

960 HJ SB 104 (FILES NO. 1 and 2)

SB

104

no. 1

MALONE

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REVENUE  
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2#23m

M E M O R A N D U M

January 18, 1980

TO: House Judiciary Committee

Rep. Charles H. Parr, Chairman  
Rep. Nels A. Anderson, Jr., Vice Chairman  
Rep. Ramona L. Barnes  
Rep. Fred E. Brown  
Rep. Thelma Bucholdt  
Rep. Hugh Malone  
Rep. Terry Martin  
Rep. Patrick M. O'Connell  
Rep. Randy Phillips

FROM: Grant Callow  
Alaska Court System

SUBJECT: Revised Supreme Court Caseload Statistics, 1979

Attached are copies of two recent memoranda prepared and circulated by Robert D. Bacon, Clerk of the Supreme Court. The first two pages of Mr. Bacon's statistics provide a brief summary of Supreme Court activity in 1978 and 1979, showing that caseloads have continued to rise. I have also attached a detailed breakdown of filings and dispositions showing trends in the various categories of cases.

I have also attached a press release issued upon publication of the Supreme Court's 2000<sup>th</sup> opinion. It provides an overall picture of the court's activity since statehood. I have highlighted some important points.

Finally, I have prepared updates of graphs contained in the 1978 Court System Annual Report (pp. A-4, A-5) which also help to illustrate caseload trends.

GC

MEMORANDUM

January 3, 1980

TO: Chief Justice Rabinowitz Grant Callow ✓  
 Justice Connor Merle Martin  
 Justice Boochever Dick Emerman  
 Justice Burke Stephanie Cole  
 Justice Matthews Connie Staska  
 Senior Justice Dimond Caroline Hudnall  
 Arthur H. Snowden II

FROM: Robert D. Bacon

SUBJECT: December 1979 Statistics

Attached is the usual Supreme Court statistical information for the month of December.

Detailed statistical information for the full calendar year 1979 will be prepared and distributed by this office within the next few weeks. Some preliminary, unaudited highlights follow.

	<u>1978</u>	<u>1979</u>	<u>% Change</u>
Filings & Reinstatements	630	656	+ 4
Dispositions	560	634	+13
Pending end of year	624	646	+ 4
Opinions published	237	234	- 1
MO&Js issued	15	38	+153
Opinions & MO&Js	252	271*	+ 8

The court is indeed working harder and falling further behind. The 646 pending cases on December 31 compares with an alltime high of 649 last July.

The court only denied two petitions for review in December, State v. A.P.E.A., No. 4963 (the probation officers' guns case), and North Slope Borough v. Hammond, No. 5034 (the Beaufort Sea case).

RDB



\* Lyle v. State, No. 3162, was initially decided by an MO&J, which was then published as an opinion. It is counted among both the opinions and the MO&Js, but only once in the total.

## TABLE I

## ALASKA SUPREME COURT

1979 STATISTICAL SUMMARY THROUGH DECEMBER 31, 1979

Total Cases Pending: December 31, 1978	624
Cases Filed or Reinstated, 1979	656
<u>Dispositions on Merits to December 31, 1979</u>	
By Opinion and Mandate	274 <sup>a</sup>
By Memorandum Opinion & Judgment	36
By Summary Order	<u>28</u>
Total Dispositions on Merits	338
<u>Other Dispositions to December 31, 1979</u>	
Dismissals	196
Petition or Application Denied	<u>100</u>
Total Other Dispositions	296
<u>Cases Pending December 31, 1979</u>	646
<u>Reasons for Cases Pending</u>	
Awaiting Record	91
Awaiting Briefs	210
Awaiting Hearing or Submission	50 <sup>b</sup>
Submitted/Awaiting Draft Opinion	132
Submitted/Draft Opinion Circulating	108
Awaiting Decision on Granting Petition for Review	21
Awaiting Mandate or Decision on Rehearing	17
Stayed or Remanded	<u>17</u>
Total Pending December 31, 1979	646

a    34 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 mandate is issued in the following year.

b    Of these cases, 16 were pending with the central staff.

TABLE II  
ALASKA SUPREME COURT  
December 31, 1979

	Civil Appeals	Criminal Appeals	Sentence Appeals	TOTAL APPEALS	Petitions for Review	Originals	TOTAL ALL CASES
PENDING DECEMBER 31, 1978	297	209	51	557	61	6	624
FILED OR REINSTATED THRU <u>11-30</u> , 1979	272	123	37	432	126	36	594
FILED OR REINSTATED THIS MONTH	33	10	3	46	15	1	62
TOTAL FILED YEAR-TO-DATE	305	133	40	478	141	37	656
Adjustments	-2	-3	+3	-2	+2		0
DISPOSITIONS							
A. By Opinion and Mandate/Published							
Affirmed	63	46	34	143	7	1	151
Affirmed in Part/Reversed or Remanded in Part	8	14	5	27	3		30
Reversed	7	3		10	9		19
Reversed and Remanded	35	17	1	53	6		59
Remanded Only	6	4	2	12	1		13
Sentence Too Lenient				0			0
Bar Disciplinary Action				0		2	2
B. By Memorandum Opinion & Judgment							
Affirmed	18	12	1	31			31
Reversed	1	3	1	5			5
C. By Summary Order		1		1	4	1	6
Affirmed							
Reversed or Reversed & Remanded				0	4	2	6
Other	3		1	4	6	6	16
TOTAL DISPOSITIONS ON MERITS	141	100	45	286	40	12	338
D. Petitions for Review/Originals Denied					80	20	100
E. Dismissals							
By Agreement or by Appellant	71	21	7	99	11		110
By Court	32	16	2	50	19	2	71
On Motion	10	2	1	13		2	15
TOTAL DENIALS AND DISMISSALS	113	39	10	162	110	24	296
TOTAL CASE DISPOSITION	254	139	55	448	150	36	634
Reasons for Cases Pending <u>12-31</u> , 1979							
Awaiting Record	70	19	2	91			91
Awaiting Briefs	106	83	11	200	8	2	210
With Central Staff	4	4	4	12	4		16
Awaiting Hearing/Submission	20	8	3	31	3		34
Awaiting Draft Opinion	69	44	6	119	10	3	132
Draft Opinion Circulating	57	30	12	99	8	1	108
Awaiting Decision on Granting P/R or Orig.				0	21		21
Awaiting Mandate or Decision on Rehearing	12	4		16		1	17
Stayed or Remanded	8	8	1	17			17
TOTAL CASES PENDING <u>12-31</u> , 1979	346	200	39	585	54	7	646

ALASKA COURT SYSTEM NEWS RELEASE

Alaska Supreme Court Issues 2000th Opinion

CONTACT: Robert D. Bacon  
Clerk of Supreme Court  
(907) 465-7410

December 21, 1979

The Alaska Supreme Court Friday issued its 2000th opinion in its 20-year history.

The 2000th opinion affirmed the two-year prison sentence given to Delbert H. Holmes of Anchorage, convicted of assault with a dangerous weapon.

The Alaska Supreme Court was organized in the fall of 1959. It issued its first opinion one day short of 20 years ago, December 22, 1959. That first opinion, by Justice John H. Dimond, discussed the power of the Alaska Housing Authority to condemn private property for redevelopment projects. Justice Dimond retired from the court in 1971, but is annually recalled to active service on the court and continues to carry a substantial caseload.

While it took more than 14 years, until February, 1974, to reach the 1000th opinion, the second thousand have been published in slightly less than six years.

During 1978 and 1979, the court has published more than 230 opinions each year. By comparison, 47 opinions were published in 1965, 72 in 1970, and 122 in 1975.

Few appellate courts in the country write as many opinions. Some with more judges write fewer.

The total number of cases filed with the Supreme Court has similarly skyrocketed in recent years. It took the court eight and a half years, until May 1968, to reach filing No. 1000. The most recent thousand, from No. 4000 in April, 1978, to No. 5000 in November, 1979, took about a year and a half. The total number of filings for 1979 will probably be between 625 and 650.

The number of filings substantially exceeds the number of published opinions because a large number of cases are disposed of without the necessity of a written opinion. Many cases are settled by the parties after they are filed in the Supreme Court but before they are decided. Also, the court is empowered to deny petitions for review of non-final orders of the Superior Court without an opinion or other statement of reasons, and does so in the majority of such cases.

The membership of the Supreme Court was increased from three justices to five in 1968. It has remained at five since that time.

Growth in the court's workload in the past decade, and resultant delays in the decision of cases, have prompted the court's support for pending legislation to create an intermediate Court of Appeals to review certain classes of trial court decisions, subject to discretionary review thereafter in the Supreme Court. The bill has passed the state Senate and awaits action in the House of Representatives at the forthcoming session.

