (§§ 22.15.010 — 22.15.270)
2. Public Administrator (§§ 22.15.310 — 22.15.350)

Article 1. District Judges and Magistrates.

Sec. 22.15.010. Establishment of the district court of the State of Alaska. There is established a district court of the State of Alaska for each of the four judicial districts of the superior court of this state. (§ 1 ch 184 SLA 1959; am § 1 ch 24 SLA 1966)

Revisor's notes. — In implementing § 3, ch. 24, SLA 1966, "district court of the State of Alaska" has in most instances been shortened to "district court," following the approach of the Alaska Supreme Court in its handling of the magistrate-court district-court name change in the court rules. (See, for example, Supreme Court Order No. 82 and Supreme Court Order No. 101, with appendix.)

Cross references. — For legislative intent related to this chapter, see § 25, ch. 184, SLA 1959, in the Temporary and Special Acts and Resolves.

Opinions of attorney general. — This chapter, which provides for the jurisdiction of district courts, does not give these courts probate jurisdiction. 1959 Op. Att'y Gen. No. 34.

NOTES TO DECISIONS

Jurisdictional boundaries. — Nowhere in the statutes are any boundaries within the district prescribed in which a particular magistrate [now judge] may exercise jurisdiction, but this chapter, which establishes the district courts, does provide that the court shall meet in its district at such place or places therein as may be designated by rule or order of the supreme court. Leege v. Strand, Sup. Ct. Op. No. 157 (File No. 301), 381 P.2d 665 (1963).

Applied in Larson v. State, Sup. Ct. Op. No. 1430 (File No. 2433), 564 P.2d 365 (1977); Oxereok v. State, Sup. Ct. Op. No. 2076 (File No. 3902), 611 P.2d 913 (1980).

Quoted in City of Fairbanks v. Schrock, Sup. Ct. Op. No. 567 (File No. 1032), 457 P.2d 242 (1969).

Cited in Delaney v. State, Sup. Ct. Op. No. 648 (File No. 1252), 476 P.2d 908 (1970), appeal dismissed, 402 U.S. 901, 91 S. Ct. 1381, 28 L. Ed. 2d 642 (1971).

Collateral references. — 20 Am.Jur.2d, Courts, § 1 et seq. 46 Am.Jur.2d, Judges, § 1 et seq.

21 C.J.S., Courts, § 1 et seq. 48A C.J.S., Judges, § 1 et seq.

Sec. 22.15.020. Number of district judges and magistrates. (a) Except as hereinafter provided, each district court of the State of Alaska shall have the number of district judges set out below opposite the name of the judicial district over which the court has jurisdiction:

First Judicial District	3
Second Judicial District	1
Third Judicial District	12
Fourth Judicial District	4

(b) Except as hereinafter provided, each district court of the State of Alaska shall have the number of magistrates set out below opposite the name of the judicial district over which the court has jurisdiction:

First Judicial District	10
Second Judicial District	7
Third Judicial District	19
Fourth Judicial District	17

(c) The number of district judges or magistrates within each judicial district may be increased or decreased by rule of the supreme court. (§ 2 ch 184 SLA 1959; am § 2 ch 24 SLA 1966; am § 3 ch 137 SLA 1984)

Effect of amendments. — The 1984 amendment in subsection (a) increased the number of district judges in the Third Judicial District from 4 to 12 and in the Fourth Judicial District from 2 to 4.

NOTES TO DECISIONS

Jurisdictional boundaries. — See same catchline in note to AS 22.15.010.

The legislature's intent in creating the office of magistrate was to meet the immediate requirements of justice in the less populated areas of the state. Buckalew v. Holloway, Sup. Ct. Op. No. 1988 (File No. 4058), 604 P.2d 240 (1979).

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).

Application of subsection (c). — Subsection (c) of this section could not provide the basis for deciding the presiding superior court judge's authority to move a district court judge from one place to another since subsection (c) creates power in the supreme court, not the presiding judge; and no permissible delegation of power to that judge was found in this case. Hornaday v. Rowland, Sup. Ct. Op. No. 2761 (File No. 7810), 674 P.2d 1333 (1983).

Sec. 22.15.030. Civil jurisdiction. (a) The district court has jurisdiction of civil cases, including foreign judgments filed under AS 09.30.200 and arbitration proceedings under AS 09.43.170, as follows:

(1) for the recovery of money or damages when the amount claimed exclusive of costs, interest, and attorney fees does not exceed $35,000;

(2) for the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed $35,000;

(3) for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding $35,000;

(4) to give judgment without action upon the confession of the defendant for any of the cases specified in this section, except for a penalty or forfeiture imposed by statute;

(5) for establishing the fact of death of any person in the manner prescribed in AS 09.55.020 — 09.55.060;

(6) for the recovery of the possession of premises in the manner provided under AS 09.45.070 — 09.45.160 when the value of the arrears and damage to the property does not exceed $35,000;

(7) for the foreclosure of a lien when the amount in controversy does not exceed $35,000;

(8) for the recovery of money or damages in motor vehicle tort cases when the amount claimed exclusive of costs, interest, and attorney fees does not exceed $35,000;

(9) over civil actions for taking utility service and for damages to or interference with a utility line filed under AS 42.20.030;

(10) over cases involving injunctive relief for domestic violence under AS 25.35.010 and 25.35.020.

(b) Insofar as the civil jurisdiction of the district courts and the superior court is the same, the jurisdiction is concurrent. Except for a petition for injunctive relief under AS 25.35.010 or 25.35.020, an action that falls within the concurrent jurisdiction of the superior court and the district court may not be filed in the superior court, except as provided by rules of the supreme court. (§ 3 ch 184 SLA 1959; am § 8 ch 110 SLA 1967; am § 1 ch 163 SLA 1968; am §§ 1 — 5 ch 38 SLA 1971; am §§ 1, 2 ch 36 SLA 1972; am § 24 ch 94 SLA 1980; am § 55 ch 59 SLA 1982; am § 3 ch 17 SLA 1985; am § 7 ch 38 SLA 1987)

Effect of amendments. — The 1985 amendment in subsection (a) substituted "$25,000" for "$10,000, except as provided in (10) of this subsection" at the end of paragraph (1), "$25,000" for "$10,000" at the end of paragraphs (2), (3), and (6) through (8), designated former paragraph (8) as present paragraph (6) and former paragraphs (9) through (11) as present paragraphs (7) through (9), and added paragraph (10); and in subsection (b) substituted "the" for "such" preceding "jurisdiction" in the first sentence and added the second sentence.

The 1987 amendment in subsection (a) in the introductory language substituted "including foreign judgments filed under AS 09.30.200 and arbitration proceedings under AS 09.43.170" for "and proceedings," deleted "of the property or" following "when the value" in paragraph (6), and substituted "$35,000" for "$25,000" throughout the section.

Editor's notes. — Section 12, ch 17, SLA 1985 provides that the 1985 amendment to (b) of this section applies only to cases filed on or after July 1, 1985.

NOTES TO DECISIONS

Limited jurisdiction. — District courts in Alaska are limited to jurisdiction in civil matters to cases involving amounts under $3,000 [now $35,000]. Pennington v. Snow, Sup. Ct. Op. No. 725 (File No. 1101), 471 P.2d 370 (1970).

