ALASKA COURT SYSTEM NEWS RELEASE

Alaska Supreme Court Issues 2000th Opinion

CONTACT: Robert D. Bacon
Clerk of Supreme Court
(907) 465-3410

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

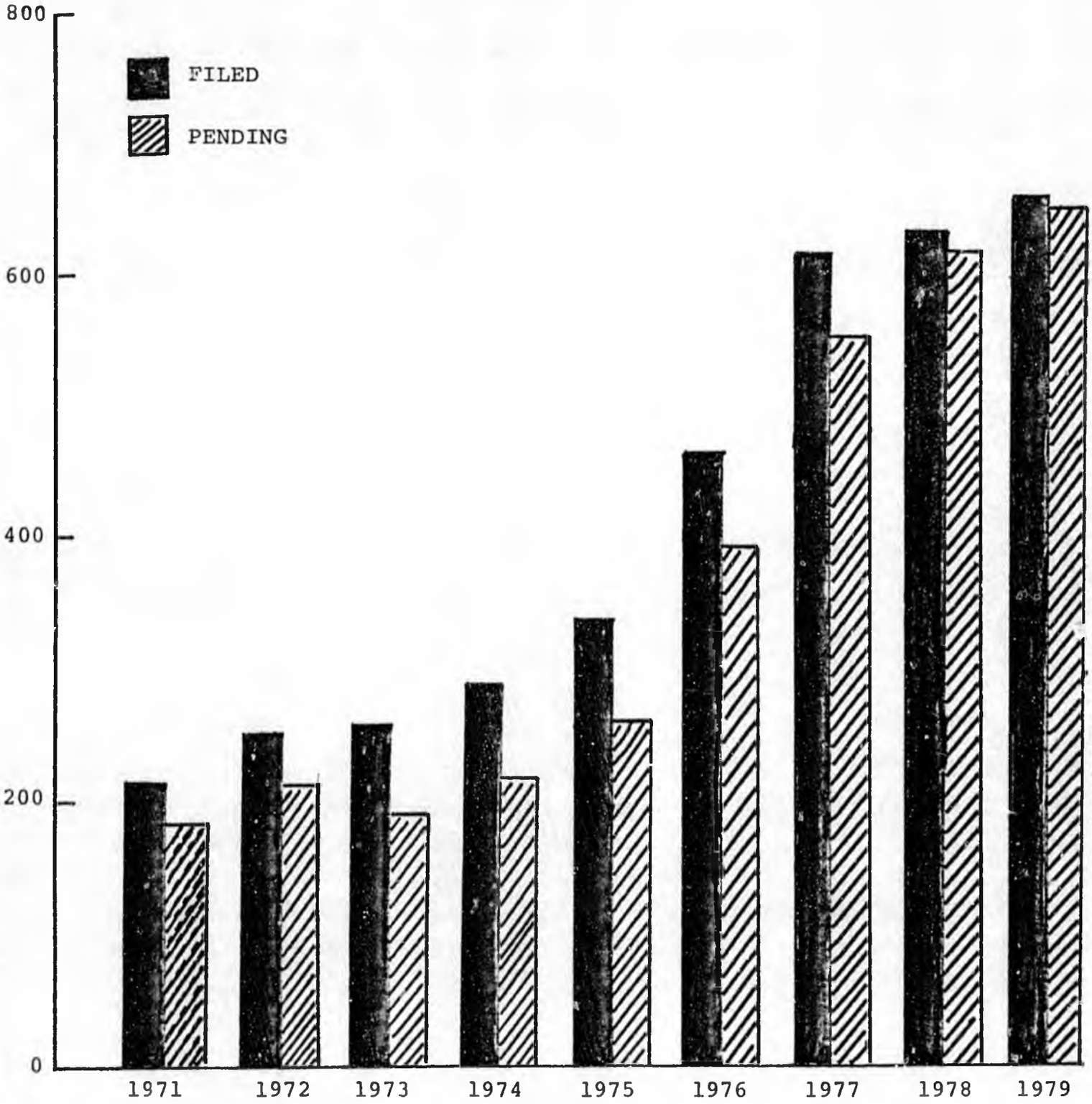
DISPOSITIONS BY TYPE OF DISPOSITION

(1978 and 1979)