SUPREME COURT

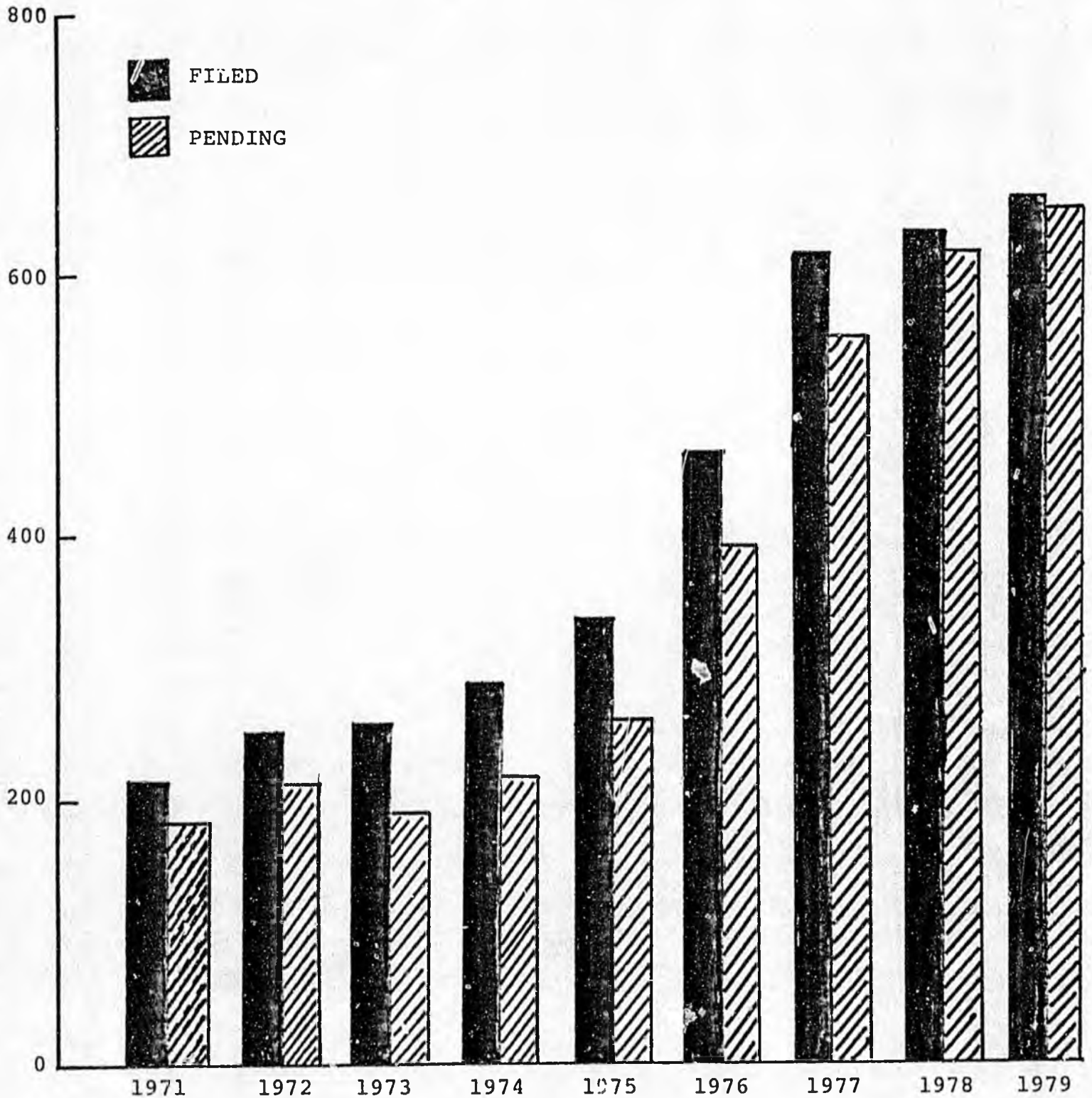
DISPOSITIONS BY TYPE OF DISPOSITION

(1978 and 1979)

TYPE OF CASE	DISPOSITION BY				TOTAL	
	OPINION AND MANDATE ON THE MERITS		DISMISSAL OR OTHER			
	1978	1979	1978	1979	1978	1979
APPEALS:						
CIVIL	123	141	102	113	225	254
CRIMINAL	103	100	28	39	131	139
SENTENCE	32	45	11	10	43	55
PETITIONS FOR REVIEW	34	40	102	110	136	150
ORIGINAL APPLICATIONS	10	12	15	24	25	36
TOTAL	302	338	258	296	560	634
PER CENT CHANGE 1978 to 1979	+12%		+15%		+13%	

# SUPREME COURT FILINGS & PENDING CASELOAD

1971 - 1979



PROPOSED AMENDMENTS TO HCSSB 104

AMENDMENT NO. 1

SUBJECT: District Court Criminal Appeals

- Providing: (1) One appeal by right to Superior Court;
- (2) Discretionary review by intermediate and Supreme Court.

Page 1    Lines 14-16.

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

Lines 25-28.

(b) The court of appeals [HAS APPELLATE JURISDICTION IN ALL ACTIONS AND PROCEEDINGS COMMENCED IN THE DISTRICT COURT AND] may, in its discretion, remand a district court matter to the district or superior court for a trial de novo in whole or in part.

Page 2    Lines 7-11.

(e) An appeal to the court of appeals is a matter of right [IN ALL] only in those actions and proceedings within its jurisdiction that are commenced in the superior court, except that the state has no right of appeal in criminal cases except to test the sufficiency of the indictment or information or to appeal a sentence on the ground that it is too lenient under (d) of this section.

(f) The court of appeals may in its discretion review a final decision of the superior court rendered in an appeal from a district court matter that is within the jurisdiction of court of appeals under AS 22.07.020.

[(f)] (g) A final decision of the court of appeals is binding on the superior court and on the district court unless superseded by a decision of the supreme court.

(h) The supreme court shall prescribe rules of procedure for appeals to the court of appeals.

Page 5    Lines 7-13.

Sec. 22.05.010. JURISDICTION. (a) The supreme court has final appellate jurisdiction in all actions and proceedings. [HOWEVER, A PARTY HAS ONLY ONE APPEAL AS A MATTER OF RIGHT FROM AN ACTION OR PROCEEDING COMMENCED IN EITHER THE DISTRICT OR THE SUPERIOR COURT.]

(b) Appeal to the supreme court is a matter of right only in those actions and proceedings [FROM WHICH THERE IS NO RIGHT OF APPEAL TO THE COURT OF APPEALS UNDER AS 22.07.020] not within the jurisdiction of the court of appeals under AS 22.07.020.

Page 7    Lines 19-29 and Page 8    Lines 1-13.

Delete Sec. 7 (proposed amendments to AS 22.10.020(a) relating to jurisdiction of the superior court).

Page 10    Lines 2-11.

Sec. 22.15.240 APPEAL. (a) Either party as a matter of right may appeal a judgment of the district court in a civil action to the [COURT OF APPEALS] superior court. [WHEN THE SUM IN CONTROVERSY IS NOT LESS THAN \$50, OR FOR THE RECOVERY OF PERSONAL PROPERTY OF THE VALUE OF NOT LESS THAN \$50 EXCLUSIVE OF COSTS IN EITHER CASE, EXCEPT WHEN THE SUM IS GIVEN BY CONFESSION OR WANT OF ANSWER.]

(b) The defendant may appeal a judgment of conviction [GIVEN] rendered in the district court in a criminal action to the [COURT OF APPEALS] superior court. When the judgment is given or a plea of guilty, no appeal may be taken (. . . etc.).

Lines 17-20. (Note: cross-reference to page 8, lines 11-13)

(c) An appeal from the district court shall be taken within thirty days from the date of entry of the judgment. All appeals shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

Page 15    Lines 17-27.

Delete (Concurrent jurisdiction of superior court and court of appeals over district court criminal appeals pending at the time the act goes into effect).

PROPOSED AMENDMENTS TO HCSSB 104

AMENDMENT NO. 1 (Alternate)

SUBJECT: District Court Criminal Appeals

- Providing: (1) Appeal by right to Superior Court;
- (2) Appeal by right to the Court of Appeals from an appeal decision by the Superior Court.

Page 1 Lines 14-16.

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

Page 2 Lines 14-15.

(g) The supreme court shall prescribe rules of procedure for appeals to the court of appeals.

Page 5 Lines 7-10.

Sec. 22.05.010. JURISDICTION. (a) The supreme court has final appellate jurisdiction in all actions and proceedings. [HOWEVER, A PARTY HAS ONLY ONE APPEAL AS A MATTER OF RIGHT FROM AN ACTION OR PROCEEDING COMMENCED IN EITHER THE DISTRICT OR THE SUPERIOR COURT.]

PROPOSED AMENDMENTS TO HCSSB 104

AMENDMENT NO. 2

SUBJECT: Compensation of Court of Appeals Judges

Providing: (1) Individual responsibility for opinion or decision within six months of date of referral.

Page 4 Lines 26-29 and Page 5 Line 1.

"(b) A salary warrant may not be issued to a judge of the court of appeals until he 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 incompleted or undecided by him for a period of more than six months."

PROPOSED AMENDMENTS TO HCSSB 104

AMENDMENT NO. 3

SUBJECT: Judicial officers as delegates to Alaska Constitutional Convention

Providing: (1) Supreme, superior, and district court judges may file for election as delegate to Constitutional Convention.

Page 7 Lines 18-19. (Insert new section as follows:)

Sec. 22.05.130. RESTRICTIONS. A supreme court justice 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 his performance of his judicial duties, nor may he 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 supreme court justice filing for another elective public office other than delegate to a constitutional convention of this state or the United States forfeits his judicial position.

Page 9 Lines 8-9. (Insert new section as follows:)

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 his performance of his judicial duties, nor may he 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 his judicial position.

Page 9 Line 29. (Insert new section as follows:)

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 his performance of his judicial duties, nor may he 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, the 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 elective public office other than delegate to a constitutional convention of this state or the United States forfeits his judicial position.

PROPOSED AMENDMENTS TO HCSSB 104

AMENDMENT NO. 4

SUBJECT: Qualifications for district court judge

Providing: (1) One-year residency requirement

(2) Two-year practice of law requirement

Page 9    Lines 11-14.

(a) A district court 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 one year immediately preceding his appointment, have been engaged for not less than two years immediately preceding his appointment in the active practice of law, and at the time of his appointment be licensed to practice law in the state. The active practice of law shall be as defined for supreme court justices.

PROPOSED AMENDMENTS TO HCSSB 104

AMENDMENT NO. 5

SUBJECT: Effective date of Court of Appeals Bill

Providing: (1) Immediate effective date;

Page 16 Lines 15-16.

\*Sec. 37. This Act takes effect immediately in accordance with AS 01.10.070(c).

M E M O R A N D U M

January 23, 1980

TO: House Judiciary Committee  
Rep. Charles H. Parr, Chairman  
Rep. Nels A. Anderson, Jr., Vice-Chairman  
Rep. Ramona J. Barnes  
Rep. Fred E. Brown  
Rep. Thelma Bucholdt  
Rep. Hugh Malone  
Rep. Terry Martin  
Rep. Patrick M. O'Connell  
Rep. Randy Phillips

FROM: Grant Callow, Alaska Court System

SUBJECT: Proposed amendments to the Court of Appeals Bill,  
HCSSB 104

This memo has been prepared in an effort to assist the House Judiciary Committee in the final drafting of its legislation concerning the creation of an intermediate appellate court. It addresses a number of concerns that have been raised by the Committee, Ms. Berck, and the Supreme Court. Five amendments have been offered for the Committee's consideration that attempt to alleviate these concerns, and are appended.