District court is a creature of the statute creating it. Ex parte Oates, 8 Alaska 319 (1931), rev'd on other grounds sub nom. United States v. Oates, 61 F.2d 536 (9th Cir. 1932).

And its powers must be exercised within limits conferred by law. — The jurisdiction and authority of a district court continues only so long as it confines the exercise of its powers within the limits conferred by law. Ex parte Oates, 8 Alaska 319 (1931), rev'd on other grounds sub nom. United States v. Oates, 61 F.2d 536 (9th Cir. 1932).

No intendments or presumptions will be indulged in favor of jurisdiction of a district court. Ex parte Oates, 8 Alaska 319 (1931), rev'd on other grounds sub nom. United States v. Oates, 61 F.2d 536 (9th Cir. 1932).

Jurisdiction cannot be conferred by consent of parties. — Consent of parties cannot confer upon a district court a jurisdiction or a power to act upon subjects which are not submitted to its judgment by the law. Myers v. Swineford, 1 Alaska 10 (1888).

Nor ousted by counterclaim in excess of jurisdictional amount. — A defendant cannot oust the jurisdiction of a district court by pleading a counterclaim which exceeds the amount for which judgment can be obtained in such court. Bennett v. Forrest, 69 F. 421 (D. Alaska 1895).

Whole proceeding void in absence of jurisdiction. — If a court of limited jurisdiction assumes to act in a case over which the law does not give it authority, the whole proceeding, from the issuing of the writ to the rendition of judgment, is void. Myers v. Swineford, 1 Alaska 10 (1888).

The record of a district court is always open to attack in a habeas corpus proceeding, and when thus challenged, such court must justify its official acts at any and every stage of the proceedings, by showing that it acted within its jurisdiction. Ex parte Oates, 8 Alaska 319 (1931), rev'd on other grounds sub nom. United States v. Oates, 61 F.2d 536 (9th Cir. 1932).

Jurisdiction under paragraph (a)(9). — In the absence of a clear intent by the legislature to limit the jurisdiction extended by paragraph (a)(9) to liens other than on real property, the supreme court refused to so limit the district court's jurisdiction. Stephens v. Hammersley, Sup. Ct. Op. No. 1275 (File No. 2505), 552 P.2d 652 (1976).

AS 22.15.050(1) not impliedly repealed by paragraph (a)(7). — Paragraph (a)(7), authorizing actions for foreclosure of liens under $10,000 (now $35,000) in district courts, was enacted subsequent to AS 22.15.050(1) prohibiting actions in district court where title to real property is at issue. But repeal of AS 22.15.050(1) will not be implied since the two provisions can be reconciled by holding that lien foreclosures under $10,000 (now $35,000), including those on real property, are permissible as long as title to real property is not in question. Stephens v. Hammersley, Sup. Ct. Op. No. 1275 (File No. 2505), 550 P.2d 1268 (1976).

District court lacked jurisdiction over action for accrued rent. — Where the district court had no jurisdiction over actions for forcible entry and detainer in 1965, the court also lacked jurisdiction to enter a 1966 judgment on a second cause of action for accrued rent under the special form of summons used in forcible entry and detainer actions. McDowell v. Lenarduzzi, Sup. Ct. Op. No. 1242 (File No. 2413), 546 P.2d 1315 (1976).

Serving as a district judge constitutes the "practice of law." In re Brewer, Sup. Ct. Op. No. 864 (File No. 1643), 506 P.2d 676 (1973).

The district judge is continuously involved with legal problems of a wide variety as indicated by the statutory jurisdiction of the district court, and the nature of the judge's duties includes conducting court hearings, ruling on questions of evidence, and adjudicating issues of law and fact, so as clearly to constitute the "practice of law." In re Brewer, Sup. Ct. Op. No. 864 (File No. 1643), 506 P.2d 676 (1973).

Applied in Oxereok v. State, Sup. Ct. Op. No. 2076 (File No. 3902), 611 P.2d 913 (1980).

Cited in Dowling Supply & Equip., Inc. v. City of Anchorage, Sup. Ct. Op. No. 739 (File No. 1460), 490 P.2d 907 (1971); Aguchak v. Montgomery Ward Co., Sup. Ct. Op. No. 1026 (File No. 1940), 520 P.2d 1352 (1974).

Sec. 22.15.040. Small claims. (a) When a claim for relief does not exceed $5,000 exclusive of costs, interest, and attorney fees, and request is so made, the district judge or magistrate shall hear the action as a small claim unless important or unusual points of law are involved. The supreme court shall prescribe the procedural rules and standard forms to assure simplicity and the expeditious handling of small claims.

(b) All potential small claim litigants shall be informed if mediation, conciliation, and arbitration services are available as an alternative to litigation. (§ 8(4) ch 184 SLA 1959; added by § 1 ch 91 SLA 1961; am § 1 ch 12 SLA 1970; am § 1 ch 23 SLA 1978; am §§ 1, 2 ch 3 SLA 1986)

Cross references. — Small claims rules may be found in District Court Civ. R. 8-22.

Effect of amendments. — The 1986 amendment in the first sentence of subsection (a) substituted "$5,000" for "$2,000" and added subsection (b).

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).

Notice to indigent bush defendants. — Proper tailoring of notice to the capacities and circumstances of indigent bush defendants requires the communication of substantially more information regarding the methods by which such defendants can respond to a distant lawsuit than is presently imparted. Aguchak v. Montgomery Ward Co., Sup. Ct. Op. No. 1026 (File No. 1940), 520 P.2d 1352 (1974).

A notice that fails to inform the indigent bush defendant of the right to file a written pleading is not reasonably calculated to afford the defendant an opportunity to be heard at a meaningful time and in a meaningful manner. Aguchak v. Montgomery Ward Co., Sup. Ct. Op. No. 1026 (File No. 1940), 520 P.2d 1352 (1974).

The summons served upon indigent bush defendants in a small claims action was constitutionally defective because it did not adequately convey the information necessary to their defense against a creditor's claim. The district court's assumption of personal jurisdiction over the debtors based on such a summons therefore violated the due process rights which inure to the debtors under Alaska Const., art. I, § 7. Aguchak v. Montgomery Ward Co., Sup. Ct. Op. No. 1026 (File No. 1940), 520 P.2d 1352 (1974).

Counsel for collection suit defendants. — The bulk of collection suit defendants, due to indigency, cannot afford to engage counsel to advise them of their "venue" rights. Aguchak v. Montgomery Ward Co., Sup. Ct. Op. No. 1026 (File No. 1940), 520 P.2d 1352 (1974).

The difficulties of locating counsel in the outlying areas of Alaska exacerbate the already substantial impediments to defense of the collection suit. Aguchak v. Montgomery Ward Co., Sup. Ct. Op. No. 1026 (File No. 1940), 520 P.2d 1352 (1974).

Applied in Oxereok v. State, Sup. Ct. Op. No. 2076 (File No. 3902), 611 P.2d 913 (1980).