TYPE OF CASE	DISPOSITION BY				TOTAL	
	OPINION AND MANDATE ON THE MERITS		DISMISSAL OR OTHER			
APPEALS:	1978	1979	1978	1979	1978	1979
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



To: Rep. Ramona Barnes
From: staff
Date: March 3, 1980
Re: HCSSB 104 (Jud.) establishing an intermediate court of appeals

The creation by the Legislature of an intermediate appellate court has been proposed as a solution to problems currently confronting the Alaska Supreme Court. Civil cases have been neglected as the overburdened court copes with a multitude of the higher priority criminal cases. Those who favor establishing an intermediate appellate court cite the expanding volume of appellate litigation (compounded by the current "ban" on plea bargaining) and delays in the administration of justice. It has been projected that such an intermediate court will reduce the time between the submission of case briefs and final disposition.

Chief Justice Rabinowitz, in his State of the Judiciary address, spoke in support of establishing an intermediate appellate court, calling it "vital to viable solution to the problems of Alaska's burgeoning appellate caseload". The Alaska Supreme Court is a proponent of establishing such a court; in addition to statistical information provided by court system administrators, amendments to the enabling legislation currently before the Legislature have been proposed by the Chief Justice. More than twenty-seven states have created intermediate appellate courts in an attempt to improve their judicial systems.

There can be no doubt that something must be done to relieve the pressure on the supreme court, to expedite the handling of appellate litigation, and to eradicate delays in the administration of justice.

The question before us is whether or not the legislation proposed, to date, solves these problems. If HCSSB 104 does not make our judicial system more efficient, we need to look elsewhere for a solution. We will need to integrate our approach to the judicial system if we expect it to function effectively as a whole.

You have been supplied with statistics by the court system concerning past, present, and projected supreme court caseloads. Two things seem evident on the basis of these figures. First, the members of the supreme court will be working at least as hard as they are now, even if an intermediate appellate court were to be created. Although the proposed jurisdiction of the intermediate appellate court would relieve the supreme court of many time consuming tasks, the anticipated increase in the supreme court caseload will more than compensate for any relief provided by the intermediate court. Enacting HCSSB 104 will not increase the efficiency of the supreme court significantly, it will merely offset the increase in appellate litigation and attendant backlog. Secondly, an intermediate court of appeals would not rectify the injustice to our citizens resulting from the delay in the courts; while enactment of HCSSB 104 would reduce the appeal time, it would not reduce the intolerable delay of two years or more at the trial courts. Approaching the problem of this frustrating delay in a fragmented fashion will result in continued inefficiency in the administrati of justice.

There are, in addition, specific portions of the existing enabling legislation which bear further examination and improvement.

1.) Section 1, AS 22.07.020 (d) specifies that appeals of district court criminal cases are appealable as a matter of right only to the superior court. Traditional standards of justice, maintains Chief Justice Rabinowitz, provide 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 (for full appellate hearing) as a matter of right.

2.) Section 15, AS 22.15.240 (a), as amended by HCCSB 104, removes the monetary restriction on appeals to the superior court of district court judgements in a civil action. The existing statute requires that the amount in controversy be at least $50.00. An increase in the amount has been suggested by some. The committee substitute removes the monetary requirement altogether. This will very likely increase the number of appeals.

3.) Section 15, AS 22.15.240 (b), (see also Section 8, AS 22.10.020 (a)) provides for a sentence appeal limit of 90 days, which is an increase over the 45 days provided by SB 104, and half the number of days provided by existing law. It is anticipated that the supreme court caseload will increase as a direct result of reducing the limit on sentence appeal.