The following is brief commentary addressing each area of concern:

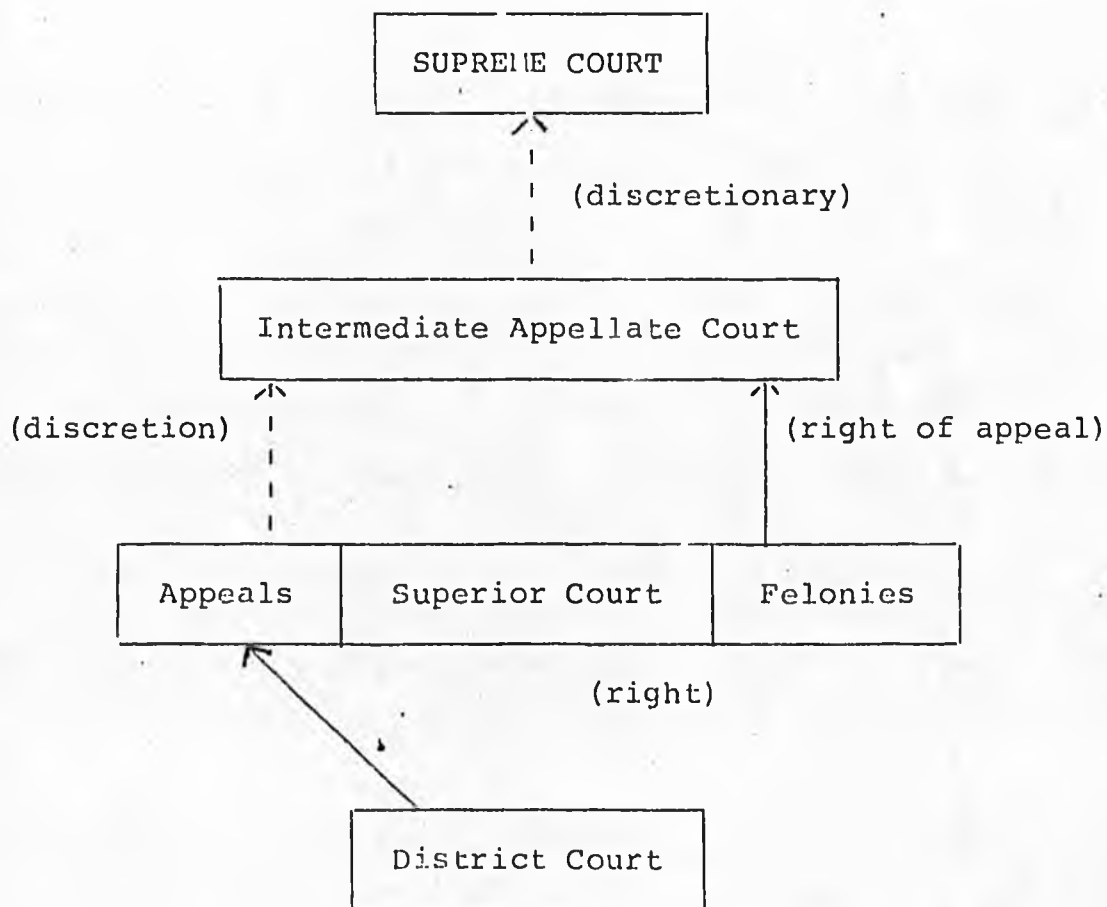
1. Review of District Court Criminal Cases (Amendment No. 1).

The present version of the Court of Appeals bill being considered by the Committee provides that district court criminal cases may be appealed directly to the intermediate appellate court. Serious concern has been expressed over the desirability of providing such direct review, with criticism focusing on the two major following points:

- a. Cost. With the intermediate appellate court based in Anchorage, the cost of appealing a district court case is likely to be prohibitive to the average defendant in district court. Although that court may periodically sit in Fairbanks and Juneau, it seems unlikely this could provide district court defendants with the access to review that the superior courts of the state now provide in terms of geographic dispersion. In addition, the superior courts are better able to supervise the district courts on a regional level, thus helping to insure greater consistency in the district court decision-making.

- b. Volume and Delay. While the figures for 1979 are not yet complete, the number of district court appeals statewide increased over 150 percent. For reasons indicated above, an increase is likely to continue. The most important criminal appeals, of course, will come from the superior court, and therefore should be the primary focus of the intermediate appellate court work. The increase in district court appeals, therefore, is likely to create an undesirable balance in the intermediate court's caseload. It also appears that the superior courts have been valuable in "weeding out" frivolous appeals. Finally, the number of superior court judges make that court level better able to absorb increased district court appeals especially in high volume areas where cases can be allocated and adjusted to workload.

Given these concerns, it seems desirable to continue to channel district court criminal appeals through the superior court. This can be accomplished while at the same time insuring that important cases will still have access to further appeal by providing that cases can be appealed further with certification by the superior or appellate court. This can be diagrammed as follows:



CRIMINAL APPEAL DIAGRAM

This version has the advantage of preserving the "one right of appeal" rule for all criminal cases originating in either district or superior court. This would be accomplished by changes offered in Amendment No. 1, attached.

(Amendment No. 1 - Alternate)

If the Committee decides that all criminal cases should be appealable as a matter of right from the superior court (including superior court appeal decisions from district court criminal cases), then the changes offered in Amendment No. 1 - Alternative, attached, would accomplish this objective.

2. Compensation of Court of Appeals Judges (Amendment No. 2).

The present version of HCSSB 104 places a restriction on any judge of the court of appeals receiving his salary warrant if the court has any opinions or decisions pending more than six months. However, the statutes relating to the supreme court, superior court, district court and magistrates place an individual responsibility on each judge or justice. This is the recommended provision in Amendment No. 2.

In the court of appeals, each case will be assigned to an individual judge for preparation of the opinion, as is the present practice in the supreme court. It is the judge's responsibility to assume that in each case assigned to him, a draft opinion is circulated to the other members of the bench for comment, and a final opinion is issued. He has no control over the cases assigned to other judges, and should therefore not be personally penalized for delay created by other members of the court of appeals.

3. Judges Serving as Delegates to Constitutional Convention (Amendment No. 3).

The present version of the Committee's draft provides that a judge of the court of appeals may seek election as a delegate to a constitutional convention of the state or the United States. (Page 4, lines 17-20 of Committee Draft). This is consistent with sound public policy, allowing all branches of government to be represented at such proceedings. To clarify this, similar statutes relating to supreme court justices and superior and district court judges should be amended to be consistent with the language in the Committee's version of the court of appeals bill.

Suggested amendments have been offered as Proposed Amendment No. 3, attached.

4. Qualifications for District Court Judge (Amendment No. 4).

The present version of HCSSB 104 amends the qualifications for applicants to the district court, by placing a residency requirement of five years instead of the present one year. This would have the effect of reducing the number of qualified applicants for each judicial vacancy. Since Alaska has no law school, a five-year residency requirement would generally result in applicants with five years of legal experience. In a sample of 11 district court positions, the Judicial Council verified that five of the judges who were appointed would not have been eligible to apply with a five-year residency requirement in effect. Assuming that the Judicial Council nominates and the Governor selects only the most qualified applicants, in 5 of these 11 positions a less qualified applicant would have been appointed.

Rather than impose a greater residency requirement, Proposed Amendment No. 4 would establish a two-year practice of law requirement, in place of the no experience requirement in the present law. This would assure that an applicant had some experience, as well as a year's residency in Alaska, before he could apply for a judgeship.

5. Effective Date of Court of Appeals Bill (Amendment No. 5).

Amendment No. 5 establishes an immediate effective date, to permit the Judicial Council to begin advertising as soon as possible for the new judgeships. It requires several months to advertise for, screen, and appoint a new judge and for the new judge to close down his previous practice and begin active duty. The actual effective start-up date for the court of appeals is projected to be July 1, 1980, and the fiscal note requests funding effective that date. However, if recruitment is not commenced prior to that date, it could be October or later before the court is in operation.

M E M O R A N D U M

January 23, 1980

TO: Members of the House Judiciary Committee

FROM: Grant Callow  
General Counsel, Alaska Court System

SUBJECT: Future Supreme Court Caseload Trends

The volume of appellate cases is expected to continue increasing, sometimes dramatically, for the following reasons:

1. Economic and Social Growth. Although the state is presently experiencing a recession, it is most certainly going to be temporary. There is no reason to believe Alaska is going to return to what it was ten or even five years ago. The pressures for development are strong, and come from all sectors of society. Indeed, present indications are that a positive growth trend may resume very soon. Major expansions of the state's infrastructure--roads, bridges, port facilities, etc.--have been proposed, along with a large infusion of capital into the housing market. The gas pipeline is also likely to provide a "mini-boom." Major efforts are being undertaken to expand the bottomfishing industry and tourism as well. These are but a few examples. All this means an expansion of building, commerce, and population, which in turn leads to more contract disputes, regulation challenges, personal injuries, divorces and domestic violence and, regrettably, probably increased crime. History shows that as such phenomena increase, so do court caseloads.
2. Traumatic Economic Changes. Although court caseloads normally rise in direct relation to absolute growth, as indicated above, traumatic economic changes in the economy, either up or down, cause heightened stresses that lead to a flurry of litigation. The pressures of the recession that Alaska has been experiencing are expected to be reflected in increasing caseloads in the future.

3. Changes in the Law. Major changes in both Alaska and federal law have created a wide variety of new legal issues to be resolved. The new Alaska Criminal Code, with its sweeping revisions, has made obsolete many prior interpretive rulings of the Supreme Court. The new code's substantive and categorical changes will provide the basis for far many more new appellate issues and hence a predictable caseload increase. This will more than offset any possible reduction in sentence appeals because of the new code's reduction in sentencing discretion. It is also worth noting that the abolition of plea-bargaining has had a major impact in the appellate caseload. Because more cases have gone to trial, more have been appealed. Between 1974 and 1976 the number of criminal cases appealed increased over 100 per cent. Similarly, changes in the United States Supreme Court--the ascendancy of the "Burger Court"--are also likely to have an impact on state court appellate caseloads. Important new decisions involving civil rights (such as the Bakke case), and fourth amendment search and seizure law, to name but two examples, have opened up areas of the law that appeared relatively settled during the decade of the "Warren Court." Such federal changes can and do increase state court appeals.
4. Increase in Alaska Attorneys. In the past decade, the number of lawyers in the state has increased dramatically, in the order of 400 per cent or more. There are presently in excess of 1,200 attorneys in the state, with well over 100 bar applicants gaining admission to practice each year. This expansion in the number of lawyers, coupled with a recent United States Supreme Court ruling allowing attorney advertising, serves to increase the awareness and availability of legal action to the average person.
5. Relative Youth of Alaska Case Law. An important means of ensuring state autonomy in a federal system, the "common law" or "rule by decision" in each state requires time to develop. The Alaska

Supreme Court has issued over 2,000 opinions and yet its body of common law, compared to nearly every other state, remains relatively undeveloped. Literally hundreds of issues that have long since been settled in other jurisdictions still have yet to be presented to the Alaska courts. Thus, compared to other states, Alaska provides particularly fertile ground for litigation. This helps explain why there has been, and will continue to be, higher levels of appeals in Alaska than in many other states.

MEMORANDUM

January 23, 1980

TO: House Judiciary Committee  
Rep. Charles H. Parr, Chairman  
Rep. Nels A. Anderson, Jr., Vice-Chairman  
Rep. Ramona L. Barnes  
Rep. Fred E. Brown  
Rep. Thelma Bucholdt  
Rep. Hugh Malone  
Rep. Terry Martin  
Rep. Patrick M. O'Connell  
Rep. Randy Phillips

FROM: Grant Callow, Alaska Court System

SUBJECT: The establishment of limits on sentence appeals by sentence length.

This memo has been prepared in response to certain concerns expressed by the Committee members at the January 18, 1980, meeting. Although it cannot, and does not, present a legal opinion of the Supreme Court, it does provide some explanations that hopefully will prove to be helpful.

Given the problem of expanding appellate caseloads, there is justified concern for the costs to the taxpayers in providing criminal defendants the right to sentence review where relatively short sentences are involved. Clearly a balance must be struck between important competing interests. In considering the recent Supreme Court decision<sup>1</sup> regarding its authority to hear sentence appeals, it is important to note that the ruling does not mean that such cost-benefit balancing must be, or will be, ignored. The Wharton decision does not say all sentences are appealable; rather, it implies that the responsibility for striking a proper balance rests to some degree with the Supreme Court.

