

LEG. FINANCE - BILLS 1979 - 1980 1267

SB 104

1267



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James O. Smith
Signature of Camera Operator

3/23/90
Date

COMMITTEE REPORT
SENATE

2/16/79

FURTHER:

Date: March 10, 1979

Mr. President:

The Committee on FINANCE has had SB 104
establishing the court of appeals

under consideration and (a majority of the committee) (the committee)
reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back ^{individual} without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

John C. S. ...

 CHAIRMAN

Introduced: 2/2/79
Referred: Judiciary and
Finance

BY ZIEGLER, BRADLEY, MELAND, RODEY,
STIMSON AND STURGULEWSKI

1 IN THE SENATE

2 SENATE BILL NO. 104

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the court of appeals; and pro-
7 viding for an effective date."

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

9 * Section 1. AS 22 is amended by adding a new chapter to read:

10 CHAPTER 07. THE COURT OF APPEALS.

11 Sec. 22.07.010. ESTABLISHMENT. There is established the court of
12 appeals, consisting of three judges.

13 Sec. 22.07.020. JURISDICTION. (a) The court of appeals has
14 appellate jurisdiction in actions and proceedings commenced in the
15 superior court involving:

16 (1) criminal prosecution;
17 (2) post-conviction relief;
18 (3) waiver of children's court jurisdiction over a minor
19 under AS 47.10;

20 (4) extradition;
21 (5) habeas corpus;
22 (6) revocation of probation or parole;
23 (7) bail; and
24 (8) appeal to the superior court from a decision of an
25 administrative agency.

26 (b) The court of appeals has appellate jurisdiction in all actions
27 and proceedings commenced in the district court and may, in its discre-
28 tion, remand a district court matter to the superior court for a trial
29 de novo in whole or in part.

1 (c) The court of appeals may issue injunctions, writs and all
2 other process necessary for the complete exercise of its jurisdiction.

3 (d) The court of appeals has jurisdiction to hear appeals of
4 sentences of imprisonment imposed by the superior court or the district
5 court on the grounds that the sentence is excessive or too lenient and,
6 in the exercise of this jurisdiction, may modify the sentence as pro-
7 vided by law and the state constitution.

8 (e) An appeal to the court of appeals is a matter of right in all
9 actions and proceedings within its jurisdiction, except that

10 (1) there is no right of appeal to the court of appeals in a
11 case for which direct review by the supreme court has been provided by
12 rule; and

13 (2) the state has no right of appeal in criminal cases except
14 to test the sufficiency of the indictment or information or to appeal a
15 sentence on the ground it is too lenient under (d) of this section.

16 Sec. 22.07.030. REVIEW BY SUPREME COURT. A party may apply to the
17 supreme court for review of a final decision of the court of appeals in
18 accordance with AS 22.05.010 and rules adopted by the supreme court. In
19 this section, "final decision" means a decision or order other than a
20 dismissal by consent of all parties that closes a matter in the court of
21 appeals.

22 Sec. 22.07.040. QUALIFICATIONS OF JUDGES. A judge of the court of
23 appeals shall be a citizen of the United States and of the state, a
24 resident of the state for three years immediately preceding his appoint-
25 ment, have been engaged for not less than eight years immediately pre-
26 ceding his appointment in the active practice of law, and at the time of
27 appointment be licensed to practice law in the state. For purposes of
28 this section, the active practice of law shall be the same as defined
29 for the justices of the supreme court in AS 22.05.070.

1 Sec. 22.07.050. OATH OF OFFICE. Each judge of the court of
2 appeals, upon entering office, shall take and subscribe to an oath of
3 office required of all officers under the constitution and such further
4 oath or affirmation as may be prescribed by law.

5 Sec. 22.07.060. APPROVAL OR REJECTION. Each judge of the court of
6 appeals is subject to approval or rejection as provided in the Alaska
7 Election Code (AS 15). The judicial council shall conduct an evaluation
8 of each judge before his retention election and shall provide to the
9 public information about the judge and may provide a recommendation
10 regarding his retention or rejection. The information and any recommen-
11 dation shall be made public at least 30 days before the election. The
12 judicial council shall also provide the information and any recommenda-
13 tion to the office of the lieutenant governor in time for publication in
14 the election pamphlet under AS 15.57.025. If a majority of those voting
15 on the question rejects the candidacy of a judge, he may not for a
16 period of four years thereafter be appointed to fill a vacancy in the
17 supreme court, the court of appeals, or the superior court of the state.

18 Sec. 22.07.070. VACANCIES. (a) The governor shall fill a vacancy
19 or appoint a successor to fill an impending vacancy in the office of
20 judge of the court of appeals within 45 days after receiving nominations
21 from the judicial council, by appointing one of two or more persons
22 nominated by the council for each actual or impending vacancy. An
23 appointment to fill an impending vacancy becomes effective upon the
24 actual occurrence of the vacancy.

25 (b) The office of a judge of the court of appeals becomes vacant
26 90 days after the election at which he is rejected by a majority of
27 those voting on the question or for which he fails to file his declara-
28 tion of candidacy to succeed himself. Upon the occurrence of (1) an
29 actual vacancy; (2) the certification of rejection following an elec-

1 tion; or (3) the failure of a judge to file a declaration of candidacy
2 to succeed himself, the judicial council shall meet within 45 days and
3 submit to the governor the names of two or more persons qualified for
4 the judicial office; however, the 45-day period may be extended by the
5 judicial council with the concurrence of the supreme court. In the
6 event of an impending vacancy other than by reason of rejection or
7 failure to file a declaration of candidacy, the judicial council may
8 meet at any time within the 90-day period immediately preceding the
9 effective date of the vacancy and submit to the governor the names of
10 two or more persons qualified for the judicial office.

11 Sec. 22.07.080. RESTRICTIONS. A judge of the court of appeals
12 while holding office may not practice law, or engage in the conduct of
13 any other profession, vocation or business for profit or compensation,
14 which conduct would interfere with his performance of his judicial
15 duties, nor may he hold office in a political party, or hold any other
16 office or position of profit under the United States, the state or its
17 political subdivisions. A judge of the court of appeals filing for
18 another elective public office forfeits his judicial position.

19 Sec. 22.07.090. COMPENSATION. (a) Each judge of the court of
20 appeals is entitled to receive annual compensation prescribed in accor-
21 dance with AS 39.23. The compensation of a judge may not be diminished
22 during his term of office, unless by general law applying to all
23 salaried officers of the state.

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

29 Sec. 22.07.100. PROCESS. Process of the court of appeals shall be

1 in the name of the State of Alaska, signed by the clerk of the court or
2 his deputy, dated when issued, sealed with the seal of court, and made
3 returnable according to rule prescribed by the supreme court.

4 * Sec. 2. AS 22.05.010 is repealed and re-enacted to read:

5 Sec. 22.05.010. JURISDICTION. (a) The supreme court has final
6 appellate jurisdiction in all actions and proceedings.

7 (b) Appeal to the supreme court is a matter of right only in those
8 actions and proceedings from which there is no right of appeal to the
9 court of appeals under AS 22.07.020.

10 (c) The supreme court may in its discretion review a final deci-
11 sion of the court of appeals on its own motion or on application of a
12 party under AS 22.07.030.

13 (d) The supreme court may issue injunctions, writs and all other
14 process necessary to the complete exercise of its jurisdiction.

15 * Sec. 3. AS 22.05 is amended by adding a new section to read:

16 Sec. 22.05.015. TRANSFER OF APPELLATE CASES. (a) The supreme
17 court may transfer to the court of appeals for decision a case pending
18 before the supreme court if the case is within the jurisdiction of the
19 court of appeals.

20 (b) The supreme court may take jurisdiction of a case pending
21 before the court of appeals if the supreme court determines that

22 (1) the case involves a significant question of law under the
23 Constitution of the United States or of the state or an issue of sub-
24 stantial public interest that should be determined by the supreme court;
25 or

26 (2) the transfer will further the efficient administration of
27 justice.

28 (c) The supreme court may provide by rule that review of an appeal
29 to the superior court from an administrative agency be by the supreme

1 court rather than by the court of appeals under AS 22.07.020(8).

2 (d) A case filed in the supreme court or in the court of appeals
3 may not be dismissed by one court on the sole ground that it is within
4 the jurisdiction of the other court. The case shall be transferred to
5 the proper court.

6 * Sec. 4. AS 22.05.060 is amended to read:

7 Sec. 22.05.060. SEALS OF COURT. The seal of the supreme court is
8 a vignette of the official flag of the state with the words "Seal of the
9 Supreme Court of the State of Alaska" surrounding the vignette. The
10 supreme court shall prescribe by rule the seals of court for the court
11 of appeals and for the superior and district courts.

12 * Sec. 5. AS 22.05.100 is amended to read:

13 Sec. 22.05.100. APPROVAL OR REJECTION. Each supreme court justice
14 is subject to approval or rejection as provided in the Alaska Election
15 Code (AS 15.05 - 15.60). The judicial council shall conduct an evalua-
16 tion of each justice before his retention election and shall provide to
17 the public information about that justice and may provide a recommenda-
18 tion regarding his retention or rejection. Such information and any
19 recommendation shall be made public at least 30 days before the reten-
20 tion election. The judicial council shall also provide such information
21 and any recommendation to the office of the lieutenant governor in time
22 for publication in the election pamphlet under AS 15.57.025. If a
23 majority of those voting on the question rejects his candidacy, he shall
24 not be appointed to fill any vacancy in the supreme court, court of
25 appeals or superior courts of the state for a period of four years
26 thereafter.