One of the most complex questions raised by this proposed legislation concerns limiting appeals of right to the supreme court. One of the main purposes of creating an intermediate appellate court is ostensibly to enable the supreme court to cope more easily with its caseload. Retention of appeals of right to the supreme court in all cases would defeat that purpose. If appeals of right to the supreme court are abolished, and the intermediate appellate court becomes the court of final appellate jurisdiction,

this would be a direct contravention of the Constitution of the State of Alaska, Article IV, section 2. The Supreme Court, however, in State v. Browder, 486 P. 2d 925 (Alaska 1971) interpreted the exercise of the power to grant certiorari to be equivalent to the exercise of final appellate jurisdiction, thus eliminating, for the time being, any constitutional problem with a grant of "final" appellate jurisdiction to an intermediate appellate court. The purpose of Article IV, section 2, of Alaska's Constitution is to guarantee the right of appeal to the supreme court, the court of final appellate jurisdiction. That constitutional right would not be explicitly guaranteed under HCSSB 104, in that the supreme court exercises its discretion to hear any case, and may choose not to exercise its jurisdiction. If review by the supreme court need be available only at the discretion or with the permission of that court (as is the case at the Federal level and in many states), by certiorari or similar procedure, then perhaps the Alaska Constitution should be amended to clearly reflect this.

In conclusion, it seems that HCSSB 104, if enacted, will not significantly alter the substantial problems in justice operations of Alaska. It will not relieve the overburdened supreme court; it will not facilitate the citizens' access to the courts (due to the delay at the district court level), and it will not change those fundamental factors which prevent a reasonable, speedy, and economical administration of justice. If justice delayed is justice denied, then we had best commit ourselves to improving the quality of justice in our state. This cannot

be achieved merely by creating another level of courts. It can only be done by means of a systematic, integrated approach to our judicial operations which will isolate, and prescribe remedies for, the ills of our court system. We must get at the source of the problems which have caused our supreme court to become so overburdened with appellate litigation that they can no longer insure that each case which comes before them is given the careful analysis and scholarly appellate scrutiny it deserves. We may have to engage in an innovative, major revision of our judicial system in order to keep abreast of the times. Although that is no small task, the end result will be superior to that of a piecemeal attempt to correct the symptoms of the problems confronting us.

For inclusion in SB 104

* Sec. ___. AS 22.25.011 is amended by adding a new subsection to read:

(b) A justice or judge may not be required to make contributions under (a) of this section if at the time of his appointment he is holding a judicial office to which benefits under this chapter apply and to which he was appointed before July 1, 1978.

To Charlie
From Peggy

Charlie – Hugh Malone wants me to add above to (H) CS for SB 104. If not added older superior Ct. judges would take a cut in pay to be an appeals Court judge.

Should I add?

Susan Burke would like to see my draft before hearing. It is ready and I would like to get her thoughts AS I put together so quickly.

Should I show it to her?

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 ascendency 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.

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 29, 1980

M E M O R A N D U M

TO: All Members of the House

FROM: Charles H. Parr, Chairman CP

SUBJECT: HCSSB 104

You have all received a letter from Chief Justice Rabinowitz dated February 27 proposing two amendments to HCSSB 104. This memorandum is to inform you of the Judiciary Committee's reasons for the current form of the bill.

The first amendment proposed by the Chief Justice would require that a District Court Judge have only two years residency and two years practice of law before appointment. It was the view of the Committee that the requirement of five years residency and three years practice of law was not excessive when one considers the importance of a judicial post and the $57,000 salary received by a District Court Judge.

The second amendment would provide an automatic right to two appeals upon conviction for a misdemeanor in District Court. This did not seem to be justifiable since presently there is only one right of appeal from a felony conviction in the Superior Court. There is little logic permitting two appeals of a 30-day sentence and only one of a seven-year sentence.

The Judiciary Committee gave long and serious consideration to CSSB 104 last session, included it in public hearings in Ketchikan, Anchorage, Fairbanks, Nome and Bethel, and did more work on the bill in this session. It is the Committee's belief that if one accepts the need for an intermediate court of appeals -- then this is a good bill.

CHP:vc

Memorandum

Alaska Court System

TO: Arthur H. Snowden, II
Administrative Director

DATE : April 6, 1979

FROM: Susan Burke
Deputy Administrative Director

SUBJECT: Court of Appeals
(Senate Bill 104)

At your request I have compiled the primary reference documents that I used in drafting the court of appeals bill. These are attached and include:

(1) statutes from several states providing for intermediate appellate courts;

(2) statistical and other materials from the Clerk of the Supreme Court; and

(3) a copy of the report prepared by the Idaho committee recommending a court of appeals for Idaho.

You have also asked for a brief review of the reasons for choosing various approaches in the draft bill, particularly in regard to the division of jurisdiction.