Sec. 22.15.050. Actions not within civil jurisdiction. The jurisdiction of the district courts does not extend to

(1) an action in which the title to real property is in question;

(2) an action for false imprisonment, libel, slander, malicious prosecution, actions of an equitable nature (except as otherwise provided by law), or actions in which the state is a defendant. (§ 4 ch 184 SLA 1959; am § 6 ch 38 SLA 1971; am § 4 ch 17 SLA 1985)

Effect of amendments. — The 1985 amendment in paragraph (2) deleted "criminal conversation, seduction upon a promise to marry," inserted "otherwise," and substituted "by law" for "in AS 22.15.030(a)(9)."

NOTES TO DECISIONS

Actions involving lien. — District court will not automatically be precluded from exercising jurisdiction merely because a lien is sought to be enforced on real property. Stephens v. Hammersley, Sup. Ct. Op. No. 1275 (File No. 2505), 550 P.2d 1268 (1976).

Absent title disputes, questions concerning the validity of a particular lien, such as whether a lien was properly filed, or questions as to the amount of a lien will not automatically divest a district court of the power to proceed in an action. Stephens v. Hammersley, Sup. Ct. Op. No. 1275 (File No. 2505), 550 P.2d 1268 (1976).

Court lacks jurisdiction under paragraph (1) only where title is in issue. — In light of the legal qualifications of present district court judges, the supreme court does not believe that the legislature intended that a district court lack jurisdiction under subsection (1) unless, from the pleadings and the issues actually contested, title to property is clearly in issue. Stephens v. Hammersley, Sup. Ct. Op. No. 1275 (File No. 2505), 550 P.2d 1268 (1976).

The original reason for the type of jurisdictional limitation as in paragraph (1) was to prevent the complex and intricate questions which frequently arise in a title dispute from being decided by a court presided over by a person who was not learned in the law. As applied to the district courts of this state, however, the distinction is an anachronism, since a district court judge must be licensed to practice law in Alaska. Nevertheless, the jurisdictional limitation remains. Stephens v. Hammersley, Sup. Ct. Op. No. 1275 (File No. 2505), 550 P.2d 1268 (1976).

Repeal of paragraph (1) not implied from enactment of AS 22.15.030(a)(7). — AS 22.15.030(a)(7), authorizing actions for foreclosure of liens under $10,000 (now $35,000) in district courts, was enacted subsequent to paragraph (1) prohibiting actions in district court where title to real property is at issue. But repeal of paragraph (1) will not be implied since the two provisions can be reconciled by holding that lien foreclosures under $10,000 (now $35,000), including those on real property, are permissible as long as title to real property is not in question. Stephens v. Hammersley, Sup. Ct. Op. No. 1275 (File No. 2505), 550 P.2d 1268 (1976).

Issue of title must appear on trial from the evidence. — A magistrate [now judge] not only has the right, but the duty, to enter upon the trial of a cause for which there otherwise is jurisdiction, notwithstanding an issue of title is made by the pleadings, and, unless it appears on the trial from the evidence that the title to land is actually in dispute, to proceed to try the cause out and render judgment. Blue v. Green, 7 Alaska 47 (1923).

Forcible entry and detainer action. — Where plaintiff attempted in a forcible entry and detainer action to litigate the merits of defendant's title, defendant's motion to dismiss the action should have been granted pursuant to AS 09.45.150 and this section. Johnson v. Robinson, Sup. Ct. Op. No. 2452 (File No. 5948), 637 P.2d 1051 (1981).

Suing for money after disaffirmance of fraudulently induced contract. — Where the plaintiff sued for moneys paid by him on a contract which he alleged he was induced to enter into through misrepresentations and fraud of the defendant, and plaintiff disaffirmed the contract by reason of such misrepresentations and fraud, this was an action at law, and it was the duty of the court to have entertained such action. Blue v. Green, 7 Alaska 47 (1923).

Plaintiff seeking equitable relief. — If the plaintiff is seeking equitable relief, then a motion to dismiss can properly be laid before the magistrate [now judge] for want of jurisdiction to entertain the action. Blue v. Green, 7 Alaska 47 (1923).

District court lacks jurisdiction to hear parole eligibility complaints. — The legislature did not intend to empower the district court to hear complaints regarding eligibility for parole. Bishop v. Municipality of Anchorage, Ct. App. Op. No. 392 (File No. A-169), 685 P.2d 103 (1984).

District court lacked jurisdiction to decide challenges to parole board's interpretation of AS 33.15.180 [now repealed] and to the constitutionality of the section as interpreted; such challenges must be brought in the superior court. Bishop v. Municipality of Anchorage, Ct. App. Op. No. 392 (File No. A-169), 685 P.2d 103 (1984).

Or Criminal Rule 35(c) proceedings. — The district court lacks jurisdiction over Alaska R. Crim. P. 35(c) proceedings. Bishop v. Municipality of Anchorage, Ct. App. Op. No. 392 (File No. A-169), 685 P.2d 103 (1984).

Applied in Oxereok v. State, Sup. Ct. Op. No. 2076 (File No. 3902), 611 P.2d 913 (1980).

Quoted in Anchorage Helicopter Serv., Inc. v. Anchorage Westward Hotel, Sup. Ct. Op. No. 361 (File No. 628), 417 P.2d 903 (1966).

Cited in Buckalew v. Holloway, Sup. Ct. Op. No. 1988 (File No. 4058), 604 P.2d 240 (1979).

Sec. 22.15.060. Criminal jurisdiction. (a) The district court has jurisdiction of the following crimes:

(1) a misdemeanor unless otherwise provided in this chapter;

(2) a violation of an ordinance of a political subdivision.

(b) Insofar as the criminal jurisdiction of the district courts and the superior court is the same, such jurisdiction is concurrent. (§ 5 ch 184 SLA 1959)

NOTES TO DECISIONS

Where defendant was first charged in the district court and then, for the same offense, in the superior court, it was held that there was no need to establish in Alaska the rule that the matter must be tried in the court first obtaining jurisdiction. Theodore v. State, Sup. Ct. Op. No. 305 (File No. 550), 407 P.2d 182 (1965), cert. denied, 384 U.S. 951, 86 S. Ct. 1570, 16 L. Ed. 2d 547 (1966).

Serving as a district court judge constitutes the "practice of law." In re Brewer, Sup. Ct. Op. No. 861 (File No. 1643), 506 P.2d 676 (1973).

The district judge is continuously involved with legal problems of a wide variety as indicated by the statutory jurisdiction of the district court, and the nature of the duties includes conducting court hearings, ruling on questions of evidence, and adjudicating issues of law and fact, so as clearly to constitute the "practice of law." In re Brewer, Sup. Ct. Op. No. 861 (File No. 1643), 506 P.2d 676 (1973).

Applied in State v. Pete, Sup. Ct. Op. No. 372 (File No. 673), 420 P.2d 398 (1966); Oxereok v. State, Sup. Ct. Op. No. 2076 (File No. 3902), 611 P.2d 913 (1980).

Quoted in State v. City of Anchorage, Sup. Ct. Op. No. 932 (File No. 1743), 513 P.2d 1101 (1973).

Stated in City of Fairbanks v. Schrock, Sup. Ct. Op. No. 567 (File No. 1032), 457 P.2d 242 (1969).

Cited in State v. Browder, Sup. Ct. Op. No. 699 (File No. 1323), 486 P.2d 925 (1971); Buckalew v. Holloway, Sup. Ct. Op. No. 1988 (File No. 4058), 604 P.2d 240 (1979); Rollins v. State ex rel. Municipality of Anchorage, Ct. App. Op. No. 769 (File No. A-1928), P.2d (1988).