27 * Sec. 6. AS 22.10.020(a) is amended to read:

28 (a) The superior court is the trial court of general jurisdiction,
29 with original jurisdiction in all civil and criminal matters, including

1 but not limited to probate and guardianship of minors and incompetents.
2 The jurisdiction of the superior court extends over the whole of the
3 state. The superior court and its judges may issue injunctions, writs
4 of review, mandamus, prohibition, habeas corpus and all other writs
5 necessary or proper to the complete exercise of its jurisdiction. A
6 writ of habeas corpus may be made returnable before any judge of the
7 superior court. The superior court has jurisdiction in all matters
8 appealed to it from an [A SUBORDINATE COURT, OR] administrative agency
9 when appeal is provided by law. Appeals are a matter of right [, BUT NO
10 APPEAL FROM A SUBORDINATE COURT MAY BE TAKEN BY THE DEFENDANT IN A
11 CRIMINAL CASE AFTER A PLEA OF GUILTY, EXCEPT ON THE GROUND THAT THE
12 SENTENCE WAS EXCESSIVE, AS FURTHER PROVIDED BY THIS SECTION. NO APPEAL
13 MAY BE TAKEN BY THE STATE, EXCEPT TO TEST THE SUFFICIENCY OF AN INDICT-
14 MENT OR INFORMATION. AN APPEAL TO THE SUPERIOR COURT MAY BE TAKEN ON
15 THE GROUND THAT A SENTENCE OF IMPRISONMENT OF 180 DAYS OR MORE WAS
16 EXCESSIVE AND THE SUPERIOR COURT IN THE EXERCISE OF THIS JURISDICTION
17 HAS THE POWER TO MODIFY THE SENTENCE APPEALED FROM UPWARD OR DOWNWARD].
18 The hearings on appeal from a final order or judgment of an [A SUBOR-
19 DINATE COURT OR] administrative agency shall be on the record unless the
20 superior court, in its discretion, grants a trial de novo, in whole or
21 in part.

22 * Sec. 7. AS 22.10.150 is amended to read:

23 Sec. 22.10.150. APPROVAL OR REJECTION. Each superior court judge
24 is subject to approval or rejection as provided in the Alaska Election
25 Code (AS 15.05 - 15.60). The judicial council shall conduct an evalua-
26 tion of each judge before his retention election and shall provide to
27 the public information about the judge and may provide a recommendation
28 regarding his retention or rejection. Such information and any recom-
29 mendation shall be made public at least 30 days before the retention

1 election. The judicial council shall also provide such information and
2 any recommendation to the office of the lieutenant governor in time for
3 publication in the election pamphlet under AS 15.57.025. If a majority
4 of those voting on the question rejects his candidacy, he shall not for
5 a period of four years thereafter be appointed to fill any vacancy in
6 the supreme court, court of appeals or superior courts of the state.

7 * Sec. 8. AS 22.15.195 is amended to read:

8 Sec. 22.15.195. APPROVAL OR REJECTION. Each district court judge
9 is subject to approval or rejection as provided in the Alaska Election
10 Code (AS 15.05 - 15.60). The judicial council shall conduct an evalua-
11 tion of each judge before his retention election and shall provide to
12 the public information about the judge and may provide a recommendation
13 regarding his retention or rejection. Such information and the recom-
14 mendation shall be made public at least 30 days before the election.
15 The judicial council shall also provide such information and any recom-
16 mendation to the office of the lieutenant governor in time for publica-
17 tion in the election pamphlet under AS 15.57.025. If a majority of those
18 voting on the question rejects his candidacy, he shall not for a period
19 of four years thereafter be appointed to fill any vacancy in the supreme
20 court, court of appeals, superior courts or district courts of the
21 state.

22 * Sec. 9. AS 22.15.240 is amended to read:

23 Sec. 22.15.240. APPEAL. (a) Either party may appeal a judgment
24 of the district court in a civil action to the court of appeals [SU-
25 PERIOR COURT] when the sum in controversy is not less than \$50, or for
26 the recovery of personal property of the value of not less than \$50
27 exclusive of costs in either case, except when the sum is given by
28 confession or for want of an answer.

29 (b) The defendant may appeal a judgment of conviction given in the

1 district court in a criminal action to the court of appeals [SUPERIOR
2 COURT]. When the judgment is given on a plea of guilty, no appeal may
3 be taken by the defendant except on the ground that a sentence of im-
4 prisonment of 45 [180] days or more was excessive; however, the supreme
5 court by rule may further provide for review of a judgment given on a
6 plea of guilty. The state has no right of appeal in criminal actions
7 for which judgment is given in the district courts, except to test the
8 sufficiency of the information.

9 (c) An appeal from the district court shall be taken within 30
10 days from the date of entry of the judgment. All appeals shall be on
11 the record [UNLESS THE SUPERIOR COURT, IN ITS DISCRETION, GRANTS A TRIAL
12 DE NOVO, IN WHOLE OR IN PART].

13 (d) The supreme court shall prescribe further rules for the pro-
14 cedure for appeals from district courts.

15 * Sec. 10. AS 22.20.010 is amended to read:

16 Sec. 22.20.010. JUDICIAL OFFICER DEFINED. The term "judicial
17 officer" means a supreme court justice, including the chief justice,
18 a judge of the court of appeals, a judge of the superior court, a dis-
19 trict judge and a magistrate.

20 * Sec. 11. AS 22.20.110 is amended to read:

21 Sec. 22.20.110. DUTY OF THE COMMISSIONER IN THE COURT OF APPEALS,
22 THE SUPERIOR COURT AND DISTRICT COURTS. When required by the supreme
23 court, the commissioner shall serve and execute all process issued by
24 the court of appeals, the superior court and the district courts, attend
25 to and wait upon grand and petit juries, maintain order, attend the
26 sessions of the courts, and exercise the power and perform the duties
27 concerning all matters within the jurisdiction of the courts as may be
28 assigned to him. The commissioner is the executive officer of the court
29 of appeals, the superior court and district courts.

1 * Sec. 12. AS 22.25.010(g) is amended to read:

2 (g) The word "justice" means a supreme court justice, and the word
3 "judge," unless the context clearly indicates otherwise, means a judge
4 of the court of appeals, a superior court judge or district court judge.

5 * Sec. 13. AS 22.30.080(2) is amended to read:

6 (2) "judge" means a justice of the supreme court, a judge of
7 the court of appeals, a judge of the superior court, or a judge of the
8 district court who is the subject of an investigation or proceeding
9 under sec. 10, art. IV, Constitution of the State of Alaska and this
10 chapter.

11 * Sec. 14. AS 11.56.900(2) is amended to read:

12 (2) "judicial officer" means a supreme court justice, in-
13 cluding the chief justice, a judge of the court of appeals, a judge of
14 the superior court, a district court judge, or a magistrate;

15 * Sec. 15. AS 15.15.030(10) is repealed and re-enacted to read:

16 (10) A separate nonpartisan judicial ballot shall be desig-
17 nated for each judicial district in which a justice or judge is seeking
18 to succeed himself. The ballot shall be divided into four parts and
19 each part shall bear a heading indicating the court to which the candi-
20 date is seeking approval. Within each part the question of whether the
21 justice or judge shall be approved or rejected shall be set out in
22 substantially the following manner: (A) "Shall be re-
23 tained as justice of the supreme court for 10 years?"; (B) "Shall . . .
24 be retained as judge of the court of appeals for eight years?";
25 (C) "Shall be retained as judge of the superior court for
26 six years?"; or (D) "Shall be retained as judge of the
27 district court for four years?" Provision shall be made for marking
28 each question "Yes" or "No".

29 * Sec. 16. AS 15.35 is amended by adding new sections to read:

1 Sec. 15.35.140. APPROVAL OR REJECTION OF A JUDGE OF THE COURT OF
2 APPEALS. Each judge of the court of appeals shall be subject to
3 approval or rejection at the first general election held more than three
4 years ~~later~~ his appointment. If approved, he shall thereafter be sub-
5 ject to approval or rejection in a like manner every eighth year.

6 Sec. 15.35.150. FILING DECLARATION BY JUDGE OF THE COURT OF
7 APPEALS. Each judge of the court of appeals seeking to succeed himself
8 in office shall file with the lieutenant governor a declaration of
9 candidacy not less than 90 days before the date of the general election
10 at which approval or rejection is requisite.

11 Sec. 15.35.160. REQUIREMENT OF FILING FEE FOR COURT OF APPEALS.
12 At the time the declaration is filed, each candidate shall pay a filing
13 fee to the lieutenant governor. The filing fee for a candidate for the
14 court of appeals is \$100.

15 Sec. 15.35.170. PLACING NAME OF JUDGE OF THE COURT OF APPEALS ON
16 BALLOT. The lieutenant governor shall place the name of a judge of the
17 court of appeals who has properly filed a declaration of candidacy on
18 the judicial ballot in each judicial district of the state for the
19 general election at which approval is sought.

20 * Sec. 17. AS 15.57.025 is amended to read:

21 Sec. 15.57.025. INFORMATION AND RECOMMENDATIONS ON JUDICIAL
22 OFFICERS. No later than 60 days before the applicable state election,
23 the judicial council shall file with the lieutenant governor a statement
24 including information about each supreme court justice, court of appeals
25 judge, superior court judge, and district court judge who will be sub-
26 ject to a retention election, following the evaluation of each such
27 justice or judge conducted by the judicial council according to law.
28 Each such statement may not exceed 300 words.

29 * Sec. 18. AS 15.57.040(2) is amended to read:

1 (2) judicial officer other than supreme court justice or
2 court of appeals judge, \$50 each.

3 * Sec. 19. AS 24.55.330(2) is amended to read:

4 (2) "agency" includes a department, office, institution,
5 corporation, authority, organization, commission, committee, council or
6 board of a municipality or in the executive, legislative or judicial
7 branches of the state government, and a department, office, institution,
8 corporation, authority, organization, commission, committee, council or
9 board of a municipality or of the state government independent of the
10 executive, legislative and judicial branches; it also includes an
11 officer, employee or member of an "agency" acting or purporting to act
12 in the exercise of his official duties, but does not include the gover-
13 nor, lieutenant governor, a member of the legislature, justice of the
14 supreme court, judge of the court of appeals, a superior court judge,
15 [OR] district court judge, magistrate, member of a city council or
16 borough assembly, elected city or borough mayor, or a member of an
17 elected school board;

18 * Sec. 20. AS 39.20.310(1) is amended to read:

19 (1) members of the state legislature, the governor, the
20 lieutenant governor, and justices and judges of the supreme and superior
21 courts and of the court of appeals, but nothing in AS 39.20.220 -
22 39.20.330 may be construed to diminish the salaries fixed by law for
23 these officers by reason of absence from duty on account of illness or
24 otherwise;

25 * Sec. 21. AS 39.23.130(2) is amended to read:

26 (2) "judiciary" means justices of the supreme court and
27 judges of the court of appeals, the superior court and the district
28 court [THE SUPERIOR AND DISTRICT COURTS].