In establishing a 45-day sentence limit for appeals, the Court was required to engage in such balancing. The balance thus struck does not appear to have done the taxpayers a disservice. In the entire 10-year history of sentence review in Alaska, only one sentence was appealed to the Supreme Court by the defense, on the sole ground of excessiveness, that fell below the time periods of

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1. Wharton v. State, 590 P.2d 427 (Alaska 1979).

the statutes.<sup>2</sup> That was the Wharton case, and involved a sentence of exactly one year. The 45-day rule was enacted in 1976, and yet it took three years for a "test case" to be brought before the Court.

Similarly, there appears to have been no problem with excessive sentence appeals from district to superior courts as a result of the court rule. Of the total 5,451 sentences imposed by the district courts in 1978, the average sentence was only 8 days. Nor did this vary significantly at the regional level. The average length of the 746 district court sentences in Fairbanks that year was 10 days; of the 300 sentences in Juneau, 9 days; and of the 2,725 sentences in Anchorage, 7 days.<sup>3</sup> These figures, of course, are well below the 45-day sentence limit. It is also noteworthy that in 1978, 69 criminal appeals from the district courts were filed in the Anchorage superior court. There were 10 such appeals filed in Juneau, and only 3 in Fairbanks.<sup>4</sup> Although data on what percentage of these were sentence appeals is not available, there has been no indication by the superior court judges that such sentence appeals have been burdensome.

Finally, it must be noted that the Wharton decision does not render the time limits set by statute meaningless. Indeed, the reasoning of the opinion suggests that while the Court has the authority to strike a balance by setting appeal limits below the statutory figures, it could not, even under the pressure of a heavy caseload, set limits in excess of those specified by statute. This is because the statutes represent a guarantee of certain minimum rights. Thus, in terms of separation of powers, a balance has been struck as well.

Please advise if you have any further questions or comments.

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2. Three other cases were brought before the court involving sentences under the statutory limits, but the challenges were based upon constitutional and procedural claims rather than excessiveness. Stock v. State, 526 P.2d 3 (Alaska 1974); Sprague v. State, 590 P.2d 410 (Alaska 1979); Amidon v. State, Opinion No. 1999 (Alaska 1979). For jurisdictional purposes, total jail sentence is the controlling factor. Sandvik v. State, 564 P.2d 20 (Alaska 1977); Andrews v. State, 552 P.2d 150 (Alaska 1976).

3. Source: 1978 Alaska Court System Annual Report, p. D-35.

4. Source: 1978 Alaska Court System Annual Report, p. C-27.

# STATE OF ALASKA THE LEGISLATURE

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

## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

August 21, 1979

SUBJECT: Distinction between a "legislative court" and a  
"constitutional court" (Work Order 7307)

TO: Charles Parr, Chairman  
House Judiciary Committee

FROM: Richard A. Bradley *B*  
Legislative Counsel

The Judiciary Committee has asked that I explain the difference, if any, between a "legislative court" and a "constitutional court". The Committee is concerned with the question whether a legislative court possesses the same inherent powers as a constitutional court. Finally, the Committee asked that the various existing courts be characterized as either constitutional or legislative. [These questions may be asked in the context of SB 104, the "court of appeals" bill, but they do not depend upon the content of that bill for their meaning.]

### I. The Differences.

The constitutional frameworks present in the United States and in the States of the Nation typically establish courts; the constitutions also typically grant to the legislature the authority to establish other courts.

Under the Federal Constitution, judges of constitutional courts, who exercise "the judicial Power of United States", are appointed under Art. III, §1. Judges of legislative courts are appointed under the power granted to Congress by Art I, §8, ¶9 to constitute tribunals inferior to the Supreme Court. On limited occasions Congress blends its authority and the "judicial power of the United States" is conveyed to courts established under Art I. 1/ The Territorial courts

---

1/ Since the "judicial power of the United States" is not granted to courts established under Art. I, the full logic of Federal cases does not apply to the Alaska situation. Compare Art. IV, §1 of the Alaska Constitution.

in Alaska prior to Statehood were courts of this blended character. American Insurance Company v. Canter, 1 Pet. (U.S.) 511 (1828).

The Alaska Constitution contains similar though different concepts. Thus, Art. IV, §1 of the Alaska Constitution provides:

The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. 2/

A constitutional court is, then, a court established in the constitution in specific particulars; a legislative court is one where its establishment and responsibilities are discretionary with the legislature. An implied corollary of this principle recognizes that the constitutional courts very likely will enjoy constitutional protections which may or may not be extended to other courts not established in the Constitution. Art. IV has a number of provisions reflecting this principle.

Thus, Supreme Court justices and Superior Court judges shall be

"citizens of the United States and of the State, [and] licensed to practice law in the State.

Judges of the constitutional courts [the Supreme and Superior Courts] must be nominated by the judicial council and appointed from those nominees by the governor. Art. IV, §5. These judges are subject to electoral confirmation on a nonpartisan ballot under §6. They are retired under the provisions of §11 and they may be removed only by impeachment under §12 [or by rejection under §6]. Their compensation is protected under §11. They are restricted in their activities during the time they hold office by §14.

---

2/ Notwithstanding this suggestion that the jurisdiction of courts shall be prescribed "by law", it seems that in a broad sense, the constitution of the state establishes the jurisdiction of the Supreme court ["the highest court of the State, with final appellate jurisdiction." Art. IV, §2(a)] and of the Superior court ["the trial court of general jurisdiction." Art. IV, §3].

In opposition to all this judges of legislatively established courts [all courts except for the Supreme and Superior Courts]

shall be selected in a manner, for terms, and with qualifications prescribed by law. Art. IV, §4.

I think it is significant to note that the determination whether the constitutional protections are extended to judges not specified in the constitution is, in the constitutional framework, not accidental. The constitution could well have extended these listed protections to any member of the judiciary, whether or not the court on which the member sits is constitutionally defined. 3/

The history of the District Court since Statehood is perhaps the best example of this principle at work. The court was established in 1959 by Ch. 184. Initially it was described as the "district magistrate court". Ch. 24, SLA 1966 shortened the name to its present form. Initially, a district magistrate was appointed by a superior court judge, served at the judge's pleasure, and was not required to be an attorney. Under present law, a district judge is appointed under a legislative formulation that follows the constitutional formula of Art. IV, §5 for judges of the supreme and superior courts. And the procedure has received constitutional review and approval in Delahay v. State, 476 P.2d 908 (1970). The judge is subject to retention elections which parallels the provisions of Art. IV, §6.

And while the question is presently academic, it is likely that the legislature could in its discretion abolish the present scheme for the district judges without constitutional problems. While the legislature may embellish, clarify, and interpret the general framework established in the constitution for the Supreme and the Superior courts, it seems clear

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3/ Another way of stating this conclusion is that I resist the suggestion implied, perhaps, in your request, that there is any general doctrine of law applicable to constitutional courts. Rather, any discussion of the implications of these terms simply raises questions of constitutional interpretation which are unique to each jurisdiction. If the matter is covered in the constitution, its statements establish the law. If the matter is not stated in the constitution, the legislature may prescribe the law.

August 21, 1979

that these courts themselves may not have their character altered in a fashion inconsistent with the constitutional provisions.

These then are the differences between the two kinds of courts. For a constitutional court, the legislature is limited in its ability to experiment by the character of the framework established in the constitution.

For a legislative court, the legislature may follow a constitutional pattern in its establishment of legislative courts, but it is under no obligation to do so. Thus, the legislature may establish a court and provide that the members of the court serve for life, at the pleasure of the governor, are confirmed by the legislature, are elected on partisan, competitive ballots, may have their compensation reduced during tenure. Judges can be attorneys or non-attorneys; can be full-time or part-time.

In short, the legislature may exercise broad discretion in its establishment of legislative courts. Lopez v. Anchorage, \_\_\_P.2d\_\_\_ (No. 1863, Alaska, June 22, 1979).

## II. Inherent powers.

The Committee asked whether a legislative court would possess the same inherent powers as a constitutional court.

The answer to the question must be viewed as somewhat tentative because of certain ambiguities in the constitution as well as in the question itself.

The constitution is somewhat ambiguous. It provides that "the jurisdiction of [all] courts shall be prescribed by law". Art. IV, §1. This phrase would otherwise suggest that the powers of the court, inherent or otherwise, derive from legislative enactment.

At the same time, the constitution establishes the larger part of the Supreme and Superior court jurisdiction: "The supreme court shall be the highest court of the State, with final appellate jurisdiction." [Art. IV, §2(a)]. "The superior court shall be the trial court of general jurisdiction...." [Art. IV, §5].

AS 22.05 and AS 22.10 contain very few provisions not directly implied in the constitutional provisions relating to the Supreme and Superior Court. As a result, the Alaska Constitution is the primary source of the jurisdiction of the two courts.

The question itself is ambiguous because many of the powers of a court that are viewed by attorneys as inherent to a court's basic operation are the result of statute. Thus the power of the courts to issue writs in aid of their jurisdiction would logically be implied if it did not exist by statute. However, it does exist by statute [AS 22.05.010(a); 22.10.020(a)] and is therefore arguably not an inherent power.

There are a number of concerns of a court that may be viewed as inherent.

1. Finality of judgement. In Hayburn's Case, 2 Dall. 409 (1792), the Federal courts refused to act on a petition for a pension since the Act of Congress granting the responsibility to the district courts allowed the Secretary of War and the Congress to review the decision. This review function was viewed as making the administration of the law non-judicial in nature and therefore not within the "judicial power of the United States".

To a large extent the question of granting non-judicial powers to courts is politically moot; I am unaware of any law invalidated or left unenforced by the Alaska courts because of this requirement.

Note that Art. IV, §1 grants the judicial power not only to the Supreme and Superior courts, but also to courts established by the legislature. I assume that a legislative court would therefore possess this requirement.

2. The contempt power. It seems that it is unarguable that all courts in Alaska possess by their nature the power to sanction contempts. Civil Rule 90 suggests this conclusion.

And if there is any doubt on the question, venerable language of the U.S. Supreme Court is instructive:

The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power." Ex parte Robinson, 19 Wall. (U.S.) 505 (1874). 4/

3. Issuance of writs. In Federal courts, the power to issue writs has historically been granted by Congress. Section 13 of the 1789 Judiciary Act was the original source. While the Act gave the power to issue writs under common law principles, the Federal courts have traditionally concurred in the view that an act of Congress is necessary to confer the judicial power to issue writs.

Note that the Supreme court and the Superior court are specifically granted the power to issue writs. AS 22.05.010(5) and 22.10.020(a) both authorize the issuance of "all writs" necessary to the courts' jurisdiction. The district court is implicitly denied the authority to issue writs by the denial to it of equitable jurisdiction. AS 22.15.050(2).

4. Admission and discipline of attorneys. The generally recognized principle of the common law holds that "it rests exclusively with the Court to determine who is qualified to become one of its officers, as an attorney and counsellor, and for what cause he ought to be removed." Chief Justice Taney in Ex parte Secombe, 19 How. (U.S.) 9, 13 (1857).