Sec. 22.15.070. Extent of jurisdiction. The civil jurisdiction and the criminal jurisdiction of the district court of the State of Alaska extend over the entire state. (§ 6(1) ch 184 SLA 1959; am § 3 ch 36 SLA 1972)

NOTES TO DECISIONS

This section expressly confers statewide jurisdiction upon the district courts. Aguchak v. Montgomery Ward Co., Sup. Ct. Op. No. 1026 (File No. 1940), 520 P.2d 1352 (1974).

Distinction between jurisdiction and venue. — This section and AS 22.15.080 establish a distinction between jurisdiction and venue. "Jurisdiction" connotes the inherent power of a court to hear and adjudicate the subject matter in a given case, while "venue" designates the particular place or locality in which a court having such jurisdiction may in the first instance properly hear and determine the case. Leege v. Strand, Sup. Ct. Op. No. 157 (File No. 301), 384 P.2d 665 (1963).

Cited in Pete v. State, Sup. Ct. Op. No. 137 (File No. 290), 379 P.2d 625 (1963).

Sec. 22.15.080. Change of venue. The court in which an action is pending shall change the place of trial of the action from one place to another place in the same judicial district or to a designated place in another judicial district when the court finds any of the following:

(1) there is reason to believe that an impartial trial cannot be had;

(2) the convenience of witnesses and the ends of justice would be promoted by the change;

(3) the judge or magistrate is disqualified from acting, but if another judge or magistrate is assigned to try the action, no change of place of trial need be made;

(4) the defendant will be put to unnecessary expense and inconvenience, and if the court finds that the expense and inconvenience were intentionally caused, the court may assess costs against the plaintiff. (§ 6(2) ch 184 SLA 1959; am § 33 ch 8 SLA 1971)

Legislative history reports. — For report on ch. 8, SLA 1971 (HB15), see 1971 House Journal, p. 52.

NOTES TO DECISIONS

Distinction between jurisdiction and venue. — See same catchline in note to AS 22.15.070.

Change of venue on proper ground constitutional. — No constitutional right of a defendant was violated by a change of venue on motion of the prosecution on the ground that an impartial trial could not be had in the place where defendant had been indicted. United States v. Hoyt, 7 Alaska 276 (1925).

Small claims are subject to change of venue. — Small claims, like other actions in the district courts, are subject to change of venue when the defendant cannot, without unnecessary expense and inconvenience, defend the action in the plaintiff's chosen forum. Aguchak v. Montgomery Ward Co., Sup. Ct. Op. No. 1026 (File No. 1940), 520 P.2d 1352 (1974).

Denial reversed only where discretion abused. — A lower court's decision to deny a change of venue motion will be reversed only if the decision amounts to an abuse of discretion. Jerrel v. State, Ct. App. Op. No. 815 (File No. A-1627), P.2d (1988).

Sec. 22.15.090. Sessions and general powers of district court. (a) The district court shall always be open for the transaction of business, except on judicial holidays as determined by rule of the supreme court. However, the court may at any time

(1) exercise its powers in a criminal action, or in a proceeding of a criminal nature, including the issuance of orders pertaining to bail,

(2) receive a verdict or discharge a jury,

(3) issue writs of habeas corpus,

(4) issue warrants of arrest and summons and search warrants.

(b) The court shall meet in its district at times and places that may be designated by rule or order of the supreme court. The district court has all power and authority necessary to carry into complete execution all its judgments, decrees, and determinations in all matters within its jurisdiction according to the constitution, the laws of the state, and the common law. (§ 7 ch 184 SLA 1959)

NOTES TO DECISIONS

Jurisdictional boundaries. — See same catchline in note to AS 22.15.010.

Sec. 22.15.100. Functions and powers of district judge and magistrate. Each district judge and magistrate has the power

(1) to issue writs of habeas corpus for the purpose of inquiring into the cause of restraint of liberty, returnable before a judge of the superior court, and the same proceedings shall be had on the writ as if it had been granted by the superior court judge under the laws of the state in such cases;

(2) of a notary public;

(3) to issue marriage licenses and to solemnize marriages;

(4) to issue warrants of arrest, summons, and search warrants according to manner and procedure prescribed by law and the supreme court;

(5) to act as an examining judge or magistrate in preliminary examinations in criminal proceedings; to set, receive, and forfeit bail and to order the release of defendants under bail;

(6) to act as a referee in matters and actions referred to the judge or magistrate by the superior court, with all powers conferred upon referees by laws;

(7) of the superior court in all respects including but not limited to contempts, attendance of witnesses, and bench warrants;

(8) to order the temporary detention of a minor, or take other action authorized by law or rules of procedure, in cases arising under AS 47.10, when the minor is in a condition or surrounding dangerous or injurious to the welfare of the minor or others that requires immediate action; the action may be continued in effect until reviewed by the superior court in accordance with rules of procedure governing these cases;

(9) to issue a temporary order for injunctive relief in cases involving domestic violence as provided in AS 25.35.010 and 25.35.020;

(10) to review an administrative revocation of a person's driver's license or nonresident privilege to drive, and an administrative refusal to issue an original license, when designated as a hearing officer by the commissioner of public safety and with the consent of the administrative director of the state court system. (§ 8(1) ch 184 SLA 1959; am § 1 ch 5 SLA 1960; am § 6 ch 110 SLA 1967; am § 4 ch 139 SLA 1980; am § 24 ch 77 SLA 1983; am § 5 ch 17 SLA 1985)

Revisor's notes. — In implementing § 3, ch. 24, SLA 1966, in AS 22.15.100(5) "judge" was added to rather than substituted for "magistrate" because it is clear from the lead-in line that, as used in the old version, the word "magistrate" included both the district magistrate and the deputy magistrate. Therefore both the district judge and the magistrate are now included.

Effect of amendments. — The 1985 amendment in paragraph (9) deleted "emergency" preceding "injunctive" and inserted "AS 25.35.010 and."

Editor's notes. — Section 7, ch. 110, SLA 1967, as amended by § 80, ch. 69, SLA 1970, provides: "In exercising its jurisdiction under AS 47.10, the superior court may designate district judges and magistrates as masters under Civil Rule 53."

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); Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979).

Cited in Bishop v. Municipality of Anchorage, Ct. App. Op. No. 392 (File No. A-169), 685 P.2d 103 (1984).

Collateral references. — Manner or extent of examination of witnesses by trial judge. 6 ALR4th 951.

Sec. 22.15.110. Additional duties of district judge and magistrate. Each district judge and magistrate shall

(1) perform the duties and exercise the authority of coroner as prescribed by law;

(2) record birth, death, and marriage certificates presented to them for record in the manner prescribed by law;

(3) take custody and control of and preserve the property and estate of deceased persons until a legal custodian is appointed;

(4) *[Repealed, § 25 ch 21 SLA 1985.]* (§ 8(2) ch 184 SLA 1959; am § 4 ch 5 SLA 1960; am § 8 ch 145 SLA 1975; am § 25 ch 21 SLA 1985)

Effect of amendments. — The 1985 amendment repealed paragraph (4), concerning filing copies of certain recorded conveyances with the commissioner of commerce and economic development.