29 * Sec. 22. AS 39.35.680(21)(C)(vi) is amended to read:
30

1 (vi) justices of the supreme court or judges of the
2 court of appeals or of the superior or district courts of
3 Alaska;

4 * Sec. 23. AS 12.55.120(a) is amended to read:

5 (a) A sentence of imprisonment lawfully imposed by the superior
6 court for a term or for aggregate terms of 45 days or more [EXCEEDING
7 ONE YEAR] may be appealed to the court of appeals [SUPREME COURT] by the
8 defendant on the ground that the sentence is excessive. By appealing a
9 sentence under this section, the defendant waives the right to plead
10 that by a revision of the sentence resulting from the appeal he has been
11 twice placed in jeopardy for the same offense.

12 * Sec. 24. AS 12.55.120(b) is amended to read:

13 (b) A sentence of imprisonment lawfully imposed by the superior
14 court may be appealed to the court of appeals [SUPREME COURT] by the
15 state on the ground that the sentence is too lenient; however, when a
16 sentence is appealed by the state and the defendant has not appealed the
17 sentence, the court is not authorized to increase the sentence but may
18 express its approval or disapproval of the sentence and its reasons in a
19 written opinion.

20 * Sec. 25. A judge of the court of appeals is entitled to receive annual
21 compensation equal to 95 per cent of the annual compensation of a supreme
22 court justice, payable in equal monthly installments, from the date upon
23 which he takes office until superseded by payment of compensation resulting
24 from the first salary recommendations made under AS 39.23 for judges of the
25 court of appeals.

26 * Sec. 26. Notwithstanding the effective date of this act, operations of
27 the court of appeals shall commence on a date determined by the supreme court
28 after all judges of the court of appeals have taken office.

29 * Sec. 27. The superior court has concurrent appellate jurisdiction with

1 the court of appeals in actions and proceedings commenced in the district
2 court and filed in the superior court before the date on which operations of
3 the court of appeals commence. The supreme court may transfer to the court
4 of appeals an appellate matter involving an action or proceeding commenced in
5 the district court which is pending in the superior court on the date on
6 which operations of the court of appeals commence, including a matter filed
7 before the effective date of this Act. An appellate matter not so trans-
8 ferred shall be decided by the superior court. Before commencement of opera-
9 tions in the court of appeals, a decision of the superior court under this
10 section may be appealed to the supreme court and thereafter to the court of
11 appeals.

12 * Sec. 28. The supreme court may transfer to the court of appeals any
13 matter within the jurisdiction of the court of appeals which is pending in
14 the supreme court on the date on which operations of the court of appeals
15 commence, including matters filed in the supreme court before the effective
16 date of this Act.

17 * Sec. 29. It is the intent of the legislature that the court of appeals
18 commence operations as soon as possible after the effective date of this Act.
19 The administrative director of courts shall immediately take necessary action
20 to provide suitable facilities for the court of appeals. When advised by the
21 supreme court, the judicial council shall meet and submit nominations to the
22 governor for all initial vacancies for judge of the court of appeals.

23 * Sec. 30. Section 14 of this Act takes effect January 1, 1980. The
24 remainder of this Act takes effect July 1, 1979.

Equipment:

Judge

Desk	\$ 600
Credenza	300
Chair	250
Bookcase (3)	450
Dictating Equip- ment (set)	1,200
Side chairs (4)	<u>400</u>

\$3,200 x 3 judges = \$ 9,600

Secretary

Desk	\$ 400
Chair	100
File Cabinet (Lateral)	600
Side chairs (2)	<u>200</u>

\$1,300 x 3 secretaries \$ 3,900

Law Clerk

Desk	\$ 350
Chair	150
File cabinet	200
Typewriter	700
Side chairs (2)	200
Bookcase (2)	<u>200</u>

\$1,800 x 3 = \$ 5,400

File cabinets - for Central Files (5)	1,000
Legal reference materials (statutes, rules, administrative code, reporters, dictionaries).	<u>5,100</u>

Total Equipment \$25,000

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST SB 104
 Bill/Resolution No. _____
 Title An Act Establishing the Intermediate Court of Appeals
 Requested by Senate Judiciary Committee Date 2/9/79

II. FISCAL DETAIL
 Agency Affected Alaska Court System
 Program Category Affected Due Process
 Budget Request Unit(s) Affected Alaska Court System

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES		177.5	376.2	398.8	422.7	448.1
200 TRAVEL		15.0	31.8	33.7	35.7	37.9
300 CONTRACTUAL		57.2	121.3	128.5	136.3	144.4
400 COMMODITIES		5.0	10.6	11.2	11.9	12.6
500 EQUIPMENT		25.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		279.7	539.9	572.2	606.6	643.0

FUNDING (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
GENERAL FUND		279.7	539.9	572.2	606.6	643.0
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
FULL TIME		10	10	10	10	10
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Attachment I - FY 80 Budget Detail

IV. DATE February 12, 1979 PREPARED BY Richard Barrier
 AGENCY Alaska Court System
 PHONE 264-0545
 Original: Legislative Finance
 cc: Budget and Management
 (Prime Sponsor (First Legislator Named))

ATTACHMENT I - FY 80 BUDGET DETAIL

This budget detail for FY 80 is based on the assumption that the effective date of this bill will be July 1, 1979 and that the intermediate court will be operational on January 1, 1980. The fiscal note incorporates all new costs associated with the intermediate court.

With the creation of the intermediate court, and the lessening of the Supreme Court caseload, it will be possible to reduce the FY 80 Supreme Court budget in a number of areas. The request for legal externs, \$30,078, can be deleted, travel expenses reduced by \$20,000, and contractual costs reduced by \$15,000 on an annual basis. Additionally, the Supreme Court is considering reductions in other budget areas, including the deletion of the central legal staff positions in the Supreme Court office, \$35,493, and several budget items in the Trial Court and Administration components.

Personnel:	3 judges: \$54,370 + \$5,900 benefits	\$180,810
	3 secretaries, range 13: \$17,940 + \$5,971 benefits	71,733
	3 law clerks, range 15: \$20,796 + \$6,652 benefits	82,344
	1 court clerk, range 10: \$14,820 + \$5,227 benefits	<u>20,047</u>
		<u>\$354,934</u>
Travel:		\$30,000
Contractual:	Space rental - 4,500 sq. ft. at \$1.10	\$59,400
	Phone, postage	20,000
	Equipment rental	30,000
	Other misc.	<u>5,000</u>
		114,400
Commodities:		10,000
Equipment:		<u>25,000</u>
		534,334

FY 80 EXPENSE

One-time costs:	Equipment	\$ 25,000
Operating Costs:	(1/2 year)	<u>254,667</u>
		\$279,667



Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

February 2, 1979

Honorable Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: The Court of Appeals

Dear Senator Ziegler:

This is in response to your request for background information concerning the proposed intermediate appellate court.

In 1977 the supreme court became increasingly aware that the appellate workload was growing beyond the court's ability to handle it effectively and efficiently. Since 1970, following the increase in the supreme court's membership from three to five justices, the court's case filings have risen from 217 to 630, an increase of 300%. Though there have been slight increases in clerical staff, and two central legal staff assistants added, the supreme court is operating with essentially the same personnel it had in 1972 when the case filings were only 249.

During recent years the court has instituted a number of improvements designed to speed up the appellate process and to allow the court to handle better the increasing caseload.¹ Yet even with these improvements, the backlog of cases awaiting decision by the court continues to rise. In 1977 the chief justice requested the administrative office to explore additional solutions to the workload problems. A copy of the report prepared by this office is enclosed, but the report may be briefly summarized here.

1. These improvements include delegating routine motions to the Clerk of the Court for decision, establishing a strict policy concerning extensions of time for filing briefs, providing a mechanism for parties to agree to a summary decision of their appeals, establishing a screening function for identifying cases that are amenable to summary decision, improving the case status monitoring capabilities, and increased use of per curiam and memorandum decisions.

Among the possible solutions identified in the report were to (1) increase the membership of the supreme court to seven; (2) limit the right of appeal; (3) have the supreme court hear cases in panels of three, with assistance from superior court judges; (4) increase the law clerk staff; and (5) establish an intermediate court of appeals. After reviewing the report, the supreme court determined that increasing the size of the court would not add significantly to its ability to decide more cases. The increased time required to achieve consensus of among more justices and the time required to review more draft opinions would nearly offset the advantage to be gained by having two more justices writing opinions. Limiting the right of appeal was rejected because it was believed that fairness requires that a party be entitled to one appeal. The court also agreed that the use of panels would not provide a significant workload savings and that such savings as would be achieved would only offer a temporary respite. Additionally, the use of panels, particularly if superior court judges were used on the panels, would unduly dilute the supreme court's law-making function. The court decided that an augmented central legal staff could provide some assistance,² but it also recognized that placing too much reliance on legal assistants is not desirable and runs the risk of having appeals decided essentially by law clerks and not by the court.

At the time the supreme court reviewed the report in September of 1977 it agreed that an intermediate appellate court was the one solution that offered the best hope of relieving the court's workload while maintaining the supreme court's essential law making function. The court, however, decided to wait one more year before making a final decision whether to seek the establishment of an intermediate appellate court. In the fall of 1978, it was clear that the workload situation on the court had not altered significantly, even though the appellate filings for 1978 increased only slightly over 1977. The court was deciding more cases than in 1977, writing more opinions, and generally working at a killing pace. Yet the backlog was still rising and at the end of 1978 the court had more cases under advisement and awaiting decision than ever before. The inevitable conclusion to be drawn from this is that even at the current rate of appellate filings, the court cannot keep pace. The backlog of cases awaiting

² The court now has two central staff attorneys working under the direction of the Clerk of the Supreme Court.

Letter to Honorable Robert H. Ziegler, Sr.

Page 3

February 2, 1979

decision will continue to rise and the already significant delay in obtaining a decision on appeal will increase even further, even if appellate filings do not increase. Litigants will find themselves waiting not months, but years, for a decision.

A recent study by this office moreover, shows that there will undoubtedly be an increase in appellate filings over the next ten years. This study found an extremely high historical correlation between population growth and increases in appellate filings. Using the most conservative estimates for population growth (i.e., assuming there is no gas pipeline construction, no increase in litigation from the criminal code, etc.), the appellate filings in the supreme court are projected as follows:

	<u>Expected</u>	<u>High</u>
1981	673	844
1982	729	800
1983	784	856
1984	843	915
1985	906	979
1986	969	1043
1987	1013	1106
1988	1098	1174

Clearly the supreme court cannot handle these anticipated future increases.