In Alaska, the Supreme Court has the "inherent and final power and authority to determine standards for admission to the practice of law in this State". In re Stephenson, 511 P.2d 136 (Alaska 1973). Only that court has the power to suspend an attorney from the practice of law. Weaver v. Superior

---

4/ The power of contempt in the Federal system has had statutory derivation since §17 of the Judiciary Act of 1789, 1 Stat. 73, 83. In Michaelson v. United States, 266 U.S. 42 (1924), Justice Sutherland questioned the authority of the Congress to qualify the contempt power: "the attributes which inhere in that power and are inseparable from it can neither be abrogated [by Congress] nor rendered [by it] practically inoperative." (Bracketed material added.)

Court, 572 P.2d 425 (Alaska 1977); Esch v. Superior Court 577 P.2d 1039, 1043-1044 (Alaska 1978). The control that the Supreme Court and other courts in Alaska have over those appearing before them is the power of contempt. There is no question whether any state court possesses this power, supra.

### III. Status of present courts.

The Supreme Court and the Superior Court in Alaska are constitutional courts as that phrase has been used in this memorandum.

They are the only two courts that can ever claim that designation under the present provisions of Art. IV of the Constitution.

Any other court presently in existence or hereafter created in the context of existing constitutional provisions will necessarily be a legislative court. The district court established under AS 22.15 is a legislative court and the proposal for an intermediate appellate court -- the court of appeals -- will be a legislative court.

RAB:slk

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 30, 1979

SUBJECT:           Constitutionality of court of appeals bill  
                      (SB 104)

TO:                 Representative Charles H. Parr, Chairman  
                      House Judiciary Committee

FROM:              Billy G. Berrier *BGB*  
                      Director  
                      Division of Legal Services

You have asked whether a constitutional amendment is needed to create a court of appeals and whether there is a constitutional right of appeal to the Supreme Court.

The legislature has the constitutional power to establish courts in addition to the supreme court and the superior court which are established by the constitution. This right is clearly recognized in Section 1, Article IV of the constitution which provides:

SECTION 1. The judicial power of the State is vested in a supreme court, a superior court and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law. (Emphasis added.)

Therefore no constitutional amendment is necessary to establish the court.

Under the United States Constitution, appellate review in state courts is not required. In Griffin v. Illinois, 351 US 12, 100 L ed 891, 76 S Ct 585 (1956), a leading case by the United States Supreme Court holding that while appellate review is not required, if granted at all it may not be limited so that some persons because of poverty may not effectively exercise the right of appeal of a criminal conviction, the court stated:

"It is true that a state is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all."

In a concurring opinion, Justice Frankfurter elaborated on this saying:

The admonition of de Querville not to confuse the familiar with the necessary has vivid application to appeals in criminal cases. The right to an appeal from a conviction for crime is today so established that this leads to the easy assumption that it is fundamental to the protection of life and liberty and therefore a necessary ingredient of due process of law. "Due process" is, perhaps, the least frozen concept of our law -- the least confined to history and the most absorptive of powerful social standards of a progressive society. But neither the unfolding content of "due process" nor the particularized safeguards of the Bill of Rights disregard procedural ways that reflect a national historic policy. It is significant that no appeals from convictions in the federal courts were afforded (with roundabout exceptions negligible for present purposes) for nearly a hundred years; and, despite the civilized standards of criminal justice in modern England, there was no appeal from convictions (again with exceptions not now pertinent) until 1907. Thus, it is now settled that due process of law does not require a State to afford review of criminal judgments.

Nor does the equal protection of the laws deny a State the right to make classifications in law when such classifications are rooted in reason. "The equality at which the 'equal protection' clause aims is not a disembodied equality. The Fourteenth Amendment enjoins 'the equal protection of the laws,' and laws are not abstract propositions." . . . Again, "the right of appeal may be accorded by the State to the accused upon such terms as in its wisdom may be deemed proper." McKane v. Durston, 153 US 684, 687, 688, 38 L ed 867, 686, 14 S Ct 913. The States have exercised this discriminating power. The different States and the same State from time to time have conditioned criminal appeals by fixing the time within which an appeal may be taken,

by delimiting the scope of review, by shaping the mechanism by which alleged errors may be brought before the appellate tribunal, and so forth.

The clause in our constitution that is the equivalent of the Sixth Amendment is Section 11 of Article I which provides:

"SECTION 11. In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury of twelve; except that the legislature may provide for a jury of not more than twelve nor less than six in courts not of record. The accused is entitled to be informed of the nature and cause of the accusation; to be released on bail, except for capital offenses when the proof is evident or the presumption great; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

The Alaska Supreme Court has taken the position that it is not limited by decisions of the United States Supreme Court or the United States Constitution when it expounds the Alaska Constitution since our constitution may have broader safeguards than the minimum federal standards. It applied this rule of construction to the Sixth Amendment in Baker v. City of Fairbanks, 471 P.2d 386 (1970).

There are, of course, no decisions directly on point in Alaska. Corpus Juris Secundum States:

"In criminal prosecutions an appeal or a writ of error will not lie from an intermediate appellate court to the higher court except in cases in which it is authorized by constitution or statute"

citing numerous cases supporting that rule. In Baker the court said:

"What is ultimately persuasive to us is the strong indication by other courts that fundamental fairness under the Fourteenth Amendment requires the extension of procedural safeguards in the administration of criminal justice to an area of crimes once deemed outside the pale of protection."

Representative Charles H. Parr  
Page 4  
March 30, 1979

The right at question here is being able to appeal, as a matter of right, to the final appellate court in the court from a decision of an intermediate appellate court. Review by the Supreme Court still exists under the bill but the review is in the discretion of the Supreme Court. .

Fundamental fairness clearly does not require appeal as a matter of right in all cases to the final appellate court of a state.

BGB:jdn



Alaska Court System

State of Alaska

RICHARD P. BARRIER  
DEPUTY ADMINISTRATIVE DIRECTOR

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K STREET  
ANCHORAGE, ALASKA 99501

(907) 274-8611

March 23, 1979

Hon. Charles H. Parr  
House of Representatives  
State of Alaska  
Pouch V  
Juneau, AK 99811

Dear Representative Parr:

The Legislature currently has before it HCR 2, the bi-annual recommendations of the Salary Commission concerning the compensation of various public officials, including judicial officers. The Commission developed these recommendations after extensive research and analysis over a period of two years. The proposed salaries in HCR 2 are in fact substantially less than the initial recommendations of the Commission, due to the necessity of complying with the President's Wage and Price guidelines.

The last judicial pay raise was implemented on July 1, 1975. If the Legislature does not adopt the Salary Commission recommendations, this will mean that for the five and one-half years from July 1, 1975 through January 1, 1981, the judiciary will have received no salary increase and will in fact find its salaries reduced in purchasing power by as much as 40 percent due to inflation. If the Legislature adopts the Salary Commission recommendations, the judiciary will receive pay raises amounting to less than three percent per year over the five and one-half year period. While this minimal judicial salary increase is less than half that received by other State employees during the comparable period (estimated at 6 to 7% per year), these salary levels are supported by the Court System in light of the restrictions imposed by the President's guidelines.

When the Salary Commission was established in 1976 the following language was enacted by the Legislature: "It is the policy of the Legislature that the Commission determine the salary schedule and retirement benefits for public officers based upon equitable relationships being maintained among State positions." The underlying purpose of establishing a commission was to develop a rational approach to the setting of salaries rather than relying on a strictly political system of salary setting. The recommendations in HCR 2 represent a judicious balance between the various competing factors in salary setting, including equitable relationships among State positions, cost of living, public opinion, comparison to other states, and salaries in the private sector.

In January 1978 this office prepared a judicial compensation position paper to assist the Commission in developing its salary recommendations. A copy of this 1978 paper is attached for your information. In reviewing the paper, the following updated information should be kept in mind:

1. An additional 10 percent increase in cost of living in 1978.
2. State employee pay raises ranging from seven to ten percent are under consideration for 1979.
3. Twenty-seven states increased their judicial salaries between July 1, 1977 and July 1, 1978. This dropped the salary ranking of the supreme court on a national scale to 41 out of 50 and the superior court to 35 out of 50 (adjusted on the cost of living determined by the Bureau of Labor Statistics for higher budget for a four-person family).

If you have any questions concerning the attached compensation paper, I would be glad to discuss these with you at your convenience,

Sincerely,



Richard P. Barrier  
Deputy Administrative Director

Attachment

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 11 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.

BH *for*  
RDB

ALASKA SUPREME COURT December 31, 1978	Civil Appeals	Criminal Appeals	Sentence Appeals	TOTAL APPEALS	Petitions for Review	Originals	TOTAL ALL CASES
ENDING 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
<b>DISPOSITIONS</b>							
<b>A. By Opinion and Mandate/Published</b>							
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>B. By Memorandum Opinion &amp; Judgment</b>							
Affirmed	6	5	1	12			12
Reversed	1	1		2			2
<b>C. By Summary Order</b>							
Affirmed	2	1		3	3		6
Reversed or Reversed & Remanded	8			8	12		20
Other	1	2		3	6	5	14
<b>TOTAL DISPOSITIONS ON MERITS</b>	<b>123</b>	<b>103</b>	<b>32</b>	<b>258</b>	<b>34</b>	<b>10</b>	<b>302</b>
<b>D. Petitions for Review/Originals Denied</b>							
<b>E. Dismissals</b>							
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
<b>TOTAL DENIALS AND DISMISSALS</b>	<b>102</b>	<b>28</b>	<b>11</b>	<b>141</b>	<b>102</b>	<b>15</b>	<b>258</b>
<b>TOTAL CASE DISPOSITION</b>	<b>225</b>	<b>131</b>	<b>43</b>	<b>399</b>	<b>136</b>	<b>25</b>	<b>560</b>
<b>Reasons for Cases Pending December 31, 1978</b>							
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
<b>TOTAL CASES PENDING December 31, 1978</b>	<b>297</b>	<b>209</b>	<b>51</b>	<b>557</b>	<b>61</b>	<b>6</b>	<b>624</b>

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 <sup>1</sup>
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 <sup>2</sup>
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

## 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 <sup>a</sup>	-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 &amp; 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<sup>a</sup>

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>
A. FILINGS <sup>b</sup>				
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	337	468	613	630
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	299	335	450	560
C. DISPOSITIONS				
On Merits	c	148	231	302
P/R and Orig. Denied	c	52	67	99
Dismissals	c	135	152	159
TOTAL	299	335	450	560
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	258	391	554	624

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>Original</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

Re: Fiscal note

she said that the  
7/80 figure is for 6 mos.

Start-up is expected  
for Jan of 80.

The FY 81 figure is  
for the whole  
fiscal year

(c) • Factory Ok  
F

Points

Criminal

- 200+ cases

- 20 Judges / CTS / Point .