Sec. 22.15.120. Limitations on proceedings which magistrate may hear. A magistrate shall preside only in cases and proceedings under AS 22.15.040, 22.15.100, and 22.15.110, and as follows:

(1) for the recovery of money or damages only when the amount claimed, exclusive of costs, interest, and attorney fees, does not exceed $5,000;

(2) for the recovery of specific personal property when the value of the property claimed and the damages for the detention do not exceed $5,000;

(3) for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding $5,000;

(4) to give judgment without action upon the confession of the defendant for any of the cases specified in this section, except for a penalty or forfeiture imposed by statute;

(5) to give judgment of conviction upon a plea of guilty by the defendant in a criminal proceeding within the jurisdiction of the district court;

(6) to hear, try, and enter judgments in all cases involving misdemeanors, if the defendant consents in writing that the magistrate may try the case;

(7) to hear, try and enter judgments in all cases involving infractions under AS 28, violations under AS 11, and violations of ordinances of political subdivisions;

(8) for the extradition of fugitives as authorized under AS 12.70. (§ 19 ch 184 SLA 1959; am § 5 ch 5 SLA 1960; am § 1 ch 85 SLA 1961; am § 2 ch 91 SLA 1961; am § 12 ch 70 SLA 1964; am § 8 ch 110 SLA 1967; am §§ 18—20 ch 71 SLA 1972; am § 1 ch 65 SLA 1978; am § 3 ch 3 SLA 1986; am § 10 ch 12 SLA 1986; am § 8 ch 38 SLA 1987)

Cross references. — For declaration of death proceeding under magistrate, see AS 09.55.020 — 09.55.080.

Effect of amendments. — The first 1986 amendment at the end of paragraphs (1) — (3) substituted "$5,000" for "$1,000."

The second 1986 amendment added paragraph (8).

The 1987 amendment inserted "violations under AS 11" in paragraph (7).

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).

Stated in Theodore v. State, Sup. Ct. Op. No. 305 (File No. 550), 407 P.2d 182 (1965), cert. denied, 384 U.S. 951, 86 S. Ct. 1570, 16 L.Ed.2d 547 (1966).

Cited in Annas v. State, Ct. App. Op. No. 647 (File No. A-954), 726 P.2d 552 (1986).

Collateral references. — Constitutional restrictions on nonattorney acting as judge in criminal proceeding. 71 ALR3d 562.

Sec. 22.15.130. Seal of court. [Repealed, § 2 ch 64 SLA 1974. For current law, see AS 22.05.060.]

Sec. 22.15.140. Process. Process of the district court shall be in the name of the State of Alaska, signed by the district judge, magistrate, clerk or deputy clerk of the district court in the judicial district where the process is issued, dated when issued, sealed with the seal of the court, and made returnable according to rule prescribed by the supreme court and shall run throughout the state. (§ 10 ch 184 SLA 1959; am § 1 ch 35 SLA 1970)

NOTES TO DECISIONS

Quoted in Agudiak v. Montgomery Ward Co., Sup. Ct. Op. No. 1026 (File No. 1940), 520 P.2d 1352 (1974).

Cited in Larson v. State, Sup. Ct. Op. No. 1430 (File No. 2433), 564 P.2d 365 (1977).

Sec. 22.15.150. Jury trials. The trial jury in the district courts consists of a body of six persons in number. (§ 10A ch 184 SLA 1959 as added by § 1 ch 82 SLA 1961)

NOTES TO DECISIONS

No conflict between this section and Alaska Const., art. I, § 11. — There is no conflict between Alaska Const., art. I, § 11, which provides for a jury of 12 in criminal cases but states that the legislature may provide for a jury of not more than 12 nor less than six in courts not of record, and this section, which provides for a jury of six in a district court, since the district court is a court not of record. Lopez v. Anchorage, Sup. Ct. Op. No. 1863 (File No. 3883), 597 P.2d 146 (1979).

As used in Alaska Const., art. I, § 11, the phrase "courts not of record" means courts of limited jurisdiction, such as the district court, which have been created by the legislature pursuant to constitutional authority and which the legislature has not seen fit to designate specifically as "courts of record." Lopez v. Anchorage, Sup. Ct. Op. No. 1863 (File No. 3883), 597 P.2d 146 (1979).

Sec. 22.15.160. Qualifications of district judges and magistrates. (a) A district judge shall be a citizen of the United States and of the state, at least 21 years of age, a resident of the state for at least five years immediately preceding appointment, and (1) have been engaged in the active practice of law for not less than three years immediately preceding appointment and at the time of appointment licensed to practice law in the State of Alaska; or (2) have served for at least seven years as a magistrate in the state. The supreme court may prescribe additional qualifications.

(b) A magistrate shall be a citizen of the United States and of the state, at least 21 years of age, and a resident of the state for at least six months immediately preceding appointment. The supreme court may prescribe additional qualifications. (§ 11 ch 184 SLA 1959; am § 1 ch 117 SLA 1967; am § 12 ch 12 SLA 1980)

Editor's notes. — Section 36, ch. 12, SLA 1980 provides: "The amendments enacted in Secs. 5, 9 and 12 of this Act apply only to justices and judges appointed on or after the effective date of this Act [March 22, 1980]."

NOTES TO DECISIONS

Appointment of district court judge as superior court judge pro tempore. — The chief justice's authority under Alas. Const., art. IV, § 16 to assign a judge "from one court . . . to another for temporary service," included the authority to appoint a judge of the district court to serve as judge of the superior court pro tempore, regardless of the differences that existed in the qualifications required by statute for permanent appointment to either of those courts prior to the 1980 amendments. Oxereok v. State, Sup. Ct. Op. No. 2076 (File No. 3902), 611 P.2d 913 (1980).

Applied in Buckalew v. Holloway, Sup. Ct. Op. No. 1988 (File No. 4058), 604 P.2d 240 (1979).

Cited in Stephens v. Hammersley, Sup. Ct. Op. No. 1275 (File No. 2505), 570 P.2d 1208, 552 P.2d 652 (1976).

Collateral references. — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 ALR3d 1048.

Validity and construction of constitutional or statutory provision making legal knowledge or experience a condition of eligibility for judicial office. 71 ALR3d 498.

Validity of age requirement for state public office. 90 ALR3d 990.

Sec. 22.15.170. Selection of district judges and magistrates. (a) The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in an office of district judge within 45 days after receiving nominations from the judicial council by appointing one of two or more persons nominated by the council for each actual or impending vacancy. The appointment to fill an impending vacancy becomes effective upon the actual occurrence of the vacancy.

(b) The presiding judge of the superior court in each judicial district may appoint acting district judges as needed to serve at the pleasure of the presiding judge for a term of no longer than 12 months or until succeeded by an appointment made under (a) of this section, whichever first occurs. An acting district judge shall be a citizen of the United States and of the state, at least 21 years of age, but need not be licensed to practice law in any of the United States and need not have established Alaska residence before appointment. Service as an acting district judge is not considered a judicial service for the purposes of AS 22.25 unless the judge is subsequently appointed under (a) of this section.

(c) The presiding judge of the superior court in each judicial district shall appoint the magistrates for the district court for the judicial district. Each magistrate serves at the pleasure of the presiding judge of the superior court in the judicial district for which appointed.