We have also recently compared the Alaska Supreme Court's current workload with that of several other supreme courts in the nation at the time that those courts sought and obtained legislation in their states to establish intermediate appellate courts. Although such comparisons are less than totally accurate because courts tend not to measure precisely the same things, it does appear that our supreme court is in very close to the same circumstances as these other courts.

For example, Arizona's intermediate appellate court was established in 1965. During 1964, the Arizona Supreme Court had total appellate filings of 672, slightly more than our court's during 1978. However, the Arizona court, with five justices, terminated only 473 cases in 1964, many fewer than the 560 terminated by our court, and wrote only 177 opinions compared to 237 opinions by the Alaska court last year. Similarly, New Mexico's intermediate court was also established in 1965. During 1964 the New Mexico Supreme Court, also with five justices, disposed of 163 cases by written opinion and terminated a total of 435 cases.

Letter to Honorable Robert H. Ziegler, Sr.
Page 4
February 2, 1979

Although the supreme court clerk's office is still completing its 1978 statistical report, we have attached some preliminary 1978 figures and should have a more complete report shortly. Also attached are reports showing the court's activity during recent years, and a report showing a breakdown of how the 1978 case filings would have been distributed between the proposed court of appeals and the supreme court, based on the proposed criminal jurisdiction of the court of appeals.

The final point of discussion concerning the creation of the court of appeals is its cost versus its benefit to litigants. The projected startup expense for this court for the six month period of January 1, 1980 to June 30, 1980, is \$325,000. The annual operating expense is projected at \$555,000.

Other than the judicial positions and immediate supporting staff, no additional positions are needed, as the clerk's office of the court of appeals will be combined with that of the supreme court.

To a large extent the additional expense associated with the court of appeals will be minimized through cost savings in the supreme court and trial courts. For example, the reduction in workload in the supreme court will eliminate the need for the additional legal research personnel requested in the Fiscal Year 1980 budget. By expediting the appeal process, litigants will experience savings in direct expenses as well as benefiting from the prompt final determination of their cases.

We appreciate very much your assistance with the court of appeals bill. If you wish further information, please let us know.

Sincerely,

Arthur H. Snowden, II

AS/pmr

MEMORANDUM

January 3, 1979

TO: Chief Justice Rabinowitz
Justice Connor
Justice Boochever
Justice Burke
Justice Matthews
Justice Dimond
Arthur H. Snowden, II
Susan Burke ✓
Connie Staska
Jim Babb
Merle Martin
Caroline Hudnall

FROM: Robert D. Bacon, Clerk

SUBJECT: December 1978 Statistics

Attached are preliminary statistical tables for the month of December, 1978.

In a few weeks, this office will issue a more detailed annual statistical report containing information for the full year 1978, including average times that various classes of cases are pending, and making comparisons to prior years.

Some preliminary information revealed by this report: during 1978, there were 630 cases filed or reinstated, up from 613 in 1977. However, the number of appeals declined from 470 to 447, the number of petitions and original applications increased from 143 to 183. During 1978, the court disposed of 560 cases, including 302 on the merits. The comparable figures for 1977 are 450 and 231. At the end of 1978 there were 624 cases pending, an all-time high, and a 12.6% increase over the 554 cases pending on the docket one year ago.

During December, only 24 cases were closed, including only 1 on the merits. These are the smallest numbers for any month in more than two years. The 129 cases under submission and awaiting a draft opinion appears to be the largest number ever.

BA for
RDB

TABLE 11
ALASKA SUPREME COURT
December 31, 1978

	Civil Appeals	Criminal Appeals	Sentence Appeals	TOTAL APPEALS	Petitions for Review	Originals	TOTAL ALL CASES
PENDING DECEMBER 31, 1977	265	207	36	508	41	5	554
FILED OR REINSTATED THRU November 30, 1978	230	118	55	403	141	24	568
FILED OR REINSTATED THIS MONTH	26	17	1	44	15	3	62
TOTAL FILED YEAR-TO-DATE	256	135	56	447	156	27	630
Adjustments	+ 1	- 2	+ 2	+ 1		- 1	0
DISPOSITIONS							
A. By Opinion and Mandate/Published							
Affirmed	42	56	23	121	8	2	131
Affirmed in Part/Reversed or Remanded in Part	24	7	2	33	1		34
Reversed	2	7		9	2	1	12
Reversed and Remanded	26	19	2	47	2		49
Remanded Only	11	5	3	19			19
Sentence Too Lenient			1	1			1
Bar Disciplinary Action						2	2
B. By Memorandum Opinion & Judgment							
Affirmed	6	5	1	12			12
Reversed	1	1		2			2
C. By Summary Order							
Affirmed	2	1		3	3		6
Reversed or Reversed & Remanded	8			8	12		20
Other	1	2		3	6	5	14
TOTAL DISPOSITIONS ON MERITS	123	103	32	258	34	10	302
D. Petitions for Review/Originals Denied					85	14	99
E. Dismissals							
By Agreement or by Appellant	69	18	8	95	4		99
By Court	27	9	3	39	12	1	52
On Motion	6	1		7	1		8
TOTAL DENIALS AND DISMISSALS	102	28	11	141	102	15	258
TOTAL CASE DISPOSITION	225	131	43	399	136	25	560
Reasons for Cases Pending December 31, 1978							
Awaiting Record	67	50	8	125			125
Awaiting Briefs	78	70	12	160	14	5	179
With Central Staff	5	3		8			8
Awaiting Hearing/Submission	33	10	1	44	2		46
Awaiting Draft Opinion	54	40	22	116	13		129
Draft Opinion Circulating	38	24	6	68	11		79
Awaiting Decision on Granting P/R or Orig					16	1	17
Awaiting Mandate or Decision on Rehearing	11	4	2	17	2		19
Stayed or Remanded	11	8		19	3		22
TOTAL CASES PENDING December 31, 1978	297	209	51	557	61	6	624

TABLE I
ALASKA SUPREME COURT
1978 STATISTICAL SUMMARY

Total Cases Pending: December 31, 1977	554
Cases Filed or Reinstated, 1978	630
 <u>Dispositions on Merits to Dec. 31, 1978</u>	
By Opinion and Mandate	248 ¹
By Memorandum Opinion & Judgment	14
By Summary Order	<u>40</u>
Total Dispositions on Merits	302
 <u>Other Dispositions to Dec. 31, 1978</u>	
Dismissals	159
Petition or Application Denied	<u>99</u>
Total Other Dispositions	258
Cases Pending Dec. 31, 1978	624
 <u>Reasons for Cases Pending</u>	
Awaiting Record	125
Awaiting Briefs	179
Awaiting Hearing or Submission	54 ²
Submitted/Awaiting Draft Opinion	129
Submitted/Draft Opinion Circulating	79
Awaiting Decision on Granting Petition for Review	17
Awaiting Mandate or Decision on Rehearing	19
Stayed or Remanded	<u>22</u>
Total Pending Dec. 31, 1978	624

*225 total
awaiting
decision*

1 237 opinions have been published to date. . The numbers differ because in consolidated cases and cross-appeals, more than one case is often disposed of in a single opinion. Moreover, opinions published late in December of one year do not produce case dispositions until the following year.

2 Of these cases, eight were pending with the Central Staff.

TABLE I

ALASKA SUPREME COURT CASE FILINGS 1970-1977

	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>
Regular Appeals and Sentence Appeals Filed	172	197	188	195	208	249	364	470
Petitions for Review Filed	33	12	45	49	60	81	86	126
Original Applications Filed	<u>12</u>	<u>6</u>	<u>16</u>	<u>11</u>	<u>22</u>	<u>7</u>	<u>16</u>	<u>17</u>
Total Filings	217	215	249	255	290	337	466	613

INCREASES

		<u>NUMERICAL</u>	<u>PERCENTAGE</u>
Increase	1970-71	-2	--
	1971-72	+34	16%
all	1972-73	+6	2%
	1973-74	+35	14%
Categories	1974-75	+47	16%
	1975-76	+129	38%
	1976-77	+147	32%
Increase	1973-74	+13	7%
Appeals	1974-75	+41	20%
and	1975-76	+115	46%
Sentence	1976-77	+106	29%
Appeals			

TABLE II

ALASKA SUPREME COURT CASE FILINGS 1975-1977

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>% Increase 1975-1977</u>	<u>% Increase 1976-1977</u>
Appeals					
Civil	151	214	251		
Criminal & Juvenile	76	119	156		
Sentence	<u>22</u>	<u>31</u>	<u>63</u>		
Total Appeals	249	364	470	90%	29%
Petitions for Review	81	86	126		
Original Applications	<u>7</u>	<u>16</u>	<u>17</u>		
Total Filings	337	466	613*	73%	32%

*Case filings for 1977 include 22 reinstated cases.