- 2 tier system .

[M.P. Motion]

Supreme Ct .

P5 - ratios

P8 DATA

P26 RIGHT TO APPEAL

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.						
<b>TOTAL</b>		<b>279.7</b>	<b>539.9</b>	572.2	606.6	643.0

FUNDING (Thousands of Dollars)

GENERAL FUND		279.7	539.9	572.2	606.6	643.0
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

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

Original: Legislative Finance PHONE 264-0545  
 cc: Budget and Management

Prepared by \_\_\_\_\_ (Legislator Name)

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, \$85,493, 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

SB

104

#2

Establishing Court  
OF APPEALS



# COMMITTEE REPORT

## HOUSE

FURTHER: FINANCE

March 15, 1979

Date: \_\_\_\_\_

Mr. Speaker:

The Committee on JUDICIARY has had SB 104am

"An Act establishing the court of appeals; eff. date."

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 <sup>House</sup> ACS for SB 104  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

**MEMBERS SIGNING  
DO PASS**

**MEMBERS HAVING  
OTHER RECOMMENDATIONS**

Wesley Anderson / Do Pass

H. Mulock

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Charles H. Pan Do Not Pass

J. Burckhardt No Rec

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Charles H. Pan

CHAIRMAN

Original sponsors: Ziegler, Bradley,  
Meland, et al

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 104 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the judiciary; establishing a court  
7 of appeals; amending the jurisdiction of the supreme  
8 court, the superior court, and the district court;  
9 clarifying and amending the sentence appeal and other  
10 appellate jurisdiction of the superior court; changing  
11 the qualifications of justices and judges; providing  
12 that justices and judges may serve as delegates to  
13 constitutional conventions; amending the time period in  
14 which the judicial council is to provide information to  
15 the public concerning judicial officers standing for  
16 retention election; and providing for an effective  
17 date."

*Changing Rule 21, Rules of Appellate Procedure and Rule 7, District Court*

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

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

20 CHAPTER 07. THE COURT OF APPEALS.

21 Sec. 22.07.010. ESTABLISHMENT. There is established the court of  
22 appeals, consisting of three judges. The court of appeals is a court of  
23 record.

24 Sec. 22.07.020. JURISDICTION. (a) The court of appeals has  
25 appellate jurisdiction in actions and proceedings commenced in the  
26 superior court involving:

- 27 (1) criminal prosecution;
- 28 (2) post-conviction relief;
- 29 (3) children's court matters under AS 47.10.010(a)(1) includ-

1 ing waiver of children's court jurisdiction over a minor under AS 47.10;

2 (4) extradition;

3 (5) habeas corpus;

4 (6) probation and parole; and

5 (7) bail.

6 (b) The court of appeals has jurisdiction to hear appeals of  
7 sentences of imprisonment imposed by the superior court on the grounds  
8 that the sentence is excessive or too lenient and, in the exercise of  
9 this jurisdiction, may modify the sentence as provided by law and the  
10 state constitution.

11 (c) An appeal to the court of appeals is a matter of right in all  
12 actions and proceedings within its jurisdiction, except that the state  
13 has no right of appeal in criminal cases except to test the sufficiency  
14 of the indictment or information or to appeal a sentence on the ground  
15 it is too lenient.

16 (d) The court of appeals may in its discretion (1) review a final  
17 decision of the superior court on an appeal from a district court in an  
18 action or proceeding involving criminal prosecution, post-conviction  
19 relief, extradition, probation and parole, habeas corpus or bail; (2)  
20 review the final decision of the superior court on appeal of a sentence  
21 imposed by the district court. In this subsection "final decision"  
22 means a decision or order, other than a dismissal by consent of all  
23 parties, that closes a matter in the superior court.

24 (e) The court of appeals may issue injunctions, writs and all  
25 other process necessary for the complete exercise of its jurisdiction.

26 (f) A final decision of the court of appeals is binding on the  
27 superior court and on the district court unless superseded by a decision  
28 of the supreme court.

29 Sec. 22.07.030. REVIEW BY SUPREME COURT. A party may apply to the

1 supreme court for review of a final decision of the court of appeals in  
2 accordance with AS 22.05.010 and rules adopted by the supreme court.  
3 Review is in the discretion of the supreme court as set out in AS 22.-  
4 05.010(c). In this section, "final decision" means a decision or order,  
5 other than a dismissal by consent of all parties, that closes a matter  
6 in the court of appeals.

7 Sec. 22.07.040. QUALIFICATIONS OF JUDGES. A judge of the court of  
8 appeals shall be a citizen of the United States and of the state, a  
9 resident of the state for five years immediately preceding his appoint-  
10 ment, have been engaged for not less than eight years immediately pre-  
11 ceding his appointment in the active practice of law, and at the time of  
12 appointment be licensed to practice law in the state. For purposes of  
13 this section, the active practice of law is the same as defined for the  
14 justices of the supreme court in AS 22.05.070.

15 Sec. 22.07.050. OATH OF OFFICE. Each judge of the court of  
16 appeals, upon entering office, shall take and subscribe to the oath or  
17 affirmation of office required of all officers under the constitution.

18 Sec. 22.07.060. APPROVAL OR REJECTION. Each judge of the court of  
19 appeals is subject to approval or rejection as provided in the Alaska  
20 Election Code (AS 15). The judicial council shall conduct an evaluation  
21 of each judge before his retention election and shall provide informa-  
22 tion to the public about the judge and may provide a recommendation  
23 regarding his retention or rejection. The information and any recommen-  
24 dation shall be made public at least 60 days before the election. The  
25 judicial council shall also provide the information and any recomm. nda-  
26 tion to the office of the lieutenant governor in time for publication in  
27 the election pamphlet as required by AS 15.57.025. If a majority of  
28 those voting on the question rejects the candidacy of a judge, he may  
29 not for a period of four years thereafter be appointed to fill a vacancy

1 in the supreme court, the court of appeals, the superior court, or the  
2 district court of the state.

3 Sec. 22.07.070. VACANCIES. (a) The governor shall fill a vacancy  
4 or appoint a successor to fill an impending vacancy in the office of  
5 judge of the court of appeals within 45 days after receiving nominations  
6 from the judicial council, by appointing one of two or more persons  
7 nominated by the council for each actual or impending vacancy. An  
8 appointment to fill an impending vacancy becomes effective upon the  
9 actual occurrence of the vacancy.

10 (b) The office of a judge of the court of appeals becomes vacant  
11 90 days after the election at which he is rejected by a majority of  
12 those voting on the question or for which he fails to file his declara-  
13 tion of candidacy to succeed himself. Upon the occurrence of (1) an  
14 actual vacancy; (2) the certification of rejection following an elec-  
15 tion; or (3) the failure of a judge to file a declaration of candidacy  
16 to succeed himself, the judicial council shall meet within 45 days and  
17 submit to the governor the names of two or more persons qualified for  
18 the judicial office; however, the 45-day period may be extended by the  
19 judicial council with the concurrence of the supreme court. In the  
20 event of an impending vacancy other than by reason of rejection or  
21 failure to file a declaration of candidacy, the judicial council may  
22 meet at any time within the 90-day period immediately preceding the  
23 effective date of the vacancy and submit to the governor the names of  
24 two or more persons qualified for the judicial office.

25 Sec. 22.07.080. RESTRICTIONS. A judge of the court of appeals  
26 while holding office may not practice law, or engage in the conduct of  
27 any other profession, vocation or business for profit or compensation,  
28 which conduct would interfere with his performance of his judicial  
29 duties, nor may he hold office in a political party, or hold any other

1 office or position of profit under the United States, the state or its  
2 political subdivisions. A judge of the court of appeals filing for  
3 another elective public office other than delegate to a constitutional  
4 convention of this state or the United States forfeits his judicial  
5 position.

6 Sec. 22.07.090. COMPENSATION. (a) The monthly salary of a judge  
7 of the court of appeals is equal to Step E, Range 29 of the salary  
8 schedule in AS 39.27.011(a) for Juneau, Alaska. The compensation of a  
9 judge may not be diminished during his term of office, unless by general  
10 law applying to all salaried officers of the state.

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

16 Sec. 22.07.100. PROCESS. Process of the court of appeals shall be  
17 in the name of the State of Alaska, signed by the clerk of the court or  
18 his deputy, dated when issued, sealed with the seal of court, and made  
19 returnable according to rule prescribed by the supreme court.

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

21 Sec. 22.05.010. JURISDICTION. (a) The supreme court has final  
22 appellate jurisdiction in all actions and proceedings. However, a party  
23 has only one appeal as a matter of right from an action or proceeding  
24 commenced in either the district court or the superior court.

25 (b) Appeal to the supreme court is a matter of right only in those  
26 actions and proceedings from which there is no right of appeal to the  
27 court of appeals under AS 22.07.020 or to the superior court under  
28 AS 22.10.020 or AS 22.15.240.

29 (c) A decision of the superior court on an appeal from an adminis-

1 trative agency decision may be appealed to the supreme court as a matter  
2 of right.

3 (d) The supreme court may in its discretion review a final deci-  
4 sion of the court of appeals on application of a party under AS 22.07.-  
5 030. The supreme court may in its discretion review a final decision of  
6 the superior court on an appeal of a civil case commenced in the dis-  
7 trict court. In this subsection "final decision" means a decision or  
8 order, other than a dismissal by consent of all parties, that closes a  
9 matter in the court of appeals.

10 (e) The supreme court may issue injunctions, writs and all other  
11 process necessary to the complete exercise of its jurisdiction.

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

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

17 (b) The supreme court may take jurisdiction of a case pending  
18 before the court of appeals if the court of appeals certifies to the  
19 supreme court that the case involves a significant question of law under  
20 the Consitution of the United States or under the constitution of the  
21 state or involves an issue of substantial public interest that should be  
22 determined by the supreme court.

23 (c) A case filed in the supreme court or in the court of appeals  
24 may not be dismissed by one court on the ground that it is within the  
25 jurisdiction of the other court. The case shall be transferred to the  
26 proper court.

27 \* Sec. 4. AS 22.05.060 is amended to read:

28 Sec. 22.05.060. SEALS OF COURT. The seal of the supreme court is  
29 a vignette of the official flag of the state with the words "Seal of the

1 Supreme Court of the State of Alaska" surrounding the vignette. The  
2 supreme court shall prescribe by rule the seals of court for the court  
3 of appeals and for the superior and district courts.

4 \* Sec. 5. AS 22.05.070 is amended to read:

5 Sec. 22.05.070. QUALIFICATIONS OF JUSTICES. A justice of the  
6 supreme court shall be a citizen of the United States and of the state,  
7 a resident of the state for five [THREE] years immediately preceding his  
8 appointment, have been engaged for not less than eight years immediately  
9 preceding his appointment in the active practice of law, and at the time  
10 of appointment be licensed to practice law in the state. The active  
11 practice of law includes

12 (1) sitting as a judge in a state or territorial court;

13 (2) being actually engaged in advising and representing  
14 clients in matters of law;

15 (3) rendering legal services to an agency, branch, or depart-  
16 ment of a civil government within the United States or a state or terri-  
17 tory of the United States, in an elective, appointive or employed capac-  
18 ity;

19 (4) serving as a professor, associate professor, or assistant  
20 professor in a law school accredited by the American Bar Association.