(d) Vacancies for magistrates shall be filled in the same manner as appointments.

(e) The office of a district court judge becomes vacant 90 days after the election at which the judge is rejected by a majority of those voting on the question or for which the judge fails to file a declaration of candidacy. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an election; or (3) the election following failure of a judge to file a declaration of candidacy, the judicial council shall meet within 90 days and submit to the governor the names of two or more persons qualified for the judicial office; except that this 90-day period may be extended by the council with the concurrence of the supreme court. In the event of an impending vacancy other than by reason of rejection or failure to file a declaration of candidacy, the council may meet at any time within the 90-day period immediately preceding the effective date of the vacancy and submit to the governor the names of two or more persons qualified for the judicial office. (§ 12 ch 181 SLA 1959; am § 2 ch 138 SLA 1966; am § 2 ch 117 SLA 1967; am § 1 ch 162 SLA 1968; am § 1 ch 165 SLA 1968; am § 3 ch 160 SLA 1972; am §§ 1, 2 ch 194 SLA 1976; am § 4 ch 7 SLA 1985)

Cross references. — For voting to approve or reject a district judge, see AS 15.35.100 — 15.35.130.

Effect of amendments. — The 1985 amendment in subsection (e) at the end of the first sentence substituted "for which the judge fails to file a declaration of candidacy" for ", if a judge fails to file a declaration of candidacy, 90 days after the filing deadline" and in the second sentence inserted "election following" preceding "failure of a judge" and substituted "90" for "45" and "90-day."

Legislative history reports. — For report on ch. 162, SLA 1968 (HB 461), see 1968 House Journal, p. 168. For legislative committee report on ch. 165, SLA 1968 (HB 463), see 1968 House Journal, p. 160.

NOTES TO DECISIONS

I. General Consideration.
II. Selection Procedure.
III. Magistrates.

I. GENERAL CONSIDERATION.

Permanent intra-district transfer of district court judge. — A permanent intra-district transfer of a district court judge by a judicial officer does not contravene the principle of separation of powers. Hornaday v. Rowland, Sup. Ct. Op. No. 2761 (File No. 7810), 674 P.2d 1333 (1983).

There is no constitutional power residing in the executive to designate the particular location where a district court judge will serve. Hornaday v. Rowland, Sup. Ct. Op. No. 2761 (File No. 7810), 674 P.2d 1333 (1983).

Stated in Theodore v. State, Sup. Ct. Op. No. 305 (File No. 550), 407 P.2d 182 (1965), cert. denied, 384 U.S. 951, 86 S. Ct. 1570, 16 L. Ed. 2d 547 (1966).

Cited in Stephens v. Hammersley, Sup. Ct. Op. No. 1275 (File No. 2505), 550 P.2d 1268 (1976); Oxereek v. State, Sup. Ct. Op. No. 2076 (File No. 3902), 611 P.2d 913 (1980).

II. SELECTION PROCEDURE.

Constitutionality. — Section 3, ch. 117, SLA 1967, does not violate the provisions of Alaska Const., art. IV, § 4. Delahay v. State, Sup. Ct. Op. No. 648 (File No. 1252), 476 P.2d 908 (1970), appeal dismissed, 402 U.S. 901, 91 S. Ct. 1381, 28 L. Ed. 2d 642 (1971).

The selection procedure enacted into law by this section follows the constitutional scheme of Alaska Const., art. IV, § 5, for appointment of supreme court justices and superior court judges. Delahay v. State, Sup. Ct. Op. No. 648 (File No. 1252), 476 P.2d 908 (1970), appeal dismissed, 402 U.S. 901, 91 S. Ct. 1381, 28 L. Ed. 2d 642 (1971).

This section prescribes no particular form of appointment. Delahay v. State, Sup. Ct. Op. No. 648 (File No. 1252), 476 P.2d 908 (1970), appeal dismissed, 402 U.S. 901, 91 S. Ct. 1381, 28 L. Ed. 2d 642 (1971).

Nominating four persons for three positions. — By nominating four persons for three positions, the judicial council complied with the requirements that they nominate at least two persons for each position; the governor could select from among all four nominees for the first position, from among three for the second, and between two for the third. Delahay v. State, Sup. Ct. Op. No. 648 (File No. 1252), 476 P.2d 908 (1970), appeal dismissed, 402 U.S. 901, 91 S. Ct. 1381, 28 L. Ed. 2d 642 (1971).

Appointment not place specific. — Nowhere in subsection (a) of this section is it stated that the governor's appointment is place specific. Hornaday v. Rowland, Sup. Ct. Op. No. 2761 (File No. 7810), 674 P.2d 1333 (1983).

III. MAGISTRATES.

Magistrate is "judge". — A magistrate is not merely "an assistant" to a district court judge, but presides with full authority over a court of limited jurisdiction, exercising the judicial power vested by Alaska Const., art. IV, § 1. Such a person is a "judge" 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).

Provision that magistrates serve at the pleasure of the presiding judge of the superior court in the judicial district for which appointed does not conflict with the requirement of Alaska Const., art. IV, § 4 that judges be "selected . . . for terms prescribed by law," since with respect to the accountability demanded in this requirement, service "at the pleasure of" constitutes a "term." Buckalew v. Holloway, Sup. Ct. Op. No. 1988 (File No. 4058), 604 P.2d 240 (1979).

Since magistrates do not campaign, are never accountable to the voting public, and are not appointed by the governor, for a magistrate to serve "at the pleasure of" the presiding superior court judge does not impair the independence of the magistrate to adjudicate cases impartially. Buckalew v. Holloway, Sup. Ct. Op. No. 1988 (File No. 4058), 604 P.2d 240 (1979).

Providing that magistrates serve "at the pleasure of the presiding judge of the superior court" is clearly designed to achieve an ongoing guarantee of accountability. Buckalew v. Holloway, Sup. Ct. Op. No. 1988 (File No. 4058), 604 P.2d 240 (1979).

Even if Alaska Const., art. IV, § 10, which created a commission on judicial qualifications which could recommend to the supreme court that a justice or judge be suspended, removed from office, retired or censured, is applicable to magistrates, it does not restrict the legislature's authority under Alaska Const., art. IV, § 4 to prescribe that magistrates shall serve at the pleasure of the presiding judge, since at the very least, the removal provisions of art. IV are supplementary to the removal procedure that defines the end of a judge's term. Buckalew v. Holloway, Sup. Ct. Op. No. 1988 (File No. 4058), 604 P.2d 240 (1979).

Collateral references. -- Power of successor judge taking office during term time to vacate, etc., judgement entered by his predecessor. 11 ALR2d 1117.

Sec. 22.15.180. Oath of office. Each district judge and magistrate, upon entering office, shall take and subscribe to an oath of office required of all officers under the constitution and any further oath or affirmation that may be prescribed by law. (§ 13 ch 184 SLA 1959)

Sec. 22.15.190. Assignment of district judges and magistrates. Each district judge and each magistrate shall hold court at times and places that 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 184 SLA 1959)

NOTES TO DECISIONS

Permanent intra district transfers. AS 22.10.130, this section, and the court rules concerning the powers of a presiding judge and the assignment of district court judges do not authorize a presiding judge's permanent intra district transfer of a judge. Hornaday v. Rowland, Sup. Ct. Op. No. 2761 (File No. 7810), 674 P.2d 1333 (1983).