TABLE III

ALASKA SUPREME COURT DISPOSITION OF CASES 1977

	<u>Opinion and Mandate</u>	<u>Summary Disposition by Order</u>	<u>Dismissed by Court or Parties</u>	<u>Review Denied</u>	<u>Total</u>
Appeals					
Civil	120	5	76		201
Criminal & Juvenile	54	1	33		88
Sentence	<u>21</u>	<u> </u>	<u>19</u>		<u>40</u>
Total Appeals	195	6	128		329
Petitions for Review	16	7	13	67	103
Original Applications	<u>3</u>	<u>4</u>	<u>11</u>	<u> </u>	<u>18</u>
Total	214	17	152	67	450

TABLE IV

ALASKA SUPREME COURT
 FILINGS, DISPOSITIONS AND PENDING CASELOAD 1977

<u>Civil Appeals and Cross Appeals</u>		<u>Sentence Appeals</u>	
Pending 12/31/76	218	Pending 12/31/76	16
Filed or Reinstated 1977	<u>251</u>	Filed or Reinstated 1977	<u>63</u>
Total	469	Total	79
<u>Disposition</u>		<u>Disposition</u>	
By Opinion and Mandate	120	By Opinion and Mandate	21
By Summary Order	5	Dismissed	<u>19</u>
Dismissed	<u>76</u>	Total	40
Total	201	Pending 12/31/77	39
Pending 12/31/77	268	<u>Petitions for Review</u>	
<u>Criminal and Juvenile Appeals</u>		Pending 12/31/76	20
Pending 12/31/76	132	Filed 1977	<u>126</u>
Filed or Reinstated 1977	<u>156</u>	Total	146
Total	288	<u>Disposition</u>	
<u>Disposition</u>		Opinion and Mandate	16
By Opinion and Mandate	54	By Summary Order	7
By Summary Order	1	Dismissed or Withdrawn	13
Dismissed	<u>33</u>	Review Denied	<u>67</u>
Total	88	Total	103
Pending 12/31/77	200	Pending 12/31/77	43

TABLE IV (Continued)

Original Applications

Pending 12/31/76	5
Filed or Reinstated 1977	<u>17</u>
Total	22

Disposition

Opinion and Mandate	3
By Summary Order	4
Dismissed	<u>11</u>
Total	18
Pending 12/31/77	4

Total Pending Cases December 31, 1976	391
Total Filings and Reinstatements 1977	<u>613</u>
Total	1004
Total Dispositions 1977	<u>450</u>
Total Pending December 31, 1977	554

TABLE V
ALASKA SUPREME COURT
REASON FOR CASES PENDING DECEMBER 31, 1977

	C A S E S		A W A I T I N G			STAYED	TOTAL
	RECORDS	BRIEFS	HEARING	DECISION	MANDATE		
<u>Appeals</u>							
Civil Appeals	84	54	22	94	4	10	268
Criminal and Juvenile Appeals	47	62	14	70	1	6	200
Sentence Appeals	<u>6</u>	<u>9</u>	<u> </u>	<u>19</u>	<u>1</u>	<u>4</u>	<u>39</u>
Total Appeals	137	125	36	183	6	20	507
<u>Petitions for Review</u>		12	1	26	2	. 2	43
<u>Original Applications</u>	<u> </u>	<u> </u>	<u>1</u>	<u>3</u>	<u> </u>	<u> </u>	<u>4</u>
TOTAL .	137	137	38	212	8	22	554
% of Total	24.6	24.6	6.9	38.3	1.6	4.0	100%

TABLE VI

ALASKA SUPREME COURT PENDING CASELOAD 1961-1977

	Total Cases Pending at Year End	Regular and Sentence Appeals	Petitions for Review	Other	Increase or Decrease
1961	78	76	1	1	
1962	75	73	1	1	-3
1963	99	96	2	1	+24
1964	66	57	2	7	-33
1965	85	78	5	2	+19
1966	93	85	2	6	+8
1967	100	91	5	4	+7
1968	122	107	3	12	+22
1969	114	100	11	3	-8
1970	165	145	15	5	+51
1971	182	175	3	4	+17
1972	211	183	18	5	+29
1973	188	172	14	2	-23
1974	216	193	20	3	+28
1975	258	241	16	1	+42
1976	391	366	20	5	+133
1977	554	507	43	4	+163
		Percent of Increase	1961-1977	600%	
		Percent of Increase	1968-1977	354%	
		Percent of Increase	1976-1977	41%	

TABLE VII

ALASKA SUPREME COURT
MOTION PRACTICE 1977

	TOTAL 1977
Stay Applications Determined by Single Justices	65
Routine Motions Determined by Single Justices	192
Routine Unopposed Motions Determined by Clerk (estimated)*	800
Substantive Motions Determined by Full Court	182
Petitions for Rehearing [Full Court]	<u>35</u>
TOTAL MOTIONS	1274

*Almost all were unopposed motions to extend time to file briefs and other papers.

SUPREME COURT ACTIVITY, 1977

*Master Copy
Clerk's
file*

*1976 Filings should
be 468
not 466*

The following is the Clerk's annual report of the activity of the Alaska Supreme Court.

I. FILINGS

Total Filings. The total filings in the Alaska Supreme Court increased from 466 in 1976 to 613 in 1977, or an overall increase of 32 per cent. (See Tables I and II for further comparisons.)¹

Appeal Filings. Of the 613 cases filed or reinstated in 1977, 470 were appeals. Of this number, 251 or 53 per cent were civil appeals or cross-appeals. Criminal and juvenile appeals accounted for 156 filings. There were 63 sentence appeals filed.

Petitions for Review and Originals. A total of 126 petitions for review were filed in 1977 as compared to 86 filed in 1976. There were 17 applications for original relief filed in 1977 as compared to 16 filed in 1976.

II. DISPOSITIONS

A total of 450 cases were disposed of by the Supreme Court in 1977. In 1976, 335 cases were disposed of during the year. (See Tables III and IV for details on 1977 case dispositions.)

¹

The increase in filings is a continuing trend. For example, 337 cases were filed in 1975. The 1977 filings mark a 73 per cent increase over 1975.

Of the total 450 cases, 214 (or nearly 50 per cent of dispositions) were disposed of by opinion or mandate.² This figure may be compared with 148 cases disposed of by opinion and mandate in 1976. A total of 17 cases were disposed of by summary order in 1977.

Of the total dispositions in 1977, 152 were cases dismissed by the Court or by the parties. These dismissals represent about one-third of all dispositions and about one-fourth of all 1977 filings. Other dispositions include 67 (or about one-half of filings) petitions for review denied without opinion.

III. PENDING CASELOAD

The pending caseload of the Supreme Court at the end of 1977 was 554 cases. This figure may be compared with 391 cases pending at the end of 1976 and 258 pending at the end of 1975. The pending caseload has almost doubled in two years. (See Tables IV, V, and VI for further analysis of the pending caseload.) The 1976-77 increase in pending cases is more than 40 per cent.

Of the 554 cases pending at the end of 1977, 212 or 38 per cent were awaiting decision. About 25 per cent were awaiting record and another 25 per cent were awaiting briefs. (See Table V for more detail.)

IV. MOTIONS

Over 1,200 motions were processed by the Court in 1977. (See Table VII) Of this number, 182 were substantive motions determined by the full Court and 35 were petitions for rehearing determined by the full Court. A total of 65 stay applications were assigned to individual justices during 1977. The balance of the motions were routine motions determined by a single justice or by the Clerk under the authority of Appellate Rule 14(c).

²

The total of 214 case dispositions by opinion does not match the figure of 189 actual opinions filed in 1977. (See Clerk's report of "Opinions by Justice" dated January 17, 1978.) This is true because the 214 dispositions include a separate accounting of appeals and cross-appeals disposed of in single opinions. Also, the 214 dispositions include some opinions filed in 1976 on which mandates did not issue until 1977.

V. TIME PERIODS FOR DISPOSITION OF APPEALS

For 1977 we have attempted to analyze the time periods for bringing appeals to issue and to decision.

Civil Appeals. For 1977, 101 civil appeal opinions were analyzed. The analysis follows:

1. Number of Days From Notice of Appeal to Mandate

Greatest Number	1,006 days
Least Number	150 days
Average Number	485 days (or one year, 120 days)

3

The time periods for resolving appeals in Alaska may be compared to the standards of timely disposition proposed by the American Bar Association in its Standards Relating to Appellate Courts:

Record Preparation	30 days
Briefing	70 days
Argument	(promptly)
Decision	<u>90 days</u>
Total	190 days

The actual time periods may also be compared to the time limits set by appellate rule and by internal procedures:

Record Preparation	40 days
Briefing	80 days
Argument	30 days
Decision	<u>120 days</u>
Total	270 days

2. Number of Days From Notice of Appeal to Certification of Record (Commencement of Briefing)

Greatest Number	497 days
Least Number	1 day
Average Number	120 days
Median	103 days

3. Number of Days From Certification of Record to Completion of Briefing

Greatest Number	354 days
Least Number	5 days
Average Number	135 days

4. Number of Days From Completion of Briefing to Hearing or Submission

Greatest Number	199 days
Least Number	1 day
Average Number	70 days

5. Number of Days From Hearing or Submission to Mandate

A. Number of Days From Hearing or Submission to Circulating Draft Opinion:

Greatest Number	233 days
Least Number	0 days
Average Number	85 days

B. Number of Days From Circulating Draft Opinion to Publication Date:

Greatest Number	189 days
Least Number	6 days
Average Number	65 days

C. Number of Days From Publication Date to Mandate:

Greatest Number	173 days
Least Number	10 days
Average Number	18 days

Criminal Appeals. A less extensive analysis of 54 1977 criminal and juvenile appeals follows:

1. Total Number of Days From Notice of Appeal to Mandate:

Greatest Number	1,076 days
Least Number	294 days
Average Number (or 1 year, 288 days)	593 days
Median Number	578 days

2. Number of Days From Notice of Appeal to Certification of Record (Commencement of Briefing):

Greatest Number	411 days
Least Number	20 days
Average Number	153 days
Median Number	142 days

3. Number of Days From Certification of Record to Completion of Briefing:

Greatest Number	528 days
Least Number	22 days
Average Number	193 days
Median Number	173 days

4. Number of Days From Completion of Briefing to Hearing or Submission:

Greatest Number	220 days
Least Number	4 days
Average Number	65 days
Median Number	49 days

5. Number of Days From Hearing and Submission to Opinion Publication:

Greatest Number	334 days
Least Number	47 days
Average Number	169 days
Median Number	165 days

Sentence Appeals: A total of 21 sentence appeals were classified as follows:

Number of Days From Notice of Appeal to Opinion Publication:

Greatest Number	662 days
Least Number	130 days
Average Number	304 days
Median Number	263 days

VI. TYPE OF DISPOSITION

Civil Appeals. For 1977, 101 civil appeal opinions were classified as to type of disposition. The classification follows:

Cases Affirmed	48
Cases Affirmed in Part, Reversed in Part	18
Cases Reversed	8
Cases Reversed and Remanded	23
Cases Remanded	<u>4</u>
Total	101

Criminal Appeals. For 1977, 54 criminal and juvenile appeal opinions were classified as to type of disposition. The classification follows:

Cases Affirmed	38
Cases Reversed and Remanded	13
Cases Reversed	<u>3</u>
Total	54

Sentence Appeals: The classification of 21 sentence appeal opinions follows:

Sentences Affirmed	15
Sentences Affirmed in Part, Reversed in Part	1
Sentences Reversed and Remanded	4
Sentences Too Lenient	<u>1</u>
Total	21

January 30, 1979

M E M O R A N D U M

TO: Ms. Susan Burke
Deputy Administrative Director

INFO: Mr. Mel Martin
Technical Operations

FROM: Robert D. Bacon
Clerk, Supreme Court

SUBJECT: Caseload of New Intermediate Appellate Court

As you requested, I have brought down to the end of 1978 the statistics which I sent you on December 1, 1978.