21 \* Sec. 6. AS 22.05.100 is amended to read:

22 Sec. 22.05.100. APPROVAL OR REJECTION. Each supreme court justice  
23 is subject to approval or rejection as provided in the Alaska Election  
24 Code (AS 15.05 - 15.60). The judicial council shall conduct an evalua-  
25 tion of each justice before his retention election and shall provide to  
26 the public information about that justice and may provide a recommenda-  
27 tion regarding his retention or rejection. Such information and any  
28 recommendation shall be made public at least 60 [30] days before the  
29 retention election. The judicial council shall also provide such infor-

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

7 \* Sec. 7. AS 22.05.130 is amended to read:

8 Sec. 22.05.130. RESTRICTIONS. A supreme court justice while  
9 holding office may not practice law, nor engage in the conduct of any  
10 other profession, vocation or business for profit or compensation, which  
11 conduct would interfere with his performance of his judicial duties, nor  
12 may he hold office in a political party, or hold any other office or  
13 position of profit under the United States, the state [,] or its poli-  
14 tical subdivisions. A supreme court justice filing for another elective  
15 public office other than delegate to a constitutional convention of  
16 this state or the United States forfeits his judicial position.

17 \* Sec. 8. AS 22.10.020(a) is amended to read:

18 (a) The superior court is the trial court of general jurisdiction,  
19 with original jurisdiction in all civil and criminal matters, including  
20 but not limited to probate and guardianship of minors and incompetents.  
21 The jurisdiction of the superior court extends over the whole of the  
22 state. The superior court and its judges may issue injunctions, writs  
23 of review, mandamus, prohibition, habeas corpus and all other writs  
24 necessary or proper to the complete exercise of its jurisdiction. A  
25 writ of habeas corpus may be made returnable before any judge of the  
26 superior court. The superior court has jurisdiction in all matters  
27 appealed to from a subordinate court, or administrative agency when  
28 appeal is provided by law. Appeals are a matter of right, but no appeal  
29 from a subordinate court may be taken by the defendant in a criminal

1 case after a plea of guilty, except on the ground that the sentence was  
2 excessive, as further provided by this section. The state has no right  
3 to appeal in criminal cases [NO APPEAL MAY BE TAKEN BY THE STATE],  
4 except to test the sufficiency of an indictment or information or to  
5 appeal a sentence on the ground it is too lenient. An appeal to the  
6 superior court may be taken on the ground that a sentence of impri-  
7 sonment of 90 [180] days or more was excessive and the superior court in  
8 the exercise of this jurisdiction has the power to modify the sentence  
9 appealed from [UPWARD OR] downward. When a sentence is appealed by the  
10 state on the ground it is too lenient, the court may not increase the  
11 sentence but may express its approval or disapproval of the sentence and  
12 its reasons in a written opinion. The hearings on appeal from a final  
13 order or judgment of a subordinate court or administrative agency shall  
14 be on the record unless the superior court, in its discretion, grants a  
15 trial de novo, in whole or in part.

16 \* Sec. 9. AS 22.10.090 is amended to read:

17 Sec. 22.10.090. QUALIFICATIONS OF JUDGES. A judge of the superior  
18 court shall be a citizen of the United States and of the state, a resi-  
19 dent of the state for five [THREE] years immediately preceding his  
20 appointment, have been engaged for not less than five years immediately  
21 preceding his appointment in the active practice of law, and at the time  
22 of appointment be licensed to practice law in the state. The active  
23 practice of law shall be as defined for justices of the supreme court in  
24 AS 22.05.070.

25 \* Sec. 10. AS 22.10.150 is amended to read:

26 Sec. 22.10.150. APPROVAL OR REJECTION. Each superior court judge  
27 is subject to approval or rejection as provided in the Alaska Election  
28 Code (AS 15.05 - 15.60). The judicial council shall conduct an evalua-  
29 tion of each judge before his retention election and shall provide to

1 the public information about the judge and may provide a recommendation  
2 regarding his retention or rejection. Such information and any recom-  
3 mendation shall be made public at least 60 [30] days before the reten-  
4 tion election. The judicial council shall also provide such information  
5 and any recommendation to the office of the lieutenant governor in time  
6 for publication in the election pamphlet under AS 15.57.025. If a major-  
7 ity of those voting on the question rejects his candidacy, he shall not  
8 for a period of four years thereafter be appointed to fill any vacancy  
9 in the supreme court, court of appeals, [OR] superior courts, or district  
10 courts of the state.

11 \* Sec. 11. AS 22.10.180 is amended to read:

12 Sec. 22.10.180. RESTRICTIONS. A superior court judge while  
13 holding office may not practice law, nor engage in the conduct of any  
14 other profession, vocation or business for profit or compensation,  
15 which conduct would interfere with his performance of his judicial  
16 duties, nor may he hold office in a political party, or hold any other  
17 office or position of profit under the United States, the state or  
18 its political subdivisions. A superior court judge filing for an-  
19 other elective public office other than delegate to a constitutional  
20 convention of this state or the United States forfeits his judicial  
21 position.

22 \* Sec. 12. AS 22.15.160(a) is amended to read:

23 (a) A district judge shall be a citizen of the United States and  
24 of the state, at least 21 years of age, a resident of the state for at  
25 least five years [ONE YEAR] immediately preceding his appointment, and  
26 (1) have been engaged in the active practice of law for not less than  
27 three years immediately preceding his appointment and at the time of his  
28 appointment licensed to practice law in the State of Alaska; or (2)  
29 have served for at least seven years as a magistrate in the state. The

1 supreme court may prescribe additional qualifications.

2 \* Sec. 13. AS 22.15.195 is amended to read:

3 Sec. 22.15.195. APPROVAL OR REJECTION. Each district court judge  
4 is subject to approval or rejection as provided in the Alaska Election  
5 Code (AS 15.05 - 15.60). The judicial council shall conduct an evalua-  
6 tion of each judge before his retention election and shall provide to  
7 the public information about the judge and may provide a recommendation  
8 regarding his retention or rejection. Such information and the recom-  
9 mendation shall be made public at least 60 [30] days before the elec-  
10 tion. The judicial council shall also provide such information and any  
11 recommendation to the office of the lieutenant governor in time for  
12 publication in the election pamphlet under AS 15.57.025. If a majority  
13 of those voting on the question rejects his candidacy, he shall not for  
14 a period of four years thereafter be appointed to fill any vacancy in  
15 the supreme court, court of appeals, superior courts or district courts  
16 of the state.

17 \* Sec. 14. AS 22.15.210(a) is amended to read:

18 (a) A district judge [,] while holding office [,] may not practice  
19 law, nor engage in the conduct of any other profession, vocation or  
20 business for profit or compensation, which conduct would interfere with  
21 his performance of his judicial duties, nor may he hold office in a  
22 political party, or hold any other office or position of profit under  
23 the United States, the state or its political subdivisions, except that,  
24 with the approval of the chief justice of the Alaska Supreme Court, a  
25 [THE] district judge may be appointed deputy clerk of the superior court  
26 and may hold the office of United States magistrate. A district judge  
27 who files for another elective public office other than delegate to a  
28 constitutional convention of this state or the United States forfeits  
29 his judicial position.

1 \* Sec. 15. AS 22.15.240 is amended to read:

2       Sec. 22.15.240. APPEAL. (a) Either party may appeal a judgment  
3 of the district court in a civil action to the superior court [WHEN THE  
4 SUM IN CONTROVERSY IS NOT LESS THAN \$50, OR FOR THE RECOVERY OF PERSONAL  
5 PROPERTY OF THE VALUE OF NOT LESS THAN \$50 EXCLUSIVE OF COSTS IN EITHER  
6 CASE, EXCEPT WHEN THE SUM IS GIVEN BY CONFESSION OR FOR WANT OF AN  
7 ANSWER].

8       (b) The defendant may appeal a judgment of conviction given in the  
9 district court in a criminal action to the superior court. When the  
10 judgment is given on a plea of guilty, no appeal may be taken by the  
11 defendant except on the ground that a sentence of imprisonment of 90  
12 [180] days or more was excessive [; HOWEVER, THE SUPREME COURT BY RULE  
13 MAY FURTHER PROVIDE FOR REVIEW OF A JUDGMENT GIVEN ON A PLEA OF GUILTY].  
14 The state has no right of appeal in criminal actions for which judgment  
15 is given in the district courts, except t. test the sufficiency of the  
16 information or to appeal a sentence on the ground it is too lenient.  
17 When a sentence is appealed by the state on the ground it is too le-  
18 lenient, the court may not increase the sentence but may express its ap-  
19 proval or disapproval of the sentence and its reasons in a written  
20 opinion.

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

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

27 \* Sec. 16. AS 22.20.010 is amended to read:

28       Sec. 22.20.010. JUDICIAL OFFICER DEFINED. The term "judicial  
29 officer" means a supreme court justice, including the chief justice,

1 a judge of the court of appeals, a judge of the superior court, a dis-  
2 trict judge and a magistrate.

3 \* Sec. 17. AS 22.20.110 is amended to read:

4 Sec. 22.20.110. DUTY OF THE COMMISSIONER IN THE COURT OF APPEALS,  
5 THE SUPERIOR COURT AND DISTRICT COURTS. When required by the supreme  
6 court, the commissioner shall serve and execute all process issued by  
7 the court of appeals, the superior court and the district courts, attend  
8 to and wait upon grand and petit juries, maintain order, attend the  
9 sessions of the courts, and exercise the power and perform the duties  
10 concerning all matters within the jurisdiction of the courts as may be  
11 assigned to him. The commissioner is the executive officer of the court  
12 of appeals, the superior court and district courts.

13 \* Sec. 18. AS 22.25.010(g) is amended to read:

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

17 \* Sec. 19. AS 22.30.080(2) is amended to read:

18 (2) "judge" means a justice of the supreme court, a judge of  
19 the court of appeals, a judge of the superior court, or a judge of the  
20 district court who is the subject of an investigation or proceeding  
21 under sec. 10, art. IV, Constitution of the State of Alaska and this  
22 chapter.

23 \* Sec. 20. AS 11.56.900(2) is amended to read:

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

27 \* Sec. 21. AS 15.15.030(10) is repealed and re-enacted to read:

28 (10) A separate nonpartisan judicial ballot shall be desig-  
29 nated for each judicial district in which a justice or judge is seeking

1 to succeed himself. The ballot shall be divided into four parts and  
 2 each part shall bear a heading indicating the court to which the candi-  
 3 date is seeking approval. Within each part the question of whether the  
 4 justice or judge shall be approved or rejected shall be set out in  
 5 substantially the following manner: (A) "Shall . . . . . be re-  
 6 tained as justice of the supreme court for 10 years?"; (B) "Shall . . .  
 7 . . . . be retained as judge of the court of appeals for eight years?";  
 8 (C) "Shall . . . . . be retained as judge of the superior court for  
 9 six years?"; or (D) "Shall . . . . . be retained as judge of the  
 10 district court for four years?" Provision shall be made for marking  
 11 each question "Yes" or "No".