Stated in Theodore v. State, Sup. Ct. Op. No. 305 (File No. 550), 407 P.2d 182 (1965), cert. denied, 384 U.S. 951, 86 S. Ct. 1570, 16 L.Ed.2d 547 (1966).

Sec. 22.15.195. Approval or rejection. Each district court judge is subject to approval or rejection as provided in AS 15 (Alaska Election Code). The judicial council shall conduct an evaluation of each judge before the retention election and shall provide to the public information about the judge and may provide a recommendation regarding retention or rejection. The information and the recommendation shall be made public at least 60 days before the election. The judicial council shall also provide the information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet under AS 15.58.050. If a majority of those voting on the question rejects the candidacy of a judge, the rejected judge may not for a period of four years thereafter be appointed to fill any vacancy in the supreme court, court of appeals, superior court or district courts of the state. (§ 3 ch 87 SLA 1975; am § 13 ch 12 SLA 1980)

NOTES TO DECISIONS

Cited in Stephens v. Hammersley, Sup. Ct. Op. No. 1275 (File No. 2505), 550 P.2d 1268 (1976); Hornaday v. Rowland, Sup. Ct. Op. No. 2761 (File No. 7810), 674 P.2d 1333 (1983).

Sec. 22.15.200. Incapacity. [Repealed, § 2 ch 213 SLA 1968.]

Sec. 22.15.205. Impeachment. A district judge is subject to impeachment by the legislature for malfeasance or misfeasance in the performance of official duties. Impeachment must originate in the senate and must be approved by two-thirds vote of its members. The motion for impeachment must list fully the basis for the proceeding. Trial on impeachment shall be conducted by the house of representatives. A supreme court justice designated by the court shall preside at the trial. Concurrence of two-thirds of the members of the house is required for a judgment of impeachment. The judgment may not extend beyond removal from office, but does not prevent proceedings in the courts on the same or related charges. (§ 9 ch 38 SLA 1987)

Sec. 22.15.210. Restrictions. (a) A district judge while holding office may not practice law, nor engage in the conduct of any other profession, vocation, or business for profit or compensation, which conduct would interfere with the performance of the judicial duties of the judge, nor may a judge hold office in a political party, or hold any other office or position of profit under the United States, the state or its political subdivisions, except that, with the approval of the chief justice of the Alaska Supreme Court, a district judge may be appointed deputy clerk of the superior court and may hold the office of United States magistrate. A district judge who files for another elec-

type public office other than delegate to a constitutional convention of this state or the United States forfeits the judicial position.

(b) A magistrate, while holding office, may not hold office in a political party. A magistrate may hold any other office or position of profit under the United States, the state or its political subdivisions, or engage in the conduct of any profession or business which does not interfere with the performance of the judicial duties of the magistrate or require that the magistrate repeatedly disqualify himself or herself from judicial service because of a conflict of interest caused thereby. (§ 16 ch 184 SLA 1959; am § 2 ch 5 SLA 1960; am § 3 ch 30 SLA 1971; am § 14 ch 12 SLA 1980)

Legislative history reports. — For report on ch. 30, SLA 1971 (FCCS HCSSB 64), see 1971 House Journal, p. 226.

NOTES TO DECISIONS

Quoted in Begich v. Jefferson, Sup. Ct. Op. No. 481 (File No. 8946, 441 P.2d 27 (1968).

Collateral references. — Validity and application of statute regarding prohibition of judge from practicing law. 17 ALR4th 829.

Sec. 22.15.220. Compensation. (a) The monthly salary for each district judge is equal to Step C, Range 26 of the salary schedule in AS 39.27.011(a) for Juneau, Alaska.

(b) Each magistrate shall receive annual compensation to be determined by the supreme court. Salary increases shall be determined on the basis of percentage of pay increase the legislature provides for state employees in the classified service. The base salary of a magistrate shall be increased by a percentage equal to three and one-half per cent times the number of step increases provided under AS 39.27.020 that a state employee would receive working in the same election district. A magistrate's annual compensation may be payable, at the option of the magistrate, either monthly in 12 equal installments or semi-monthly in 24 equal installments.

(c) A salary warrant may not be issued to a district judge or magistrate until the judge or magistrate has filed with the state officer designated to issue salary warrants, an affidavit that no matter referred to the judge or magistrate for opinion or decision has been uncompleted or undecided by the judge or magistrate for a period of more than six months.

(d) In addition to annual salary, a district court judge is entitled to receive a geographic cost-of-living adjustment, based on the location of the judge's primary office assignment, equal to 3.5 per cent of the

judge's annual salary times the number of pay step increases provided under AS 39.27.020 for a state employee working in the same election district in those districts for which AS 39.27.020 specifies zero-to-five pay step increases. In an election district for which AS 39.27.020 specifies more than five pay steps, the number of pay step increases under this section is limited to five. Any retirement benefits to which a district court judge may be entitled shall be computed only on the annual salary. (§ 17 ch 184 SLA 1959; am § 1 ch 66 SLA 1962; am § 1 ch 64 SLA 1963; am § 1 ch 137 SLA 1966; am § 5 ch 83 SLA 1967; am § 3 ch 101 SLA 1969; am § 3 ch 193 SLA 1970; am § 1 ch 78 SLA 1971; am § 1 ch 188 SLA 1972; am §§ 3, 4 ch 34 SLA 1974; am § 3 ch 205 SLA 1975; am §§ 4, 5 ch 148 SLA 1976; am § 1 ch 196 SLA 1976; am § 5 ch 263 SLA 1976; am § 6 ch 80 SLA 1978; am §§ 5, 20 ch 3 SLA 1980)

Editor's notes. — Chapter 205, SLA 1975, which amended this section, was submitted to the voters by referendum and was rejected.

NOTES TO DECISIONS

Cited in Kuchutin v. State, Sup. Ct. Op. No. 3194 (File No. S-1894), 739 P.2d 170 (1987).

Sec. 22.15.230. Additional compensation. Subject to rule of the supreme court, a district judge or magistrate shall receive a per diem allowance and a transportation allowance commensurate with that authorized for other state employees. (§ 18 ch 184 SLA 1959)

Sec. 22.15.240. Appeal. (a) Either party may appeal a judgment of the district court in a civil action to the superior court.

(b) The defendant may appeal a judgment of conviction given in the district court in a criminal action to the superior court. When the judgment is given on a plea of guilty, an appeal may not be taken by the defendant except on the ground that a sentence of imprisonment of 90 days or more was excessive. The state has no right of appeal in criminal actions for which judgment is given in the district courts, except to test the sufficiency of the information or to appeal a sentence on the ground it is too lenient. When a sentence is appealed by the state on the ground it is too lenient, the court may not increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion.

(c) *[Repealed, § 47 ch 14 SLA 1987.]*

(d) *[Repealed, § 47 ch 14 SLA 1987.]* (§ 20 ch 184 SLA 1959; am § 3 ch 5 SLA 1960; am § 3 ch 117 SLA 1969; am § 15 ch 12 SLA 1980; am § 47 ch 14 SLA 1987)

Cross references. — For jurisdiction of court of appeals to review decision of the district court, see AS 22.07.020(c). For jurisdiction of superior court, see AS 22.10.020. For procedure on appeal, see Rules 601 — 609, Rules of Appellate Procedure.