	<u>Pending</u> <u>12/31/78</u>	<u>Filed</u> <u>1978</u>
CIVIL	297	256
Extradition	3	8
Habeas other than extradition	2	2
Criminal Rule 35	3	3
Civil forfeiture of property used to commit crime	3	3
Civil suit re conditions in prison	1	0
Review proceeding re criminal contempt of District Court	1	1
Other civil	284	239
CRIMINAL	209	135
SENTENCE	51	56
PETITION FOR REVIEW	61	156
Civil	34	104
Criminal	27	52
ORIGINAL	6	27
Civil	4	17
Criminal	2	10
TOTAL	624	630
Within jurisdiction of Court of Appeals*	302	270
Within new jurisdiction of Supreme Court*	322	360

* ^{NOT} We do at the present time have an accurate count of matters pending in the Supreme Court which originated in the District Court. Furthermore, this would not be the statistic required for these purposes, since it includes only District Court cases which are appealed a second time from the Superior Court to the Supreme Court. The number of "other civil" cases in this

Ms. Susan Burke
January 30, 1979
Page 2

table, all of which are included in the last item on the table as within the new jurisdiction of the Supreme Court, includes a small number of cases which originated in the District Court and would not in fact be within the new jurisdiction of the Supreme Court. If you or Mel is able to get from the Superior Court the number of appeals filed with them, it would be a more useful statistic than any that this office might be able to provide on District Court cases.

RDB



M E M O R A N D U M

January 31, 1979

TO: Susan Burke
Merle Martin

FROM: Beverly Haywood

SUBJECT: Annual Report Preview

Bob Bacon asked me to send along the attached copies of statistics which will form part of our annual report. Sort of a sneak preview!

BA

BH

TABLE I
1978 RECAPITULATION

	<u>Civil Appeals</u>	<u>Criminal Appeals</u>	<u>Sentence Appeals</u>	<u>Total Appeals</u>	<u>Petitions for Review</u>	<u>Originals</u>	<u>TOTAL</u>
Pending Jan. 1, 1978	268	200	39	507	43	4	554
Filed	253	133	53	439	156	27	622
Reinstated	3	2	3	8	0	0	8
Adjustments ^a	-2	+5	-1	+2	-2	0	0
Closed	225	131	43	399	136	25	560
Pending Dec. 31, 1978	297	209	51	557	61	6	624

a Accounts for cases converted from one category to another during 1978, and for correction of erroneous classifications of certain cases pending January 1, 1978.

TABLE II

1978 DISPOSITIONS

	Civil Appeals	Criminal Appeals	Sentence Appeals	Total Appeals	Petitions for Review	Originals	TOTAL
A. By Opinion & Mandate:							
Affirmed	42	56	23	121	8	2	131
Affirmed in part/reversed or remanded in part	24	7	2	33	1		34
Reversed	2	7		9	2	1	12
Reversed and remanded	26	19	2	47	2		49
Remanded only	11	5	3	19			19
Sentence too lenient			1	1			1
Bar disciplinary action						2	2
<u>Total Dispositions by Opinion & Mandate</u>	105	94	31	230	13	5	248
B. By Memorandum Opinion and Judgment:							
Affirmed	6	5	1	12			12
Reversed	1	1		2			2
C. By Summary Order:							
Affirmed	2	1		3	3		6
Reversed or reversed and remanded	8			8	12		20
Other	1	2		3	6	5	14
TOTAL DISPOSITIONS ON MERITS	123	103	32	258	34	10	302
D. Petitions for Review/ Originals denied					85	14	99
E. Dismissals:							
By Agreement or by appellant	69	18	8	95	4		99
By court	27	9	3	39	12	1	52
On motion	6	1		7	1		8
TOTAL DENIALS & DISMISSALS	102	28	11	141	102	15	258
TOTAL CASE DISPOSITIONS	225	131	43	399	136	25	560

TABLE III - HISTORICAL^a

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>
A. FILINGS ^b				
Civil Appeals	151	214	251	256
Criminal Appeals	76	120	156	135
Sentence Appeals	22	32	63	56
<u>Total Appeals</u>	<u>249</u>	<u>366</u>	<u>470</u>	<u>447</u>
Petitions for Review	81	86	126	156
Originals	7	16	17	27
TOTAL	<u>337</u>	<u>468</u>	<u>613</u>	<u>630</u>
B. DISPOSITIONS				
Civil Appeals	193	141	201	225
Criminal Appeals	12	67	88	131
Sentence Appeals	12	33	40	43
<u>Total Appeals</u>	<u>203</u>	<u>241</u>	<u>329</u>	<u>399</u>
Petitions for Review	84	82	103	136
Originals	10	12	18	25
TOTAL	<u>299</u>	<u>335</u>	<u>450</u>	<u>560</u>
C. DISPOSITIONS				
On Merits	c	148	231	302
P/R and Orig. Denied	c	52	67	99
Dismissals	c	135	152	159
TOTAL	299	<u>335</u>	<u>450</u>	<u>560</u>
D. OPINIONS PUBLISHED	122	142	189	237
E. PENDING END OF YEAR				
Civil Appeals	148	218	268	297
Criminal Appeals	76	132	200	209
Sentence Appeals	17	16	39	51
<u>Total Appeals</u>	<u>241</u>	<u>366</u>	<u>507</u>	<u>557</u>
Petitions for Review	16	20	43	61
Originals	1	5	4	6
TOTAL	<u>258</u>	<u>391</u>	<u>554</u>	<u>624</u>

a The figures for cases pending at the end of 1977 plus 1978 filings minus 1978 dispositions do not equal cases pending at the end of 1978 due to reclassifications and corrections. See footnote a to Table I. The same is true from 1975 to 1976.

b Includes reinstatements.


c Breakdown unavailable.

TABLE IV

CASES PENDING: DECEMBER 31, 1978

	<u>Civil Appeals</u>	<u>Criminal Appeals</u>	<u>Sentence Appeals</u>	<u>Total Appeals</u>	<u>Petitions for Review</u>	<u>Originals</u>	<u>TOTAL</u>
Awaiting Record	67	50	8	125			125
Awaiting Briefs	78	70	12	160	14	5	179
With Central Staff	5	3		8			8
Awaiting Hearing/Submission	33	10	1	44	2		46
Awaiting Draft Opinion	54	40	22	116	13		129
Draft Opinion Circulating	38	24	6	68	11		79
Awaiting Decision on Granting Petition for Review or Original					16	1	17
Awaiting Mandate or Decision On Rehearing	11	4	2	17	2		19
Stayed or Remanded	<u>11</u>	<u>8</u>	<u>—</u>	<u>19</u>	<u>3</u>	<u>—</u>	<u>22</u>
TOTAL	297	209	51	557	61	6	624

SUPREME COURT WORKLOAD:
Analysis of Proposed Solutions



Prepared By:
Office of Staff Counsel
Office of Administrative Director
September 16, 1977

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INTRODUCTION

The caseload of the Alaska Supreme Court has increased sharply over the past three years. While the Court has also increased its disposition of cases over this period, the increase in dispositions has not kept pace with the increase in filings.

In a memorandum dated May 24, 1977, the Chief Justice requested that the Administrative Director obtain data from other states relating to the workload of the supreme court. This same memorandum mentioned three possible methods of dealing with increased caseloads: (1) handling some cases by panels, (2) increasing the size of the court and (3) establishing an intermediate appellate court.

In response to this request the Administrative Office has undertaken a preliminary study of the supreme court workload. This report will present comparative data on the Alaska Supreme Court and the supreme courts in other comparable states. The report will also review several possible methods of dealing with increased caseloads and will discuss the advantages and disadvantages of the various possibilities.

Unfortunately, the report must begin with three caveats. First, it is very difficult to compare the data from various states as there is no widely-used standard method of defining and stating the pertinent information. Every effort has been made to compare only those figures which are truly comparable,

but, at best, the comparative figures in this report are a "good approximation" of the facts. Secondly, the discussions of the various possible methods of dealing with increasing caseloads are not intended to be exhaustive and conclusive. It would require a much more extended study in order to determine the likely effect in Alaska of adopting any one solution, and even the conclusions of such an extended study would necessarily be less than absolutely reliable. This report then attempts to present the alternatives and some of the more likely effects of each possible solution. Finally, although statistics can be gathered from other states and compared with Alaska, this report cannot answer the fundamental question of whether the Alaska Supreme Court is approaching or has reached its limit in terms of the number of cases it can handle without adopting one or more of the alternatives discussed here. There are no standards by which to measure overwork, and the answer ultimately must be the Court's judgment as to whether it can handle more cases without sacrificing quality.

I. STATISTICAL COMPARISON OF ALASKA WITH OTHER STATES

The memo which initiated this study expressed some concern about the relationship of the size and number of appellate courts to the population of the state and information on this relationship provides an interesting backdrop to the other statistical comparisons which follow.

The Court Administrator in Louisiana recently surveyed 52 jurisdictions (50 states plus Puerto Rico and the District of Columbia) to obtain data on the number of appellate judges in relation to population.^{1/} The corrected^{2/} data on Alaska is as follows:

Trial judges per 100,000 population	4.46
Appellate judges per 100,000 population	1.24
Appellate judges per 100 trial judges27.77

These ratios are based on the following figures:

Trial court judges (general jurisdiction in 1975)	18
Intermediate appellate court judges	0
Supreme court justices	5
Population (estimated 1975)	403,000

Of the 46 jurisdictions for which data is available, Alaska ranks tenth from the highest for trial judges per 100,000 population.^{3/} Alaska is in a three-way tie for second place for appellate judges per 100,000 population.^{4/} Alaska ranks sixth,

^{1/} See Appendix I for charts prepared by Louisiana.

^{2/} The ratios calculated by Louisiana were based on an incorrect number of trial court judges (37) and on an incorrect population figure (330,000).

^{3/} The states ranking higher than Alaska are Illinois (5.4), Indiana (4.6), Kansas (5.7), Michigan (5.6), Minnesota (5.5), Nevada (4.7), Oklahoma (5.3), Puerto Rico (6.3) and the District of Columbia (5.9).