12 \* Sec. 22. AS 15.35 is amended by adding new sections to read:

13 Sec. 15.35.140. APPROVAL OR REJECTION OF A JUDGE OF THE COURT OF  
 14 APPEALS. Each judge of the court of appeals is subject to approval or  
 15 rejection at the first general election held more than three years after  
 16 his appointment. If approved, he is thereafter subject to approval or  
 17 rejection in a like manner every eighth year.

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

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

27 Sec. 15.35.170. PLACING NAME OF JUDGE OF THE COURT OF APPEALS ON  
 28 BALLOT. The lieutenant governor shall place the name of a judge of the  
 29 court of appeals who has properly filed a declaration of candidacy on

1 the judicial ballot in each judicial district of the state for the  
2 general election at which approval is sought.

3 \* Sec. 23. AS 15.57.025 is amended to read:

4 Sec. 15.57.025. INFORMATION AND RECOMMENDATIONS ON JUDICIAL OFFI-  
5 CERS. No later than 60 days before the applicable state election, the  
6 judicial council shall file with the lieutenant governor a statement  
7 including information about each supreme court justice, court of appeals  
8 judge, superior court judge, and district court judge who will be sub-  
9 ject to a retention election, following the evaluation of each such  
10 justice or judge conducted by the judicial council according to law.  
11 Each such statement may not exceed 300 words.

12 \* Sec. 24. AS 15.57.040(2) is amended to read:

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

15 \* Sec. 25. AS 24.55.330(2) is amended to read:

16 (2) "agency" includes a department, office, institution,  
17 corporation, authority, organization, commission, committee, council or  
18 board of a municipality or in the executive, legislative or judicial  
19 branches of the state government, and a department, office, institution,  
20 corporation, authority, organization, commission, committee, council or  
21 board of a municipality or of the state government independent of the  
22 executive, legislative and judicial branches; it also includes an offi-  
23 cer, employee or member of an "agency" acting or purporting to act in  
24 the exercise of his official duties, but does not include the governor,  
25 lieutenant governor, a member of the legislature, justice of the supreme  
26 court, judge of the court of appeals, a superior court judge, [OR]  
27 discript court judge, magistrate, member of a city council or borough  
28 assembly, elected city or borough mayor, or a member of an elected  
29 school board;

1 \* Sec. 26. AS 39.20.310(1) is amended to read:

2 (1) members of the state legislature, the governor, the  
3 lieutenant governor, and justices and judges of the supreme and superior  
4 courts and of the court of appeals, but nothing in AS 39.20.220 -  
5 39.20.330 may be construed to diminish the salaries fixed by law for  
6 these officers by reason of absence from duty on account of illness or  
7 otherwise;

8 \* Sec. 27. AS 39.35.680(21)(C)(vi) is amended to read:

9 (vi) justices of the supreme court or judges of the  
10 court of appeals or of the superior or district courts of  
11 Alaska;

12 \* Sec. 28. AS 39.50.200(2) is amended to read:

13 (2) "judicial officer" means a person appointed as a justice  
14 to the supreme court or as a judge to the court of appeals, superior  
15 court, district court, or magistrate court.

16 \* Sec. 29. AS 12.55.120(a) is amended to read:

17 (a) A sentence of imprisonment lawfully imposed by the superior  
18 court for a term or for aggregate terms of [EXCEEDING] one year or more  
19 may be appealed to the court of appeals [SUPREME COURT] by the defendant  
20 on the ground that the sentence is excessive. By appealing a sentence  
21 under this section, the defendant waives the right to plead that by a  
22 revision of the sentence resulting from the appeal he has been twice  
23 placed in jeopardy for the same offense.

24 \* Sec. 30. AS 12.55.120(b) is amended to read:

25 (b) A sentence of imprisonment lawfully imposed by the superior  
26 court may be appealed to the court of appeals [SUPREME COURT] by the  
27 state on the ground that the sentence is too lenient; however, when a  
28 sentence is appealed by the state and the defendant has not appealed the  
29 sentence, the court is not authorized to increase the sentence but may

1 express its approval or disapproval of the sentence and its reasons in a  
2 written opinion.

3 \* Sec. 31. AS 12.55.120 is amended by adding a new subsection to read:

4 (d) A sentence of imprisonment lawfully imposed by the district  
5 court for a term or for aggregate terms exceeding 90 days may be ap-  
6 pealed to the superior court by the defendant on the ground that the  
7 sentence is excessive. By appealing a sentence under this section, the  
8 defendant waives the right to plead that by a revision of the sentence  
9 resulting from the appeal he has been twice placed in jeopardy for the  
10 same offense. A sentence of imprisonment lawfully imposed by the dis-  
11 trict court may be appealed to the superior court by the state on the  
12 ground that the sentence is too lenient; however, when a sentence is  
13 appealed by the state, the court may not increase the sentence but may  
14 express its approval or disapproval of the sentence and its reasons in a  
15 written opinion.

16 \* Sec. 32. A judge of the court of appeals is not required to contribute  
17 to the retirement system under AS 22.25.011 if, at the time of his appoint-  
18 ment to the court of appeals, he holds a judicial office to which the retire-  
19 ment benefits of AS 22.25 apply and to which he was appointed before July 1,  
20 1978.

21 \* Sec. 33. Notwithstanding the effective date of this Act, operations of  
22 the court of appeals shall begin on a date determined by the supreme court  
23 after all judges of the court of appeals have taken office.

24 \* Sec. 34. Cases pending in the supreme court on the date on which the  
25 operations of the court of appeals begin which have been heard by or sub-  
26 mitted to the supreme court on the briefs on or before that date shall be  
27 retained by the supreme court for decision. The supreme court may transfer  
28 to the court of appeals all other pending cases within the jurisdiction of  
29 the court of appeals.

1 \* Sec. 35. It is the intent of the legislature that the court of appeals  
 2 begin operations as soon as possible after the effective date of this Act.  
 3 The administrative director of courts shall immediately take necessary action  
 4 to provide suitable facilities for the court of appeals. When advised by the  
 5 supreme court, the judicial council shall meet and submit nominations to the  
 6 governor for the initial vacancies for judge of the court of appeals.

7 \* Sec. 36. The amendments enacted in secs. 5, 9 and 12 of this Act apply  
 8 only to justices and judges appointed on or after the effective date of this  
 9 Act.

10 \* Sec. 38. This Act takes effect immediately in accordance with AS 01.10.  
 11 070(c).

*Section 37 and sec. 15 and sec. 31*  
 12  
 13 ~~Sec. 37~~ Sections of this Act have the effect  
 14 of changing Rule 21, Rules of Appellate  
 15 Procedure and Rule 7, District Court  
 16 Criminal Rules by amending AS 12.020(a), AS 22.15.240,  
 17 to provide that a ~~90 day~~ <sup>90 day</sup> ~~may~~ be  
 18 ~~appealed.~~ <sup>appealed.</sup>  
 19  
 20  
 21

22 \* Sec. 38. Section 29 of this Act has the effect  
 23 of changing Rule 21, Rules of Appellate Procedure  
 24 by amending AS 12.55.100(a) to provide that a  
 25 ~~period of one year or more~~ <sup>may be appealed</sup>  
 26  
 27 *new sec 37*  
 28 *attached*  
 29

*AS 12.55*

1 \* Sec. 37. Sections 8, 15 and 31 of this Act have the effect of changing  
2 Rule 21, Rules of Appellate Procedure and Rule 7, District Court Criminal  
3 Rules by amending AS 22.10.020(a), AS 22.15.240, and AS 12.55 to provide that  
4 a sentence of 90 days or more imposed by the district court may be appealed.

5 \* Sec. 38. Section 29 of this Act has the effect of changing Rule 21,  
6 Rules of Appellate Procedure by enacting and amending AS 12.55.120(a) to  
7 provide that a sentence of one year or more may be appealed.

8  
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12 *Attachments*  
13 *9/18*  
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*HA*



## Supreme Court

State of Alaska

CHIEF JUSTICE  
JAYA RABINOWITZ

JUSTICES  
ROGER G. CONNOR  
ROBERT BOOCHEVER  
EDMOND W. BURKE  
WARREN W. MATTHEWS, JR.

February 27, 1980

303 "K" STREET  
ANCHORAGE, ALASKA  
99501  
907-274-8611

Re: HCSSB 104

Dear Representative:

On previous occasions I have communicated to you regarding the necessity for the legislature's creation of the intermediate appellate court. In addition, Arthur Snowden and his staff have furnished each of you, as well as relevant committees, detailed data pertaining to the need for the creation of such a court. Naturally I wish to reiterate my belief that the establishment of this court is necessary to enable the Alaska Court System to process the expanding volume of appellate litigation and to eradicate delays in the administration of justice.

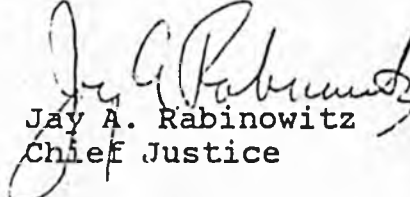
HCSSB 104, now pending before you, in my view serves their goals well. However, after careful scrutiny of the provisions of this proposed legislation, it is my belief, as well as that of my colleagues on the Supreme Court, that two amendments should be made. (The text of these proposed amendments is attached).

Amendment No. 1 concerns the qualifications for appointment as a district court judge. Present law requires a district court judge to be licensed to practice law in Alaska and to have been a resident of the state for at least one year at the time of his appointment. HCSSB 104 now provides that district court judges have practiced law for three years and have been residents of the state for at least five years. Raising these requirements as provided in the present version of HCSSB 104 in my view is likely to deprive the Alaska Court System of the opportunity to attract talented young lawyers to these positions. Many of our most outstanding district court judges, past and present, would not have been eligible for appointment under the proposed new requirements. Therefore, I think an appropriate compromise which serves all interests is embodied in proposed Amendment No. 1, which would establish a two year law practice and residency requirement for district court judges.

Amendment No. 2, attached, involves appeals of district court criminal cases. Under the present bill, these are appealable as a matter of right only to the superior court. This allows for prompt review with minimal costs to the parties. Traditional standards of justice, however, provides that more than one judge be involved in a full appellate review. Thus, district court criminal cases should be appealable from the superior court to the court of appeals as a matter of right. The proposed amendment would balance the need for prompt, inexpensive review with the need to provide a full appellate hearing. While most district court cases go no further than the superior court, the important cases do get appealed. The way should be open for these cases to get full appellate review as a matter of right.

My thanks for your consideration in this matter.

Sincerely yours,

  
Jay A. Rabinowitz  
Chief Justice