Effect of amendments. — The 1987 amendment deleted subsections (c) and (d), concerning appeals from the district court.

Editor's notes. — Section 37, ch. 12, SLA 1980 provides "Sections 8, 15 and 31 of this Act have the effect of changing Rule 21, Rules of Appellate Procedure and Rule 7, District Court Criminal Rules by amending AS 22.10.020(c), AS 22.15.240, and AS 12.55.095 — 12.55.185 to provide that a sentence of 90 days or more imposed by the district court may be appealed."

NOTES TO DECISIONS

District court is not "court of record." See Lopez v. Anchorage, Sup. Ct. Op. No. 1863 (File No. 3863), 597 P.2d 146 (1979).

Magistrates are "judges of other courts" within the meaning of Alaska Const., art. IV, § 1. Buckalew v. Holloway, Sup. Ct. Op. No. 1960 (File No. 4050), 601 P.2d 240 (1979).

This section and AS 22.10.020 provide basic and alternative methods of reviewing which were intended to simplify and expedite the handling of appeals. Lee v. State, Sup. Ct. Op. No. 107 (File No. 193), 374 P.2d 868 (1962).

Proper standard and scope of review. — In recent cases, the supreme court has set forth the proper standard and scope of review to be applied by it in reviewing superior court sentences appealed to it pursuant to AS 12.55.120. It is the intention of the legislature that the superior court apply an identical standard in reviewing sentences appealed to it pursuant to subsection (b) of this section. Galaktionoff v. State, Sup. Ct. Op. No. 700 (File No. 1291), 486 P.2d 919 (1971). The authority to review sentences now resides in the court of appeals, which began operations on September 18, 1980. — Ed. note.

In the exercise of its sentence appeal jurisdiction, the superior court's scope of review is to be identical with that exercised by the supreme court under State v. Chaney, Sup. Ct. Op. No. 653, 777 P.2d 441 (1970). The application of this standard to the superior court means that when a sentence is appealed to the superior court, the reviewing judge is to make his or her own examination of the record and must modify the sentence if he is convinced that the district court was clearly mistaken in imposing the sanction it did. Galaktionoff v. State, Sup. Ct. Op. No. 700 (File No. 1291), 486 P.2d 919 (1971).

Trial de novo on appeal prior to 1980 amendment. — For cases discussing power of superior court to grant new trial prior to 1980 amendment, which deleted "unless the superior court, in its discretion, grants a trial de novo, in whole or in part" from the end of subsection (c), see Lee v. State, Sup. Ct. Op. No. 107 (File No. 193), 374 P.2d 868 (1962); Kinsman v. State, Sup. Ct. Op. No. 786 (File No. 1523), 496 P.2d 63 (1972); Lopez v. Anchorage, Sup. Ct. Op. No. 1863 (File No. 3863), 597 P.2d 146 (1979).

Court can hear argument of counsel. — The superior court can, on a proper showing, based on an appropriate motion, permit counsel for the appellant to be heard in argument before the appeal is disposed of on the record. Lee v. State, Sup. Ct. Op. No. 107 (File No. 193), 374 P.2d 868 (1962).

The superior court has the power to entertain appropriate motions. Kinsman v. State, Sup. Ct. Op. No. 786 (File No. 1523), 496 P.2d 63 (1972).

"Appropriate motions". — The state's motion for a more particular statement of allegations of prejudice and the stipulations of the parties were "appropriate motions" and the superior court was within its powers in ordering a time schedule for briefing. Kinsman v. State, Sup. Ct. Op. No. 786 (File No. 1523), 496 P.2d 63 (1972).

Rules may not be applied to work an injustice. — While inherent in its power to entertain "appropriate motions" is the power to police compliance with its orders entered pursuant to those motions, the superior court may not apply its rules in such a way as to work an injustice. Kinsman v. State, Sup. Ct. Op. No. 786 (File No. 1523), 496 P.2d 63 (1972).

Dismissal without warning. — The superior court abused its discretion in ordering a dismissal without first warning the party that continued failure to comply with the ordered schedule for briefs would lead to dismissal. Kinsman v. State, Sup. Ct. Op. No. 786 (File No. 1523), 496 P.2d 63 (1972).

Only crime of conviction considered on appeal. — The fair approach in reviewing sentences is to treat the case as presenting only the crime of which the defendant has been convicted. Other offenses, for which guilt has not been established, should not be considered. Galaktionoff v. State, Sup. Ct. Op. No. 700 (File No. 1291), 486 P.2d 919 (1971).

The superior court judge's estimation of crimes committed but not charged cannot provide support for the affirmance of the sentence. Galaktionoff v. State, Sup. Ct. Op. No. 700 (File No. 1291), 486 P.2d 919 (1971).

Undue consideration given district judge's opportunity to observe defendant. — The superior court judge gave undue influence and consideration to the district judge's opportunity to observe the defendant, and, in so doing, the reviewing judge failed to make the requisite full and independent examination of the record with a view to determining if the district judge was clearly mistaken in imposing the sanction he did. Galaktionoff v. State, Sup. Ct. Op. No. 700 (File No. 1291), 486 P.2d 919 (1971).

Prosecution of appeal does not change offense from petty to serious. — Where a defendant had no constitutional or statutory right to trial by jury when he originally appeared before a magistrate on a charge of violating a municipal ordinance, the fact that he chose to prosecute an appeal does not change the nature of the offense from petty to serious; the possible penalty is not increased; no additional constitutional or statutory right sprang into existence on his appeal to give him a right to trial by jury. Knudsen v. City of Anchorage, Sup. Ct. Op. No. 21 (File No. 58), 358 P.2d 376 (1960).

Appeal from joint judgment. — See Stanley v. Greenberg, 5 Alaska 178 (1914).

Applied in Hanrahan v. City of Anchorage, Sup. Ct. Op. No. 121 (File No. 247), 377 P.2d 381 (1962); State v. Marathon Oil Co., Sup. Ct. Op. No. 1098 (File No. 21991), 528 P.2d 293 (1974); Halligan v. State, Sup. Ct. Op. No. 2299 (File No. 5035), 624 P.2d 281 (1981).

Sec. 22.15.250. Disposition of fines. When by law any fees, fines, forfeitures, or penalties are levied and collected by the district judge or magistrate, the proceeds and all other money collected shall be accounted for and transmitted to the administrative director of the judicial system for transfer to the general fund of the state except as provided in AS 22.15.270. (§ 21 ch 184 SLA 1959)

Sec. 22.15.260. Bond. Before entering upon the duties of office each district judge and magistrate shall execute and file with the administrative director a surety bond in form and amount to be determined by rule of the supreme court. The state shall pay for the bond. (§ 22 ch 184 SLA 1959)

Sec. 22.15.270. Retention of fines, etc., by political subdivisions. All fines, penalties, and forfeitures resulting from violations of ordinances of political subdivisions shall be returned to the political subdivision whose ordinance is involved in the manner provided by rule of the supreme court. Fines, penalties, and forfeitures imposed after appeals accrue to the state, unless the appeal is prosecuted by the political subdivision. (§ 23 ch 184 SLA 1959; am § 1 ch 219 SLA 1976)