^{4/} Alaska is tied with Delaware and the District of Columbia. Only Wyoming ranks higher (1.4).

along with Hawaii, for appellate judges per 100 trial judges.^{5/}

These figures indicate that Alaska already ranks among those states with the highest number of appellate judges in relation to the population. If Alaska should increase the number of appellate judges, either by increasing the size of the supreme court or by creating a new intermediate appellate court, it, of course, would rank even higher. For example, if the size of the supreme court were increased to seven justices, the number of appellate judges per 100,000 population would be 1.73, rather than the current 1.24. Alaska would then have more appellate judges in relation to its population than any of the other 45 jurisdictions included in the chart in Appendix I. If the supreme court remained as it is with five justices and a three-judge intermediate appellate court were created, the ratio would be even higher--1.98 per 100,000 rather than the current 1.24.

It is obvious that the unusually small population of Alaska skews these ratios to some extent, but it is equally obvious that, by any standards, Alaska already has a high number of appellate judges in relation to the population.

^{5/} The states ranking higher than Alaska and Hawaii are Delaware (38.8), Maine (50), New Hampshire (38.4), North Carolina (29) and Wyoming (33.3).

Such a high ratio may not be inappropriate, however, if the number of appellate judges is not high in relation to the amount of litigation in the state. For example, in 1976 in Alaska, 364 new appeals were filed with the supreme court. This is a ratio of 90.32 appeals per 100,000 population. In Idaho, for the same period, 295 new appeals were filed, which is a ratio of only 38.26 appeals per 100,000 population.^{6/} The ratio of appeals in Alaska to the population is more than twice the ratio in Idaho. While the ratio of appellate judges in Alaska to population is about twice the ratio in Idaho, the disparity is offset by the higher ratio of appeals to population.

Some tentative conclusions may be drawn from these figures. First, although the number of appellate judges in Alaska when compared to other states appears to be extremely high in relation to the population, the number is not so high when the amount of litigation in the state is taken into consideration. Secondly, the amount of litigation in Alaska is relatively large in relation to the size of the population.

Without regard to population figures, the charts in Appendix II present comparative data on the workloads of the supreme court

^{6/} Perhaps more interesting is the comparison of appeals to trial court filings. In Idaho for this period there were 262,419 trial court filings, and one appeal for every 889 trial court cases. In Alaska, there were 102,239 trial court filings, or one appeal for every 280 trial court cases. In other words, three times as many cases are appealed in Alaska as in Idaho.

in Alaska and in eight other states.^{7/} These particular states were selected for comparison because, like Alaska, they have no intermediate appellate court, and each of them has a five-justice court except for Maine, which has six justices. Based on the data in Appendix II, the 1976 workload of the Alaska Supreme Court, in comparison with other relatively similar states, appears to be about average.

During 1976, 364 appeals were filed with the Alaska Supreme Court, and 133 opinions were issued. Of the eight other supreme courts reviewed, only Nevada and New Hampshire reported having issued significantly more opinions than did Alaska during 1976.^{8/} The Nevada court issued 252 opinions and had 607 appeals filed during 1976. New Hampshire reported having issued 205 opinions from July 1, 1974, through June 30, 1975.

Three of the eight courts appear to have workloads much lighter than Alaska's. Hawaii reported 253 appeals filed from July 1, 1975 to June 30, 1976, with opinions issued in 84 cases. North Dakota reported for calendar year 1975 that 128 appeals and original proceedings were filed, and 93 opinions were issued. The Wyoming court issued 75 opinions during 1976, with 138 appeals having been filed.

^{7/} Hawaii, Idaho, Maine, New Hampshire, Nevada, North Dakota, Vermont, and Wyoming.

^{8/} The New Hampshire statistics cover fiscal year 1975, the North Dakota statistics cover calendar year 1975, and the Hawaii statistics cover fiscal year 1976. All others cover calendar year 1976.

The three states having apparent caseloads and dispositions nearest to Alaska's were Idaho, Maine and Vermont. During 1976, 351 appeals were filed in the Vermont Supreme Court, and opinions were issued in 141 cases. Idaho reported 295 appeals filed during 1976, and 136 opinions issued. The Maine Supreme Court issued 168 opinions during 1976, but as the following chart indicates, the average number of opinions per justice in Maine was quite comparable to the Alaska average:

<u>STATE</u>	<u>TOTAL OPINIONS</u>	<u>AVERAGE PER JUSTICE</u>
Nevada	252	50.4
New Hampshire	205	41
Maine	168	28
Vermont	141	28.2
Idaho	136	27.2
Alaska	133	26.6
North Dakota	93	18.6
Hawaii	84	16.8
Wyoming	75	15

It is noteworthy, however, that for the first eight months of 1977, the Alaska Supreme Court published 128 opinions. If the court continues to publish opinions at this rate for the remainder of 1977, it could reach a total for the year of over 190 opinions.

Of the states included in this review, six of them have supreme courts which, like Alaska's, have both administrative and rule-making authority.^{9/} Of the remaining two, Nevada has no administrative responsibilities, but does have rule-making authority. The Vermont court, conversely, has administrative responsibilities, but no rule-making authority. The data in Appendix II shows that the Maine and New Hampshire courts, with both administrative and rule-making authority, issued more opinions than did the Vermont court, which lacks rule-making authority. While we know intuitively that a court which does not exercise either administrative or rule-making authority should be able to handle a higher number of cases than a court that does, this data does not tell us to what degree the absence of such responsibilities increases a court's capacity to handle cases.

Furthermore, the comparative data is insufficient to provide an answer to the question of whether the Alaska Supreme Court is approaching or has reached its limit in terms of the number of cases it can handle, or whether the Alaska court could be producing as many opinions as does the Nevada court, for example. Extensive research would be required to determine whether the Alaska Supreme Court is faced with a greater number of complex cases than are the courts that issue more opinions. Even more difficult to determine is the question of whether the quality of the opinions issued by these courts is up to the

present standard of the Alaska court, and whether our court would be willing to sacrifice some quality to increase substantially its rate of dispositions.

II. POSSIBLE SOLUTION TO THE CASELOAD PROBLEM

Although the workload of the Alaska Supreme Court has increased substantially over the last several years, neither the size of the court itself nor the number of law clerks has increased at all.^{10/} During 1976, a total of 364 appeals were filed with the court, as compared to 249 in 1975. This represents an increase in appeal filings of 46% in one year. Because the increase in filings for petitions for review and original applications was not so high, the overall percentage increase in filings from 1975 to 1976 was 38%. Further, a recent statistical report by the Clerk of the Supreme Court showed that the number of pending cases in the "awaiting decision" category as of April 30, 1977, was nearly double the number in that category on the same date in 1976.^{11/} It is therefore understandable that the staff and court are feeling burdened by the workload.

^{10/} Memo dated May 20, 1977, from Donna Spragg Pegues to Chief Justice Boochever.

^{11/} The number in that category on April 30, 1977 was 125, and on April 30, 1976, the number was 64. See, Memorandum to the Justices from Donna S. Pegues, 5/24/77.

The solutions which come most readily to mind and which have been used by other states to cope with increasing appellate caseloads are the following:

1. Increase the size of the supreme court.
2. Establish panels of the supreme court.
3. Limit appeals of right to the supreme court.
4. Establish central research and screening staff.
5. Establish intermediate court of appeals.

This report will review each of these solutions generally:

1. Increase the size of the supreme court. In many ways court expansion appears to be the simplest solution to the case-load problem. Increasing the number of justices on the court would obviously divide the workload among more people, so that the opinion writing burden on each person is reduced--and this is one of the important goals of any change in the appellate system. Court expansion is an attractive solution also in that it would not necessitate any change in appellate procedures.

The use of either a seven-justice or five-justice court would be compatible with the American Bar Association Standards relating to Court Organization, which state in part:

A supreme court should be constituted of an odd number of judges, so the decisions can be reached by majority vote. The number most common and generally satisfactory is seven. This number facilitates the working relationships required to establish concurrence of opinion on difficult legal questions, while at the same time being large enough to provide breadth of viewpoint and the manpower to prepare the opinions: that

are the principal work product of appellate courts. Nevertheless, some appellate courts have operated effectively with five judges . . . [EMPHASIS ADDED]^{12/}

A change in the size of the court could be achieved by an amendment to A.S. 22.05.020, which establishes the composition of the court.^{13/} No constitutional amendment would be necessary, since article IV, section 2(a), of the Alaska Constitution, authorizes the legislature to increase the number of justices upon the request of the supreme court.^{14/}

However, the efficacy of court expansion as a solution to the caseload problem may be illusory. As stated in the American Bar Association Standards on Court Organization, "Adding additional judges to a highest court may actually slow down its operation rather than speeding it up."^{15/} The additional justices

^{12/} American Bar Association Standards Relating to Court Organization, Standard 1.13, at 34 [hereinafter cited as ABA Standards on Court Organization].

^{13/} A.S. 22.05.020 provides: "Composition and general powers. The supreme court is a court of record and consists of three justices including the chief justice. On December 1, 1968, the total number of justices shall be increased to five. The supreme court is vested with 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. It may prescribe by rule the fees to be charged by all courts for judicial justices."

^{14/} Alaska Constitution, article IV, section 2(a) provides: "The supreme court shall be the highest court of the State, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court."

^{15/} ABA Standards on Court Organization at 35.

would certainly make it possible for the court to increase its output of opinions, but, at the same time, each case might take somewhat longer to decide because there would be additional points of view to be dealt with and more justices among whom draft opinions and memoranda would have to circulate. Additionally, each justice would still have to review each draft opinion. Assuming that seven justices would produce more opinions in a given year than would five, the workload on each justice with respect to the opinion review function would actually increase with seven justices. One commentator has described the situation as follows:

[W]hatever added work can be done by the extra judges is dissipated by the increased consultation time, by the difficulties inherent in drafting opinions to accommodate multiple points of view, and by the administrative problems involved in increased personnel.^{16/}

Increasing the size of the supreme court has not been a widely-used method of dealing with appellate caseload problems. In fact, the National Center for State Courts reported to the Idaho committee that no state judiciary had expanded the size of its supreme court in recent years.^{17/}

^{16/} Hufstedler, Constitutional Revision and Appellate Court Decongestants, 44 Wash. L. Rev. 577, 594 (1969), quoted in Donaldson, A Crisis in the Idaho Court System: An "Appealing Remedy", 13 Idaho L. Rev. 1, 4 (1976).

^{17/} An Investigation into the Problems Created by the growing Appellate Caseloads in Idaho, Report of the Supreme Court Appellate Court Committee, August 1977, Draft Report of June 29, 1977, at 37. [Hereafter cited as Draft Idaho Appellate Court Report.]

The projected cost of adding two justices to the supreme court, including staff, space and equipment requirements, would be approximately \$300,000 the first year and \$285,000 each subsequent year.

2. Establish panels of the supreme court. Another possible solution to the caseload problem is to divide the supreme court into panels of three. The advantage of sitting in panels is that, while three judges are hearing arguments or deliberating on or writing opinions relating to certain cases, the other two justices would be free to tend to other work of the court. The use of panels would necessitate some change in the internal procedures of the supreme court, but this solution does have the advantage of not requiring procedural changes for the attorneys or litigants.

There is no constitutional, statutory or administrative requirement that the supreme court sit en banc,^{18/} and Appellate Rule 16 does provide that three justices shall constitute a quorum.^{19/}

^{18/} A.S. 22.05.010(b) does include the following provision: "For the purpose of considering appeals of sentences on [the grounds that the sentence is excessive or too lenient], the supreme court may sit in divisions." [Emphasis added.] It is at least arguable that the principle of statutory construction inclusio unius est exclusio alterius would apply, and, if so, the use of divisions would be valid only for the specified sentence appeals.

^{19/} Appellate Rule 16(a) provides: "A quorum shall consist of a minimum of 3 justices or judges designated to sit on the supreme court."

It therefore appears that the change to panels could be made by internal administrative action, without the necessity of constitutional amendment or legislative action.

The commentators, however, are uniformly opposed to the use of panels by a state's highest appellate court. The American Bar Association Standards on Court Organization, for example, contend that the use of panels dilutes the appellate function, "particularly that of developing the law."^{20/} The American Bar Association Standards Relating to Appellate Courts state a more emphatic position against the use of panels. The Standard itself reads as follows:

3.01 Internal Organization of Appellate Courts.

(a) Supreme Court. In hearing and determining the merits of cases before it, the supreme court should sit en banc. Except for those who may be disqualified for cause or unavoidably absent, all members of the court should participate in the decision of each case. The court should not sit in panels or divisions, whether fixed or rotating, or delegate its deliberative and decisional functions to officers such as commissioners.^{21/}

The Commentary explains the rationale behind this position.

The internal organization of an appellate court should be designed to permit the court to fulfill its functions in the court system. The primary responsibility of a supreme court is that of developing and maintaining the consistency of the

^{20/} ABA Standards on Court Organization at 55.

^{21/} American Bar Association Standards Relating to Appellate Courts, Standard 3.01, at 7-8 [hereinafter cited as ABA Standards on Appellate Courts]

law to be applied in subordinate courts in the system... In deliberating upon and deciding the legal questions that come before it, the supreme court's entire membership should participate so that its collective professional and intellectual resources are brought to bear in the development of the law. To the extent that such a court subdivides itself into panels or divisions, it creates possibilities of conflict or inconsistency in its decisions, which can be resolved only through en banc hearings.

In some states having no intermediate appellate court, the supreme court sits in divisions in order to cope with a caseload which would be too large to handle if the court were to sit en banc in every case. This arrangement has often been used as a means of transition to the establishment of an intermediate appellate court. The result of such an arrangement is that the court functions simultaneously as a court of intermediate review when it sits in divisions and as a court of subsequent review when it sits en banc. If the court's docket in such a system is carefully administered, so that important or difficult cases are identified before being heard and assigned directly for en banc hearing, a single supreme court can handle the system's appellate responsibilities in an effective way. Experience indicates, however, that such an arrangement may persist long after the point has been reached when an intermediate appellate court should have been established.

Moreover, internal inconsistency in the court's decisional product may be ignored or tolerated to an excessive degree in the hope of avoiding the cost of establishing an intermediate court.^{22/}

The blue-ribbon committee which recently studied appellate caseload problems in Idaho considered the possibility of using panels of the supreme court, but the committee finally rejected that alternative:

[T]here seemed to be more arguments against the use of panels than arguments in favor: both of the "outside experts" who testified before the committee, Chief Judge Schwab and Chief Justice

^{22/} Id. at 8-9.

Cameron, urged that any Supreme Court has a law-stating function, and that this function is weakened by the operation of panels within a supreme court. Other committee members felt that decisions by panels should be final only if they are unanimous--meaning that a panel which developed disagreement would then have to return an appeal to the entire appellate body or to another panel, causing further delay. Other committee members felt that panels placed too much emphasis on the luck of the draw, and that panels are not appropriate for decisions of a court of last resort, although they would be useful for an intermediate appellate court. Committee members seemed to take the view that the function of a court of last resort is to take a broad and balanced view of the law and the needs of society, and that dividing any court of last resort into smaller units of decision would interfere with this basic role. The committee finally determined that the use of panels, either in connection with increasing the size of the Supreme Court or within the present structure, is not desirable.^{23/}

In Nevada the legislature in 1976 gave final approval to a constitutional amendment which would permit the supreme court to sit in panels if there are more than five justices on the court. There are currently only five justices on the Nevada court, and this amendment has had no effect in practice, since no implementing legislation has been sought.^{24/}

With the assistance of the Clerk of the Supreme Court, we have attempted to determine how panels might actually operate and to quantify to some extent the reduction in workload that

^{23/} Draft Idaho Appellate Court Report, supra, note 17, at 31-32.

^{24/} David Frank, Legal Assistant to the Nevada Supreme Court, telephone conversation on June 16, 1977.

a panel system could be expected to produce.

By use of a standard mathematical formula, it was determined that in order to have the five justices sit in all possible combinations of three justices each, a total of ten panels would be required. The composition of each panel would be as follows:

Panel 1:	Boochever/Rabinowitz/Connor
Panel 2:	Rabinowitz/Connor/Burke
Panel 3:	Connor/Burke/Matthews
Panel 4:	Burke/Matthews/Boochever
Panel 5:	Matthews/Boochever/Rabinowitz
Panel 6:	Boochever/Connor/Burke
Panel 7:	Connor/Matthews/Boochever
Panel 8:	Matthews/Rabinowitz/Burke
Panel 9:	Burke/Rabinowitz/Boochever
Panel 10:	Matthews/Connor/Rabinowitz

It must be remembered that even if panels are utilized, each justice will still have the responsibility for drafting the same number of opinions each year as he would if panels were not used. The two areas in which the use of panels would reduce the workload of individual justices are in the preparation for oral argument and in the review of draft opinions from other justices. Since each justice will not be participating in four of the ten panels, the time he spends presently on preparation for oral argument and on reviewing drafts would be

reduced by a maximum of 40 percent. Assuming for purposes of illustration that a justice devotes 40 percent of his total time to these two tasks, then the panel system would theoretically reduce his overall workload by 16 percent.^{25/}

In practice, however, the 40 percent reduction figure is unrealistically high when applied to total workload because a certain percentage of the total appeals will be heard by the Court en banc. For example, if the Court had an annual caseload of 200 appeals, and 50 of the 200 were heard en banc, then the workload reduction in the preparation and review functions would be diminished from the maximum 40 percent to 30 percent.^{26/} Again assuming that a justice devotes 40 percent of his total time to these two tasks, the overall savings in workload for that justice would be 12 percent, or 4.8 hours per 40 hour week. And as the ratio of en banc cases to panel cases increases, the workload reductions are further diminished.

Even if the philosophical objections were set aside, the use of panels is generally agreed to be a temporary solution to the workload problem at best. The following chart illustrates that if the caseload continues to increase, then the actual

^{25/} This figure is arrived at by multiplying the 40% reduction by the percent of total time spent on preparation for argument and review of opinions.

^{26/} If only 150 of the total 200 cases are heard by panels, then each justice would not be required to participate in 40% of the 150 panel cases, or 60 cases. These 60 cases represent 30% of the total 200.

workload of each justice under a panel system will approach and finally increase beyond the present actual workload within a relatively short period of time.

Year One

It is assumed that 200 cases will be filed, ready for argument, and decided during the year. It is also assumed that 25% of the total, or 50 cases, will be heard en banc.^{27/}

Each justice must write opinions in 40 cases

Each justice must fully participate in 140 cases*

*50 cases en banc plus 90 cases in panels.

Year Two

It is assumed that the caseload increases by 25%, for a total of 250 cases. 25% of the total, or 63 cases, will be heard en banc.

Each justice must write opinions in 50 cases

Each justice must fully participate in 175 cases*

*63 cases en banc plus 112 cases in panels.

Year Three

It is assumed that the caseload will again increase by 25%, for a total of 325 cases. 25% of the total, or 81 cases, will be heard en banc.

Each justice must write opinions in 65 cases

Each justice must fully participate in 227 cases*

*81 cases en banc plus 146 cases in panels.

^{27/} The estimate of 25% en banc cases was somewhat arbitrary, since a more accurate figure could not be determined. It does, however, take into account the 1976 experience of dissenting opinions filed in 17% of the opinions, with the additional 8% intended to reflect those cases involving important questions of law requiring full court participation. It may be that the estimate is too low to adequately take into account the number of these cases.

Thus after two years, the actual number of cases that each justice must fully participate in will exceed the number of total cases from the hypothetical "Year One."

This chart also illustrates the problems attending the adoption of a solution that is geared toward percentage reductions in workload as is the panel system. At some point along the graph of caseload rise, a court will reach its saturation point. A justice has time to write only a certain number of opinions each year and can participate fully in only a certain number of cases each year without seriously sacrificing the quality of the court's work product. When the saturation point is reached, it hardly matters in practical terms that next year's workload will be reduced by 15 or 20 percent by the use of panels if the actual workload will exceed the capacity of the justices. The court will continue to fall behind, whether panels are utilized or not. At the trial court level, when a court reaches this saturation point, the solution is to add another judge so that judicial capacity is increased. It has been suggested that the panel system will provide real relief only if pro tempore appointments of superior court judges are included on the panels. The inclusion of pro tem justices on panels could be accomplished in at least two different ways.

If an extra judicial position were assumed to exist on the Supreme Court (to be filled each time with a different pro tem justice), then the judicial capacity for use on panels would