There were three primary considerations in determining the proposed jurisdiction for the court of appeals:

(1) Cases within the jurisdiction of the court of appeals should be <u>clearly</u> defined by class or type in order to avoid time-consuming disputes over jurisdictional questions.

(2) Jurisdiction between the two courts should be divided in a way that provides an equitable and reasonable workload for each court.

(3) The class of cases chosen for court of appeals jurisdiction should include cases that are most likely to involve merely a review of whether the trial court correctly applies established law to the facts. If too many of the cases within the jurisdiction of the court of appeals involve areas of unsettled law, too many court of appeals decisions will require additional review by the supreme court. This result in needless delay to litigants and an extreme waste of judicial resources.

Criminal cases appeared to best meet these three requirements. The division between civil and criminal cases is a very clean one, and there is no doubt about whether a case falls in one category or the other. If certain types of civil cases were chosen for the court of appeals jurisdiction, there could be room for manipulation of jurisdiction by parties. For example, if court of appeals jurisdiction were to consist only of motor vehicle tort cases, a plaintiff wishing to avoid court of appeals jurisdiction would only need to add to his complaint a products liability claim against the auto manufacturer, and the appeal would have to go to the supreme court.

It is impossible for parties to combine civil and criminal causes of action in this way, and thus a split of jurisdiction along these lines is preferable.

Based on the historical ratio between civil and criminal appellate filings in the Alaska Supreme Court, it appeared that the criminal/civil division of jurisdiction would provide a high likelihood that each court will be able to handle its caseload. Excluding sentence appeals and petitions for review, full criminal "merit" appeals have maintained a fairly constant ratio to civil merit appeals over the last several years:

	CRIMINAL	CIVIL
1975	34%	66%
1976	36%	64%
1977	38%	62%
1978	36%	64%

If sentence appeals are included in "criminal" cases, the percentages are as follows:

	CRIMINAL & SENTENCE	CIVIL
1975	39%	61%
1976	41%	59%
1977	47%	53%
1978	44%	56%

Sentence appeals, however, do not require as much time to decide as a full merit appeal. We have estimated that a sentence appeal takes an average of 25% less court time than a merit appeal. (The trial court records are substantially less voluminous, and the amount of legal research required is much more limited). Taking this into account would reduce the above percentages for

criminal and sentence appeals by one to two per cent. Finally, the breakdown of criminal and civil petitions for review is available only for 1978. During 1978, 104 civil petitions for review were filed and 52 criminal petitions. When these are added to the 1978 figures above, and adjustments made for sentence appeals, the percentages for civil and criminal (including bail, habeas corpus, past-conviction relief, etc.) the breaddown for total 1978 filings is as follows:

	Filings	Percent
Criminal	246*	41%
Civil	360	59%

* 52 Sentence Appeals were reduced by 25% to 42.

It is expected that a three judge court of appeals should be able to decide more cases than a supreme court of the same size, for several reasons: First, the court of appeals will not be exercising a law-making function as does the supreme court. Second, the court of appeals will not have the additional constitutional responsibilities that our supreme court has; namely, administration of the state court system and promulgation of rules of procedure. Finally, some cases within the proposed court of appeals jurisdiction will be certified to the supreme court prior to consideration by the court of appeals. Without these considerations, a caseload ratio equal to the judge/justice ratio would be appropriate. This ratio of three to five is almost exactly equal to the 41% to 59% ratio of civil and criminal case filings for 1978.

(That is, with a total of eight justices and appellate judges, the supreme court will have 60% of the total judicial personnel). Although there is no accurate way to predict how many more cases a court of appeals judge can decide that a supreme court justice, we believed that a higher than three to five ratio would best result in a truly balanced caseload. Further, we determined that it was preferable to err on the high side rather than low side, mainly because the court of appeals will be a court of limited jurisdiction. Since the supreme court in effect is a "general jurisdiction" appellate court, it would be legally proper for it to take any excess cases that the court of appeals may not be able to decide expeditiously. (Legislation from several other states does provide for transfer of cases from the court of appeals to the supreme court to relieve workload imbalances that may occur from time to time).

For all of these reasons, it was determined that the court of appeals could very likely also handle the district court appeals that now go to the superior court and might be able to handle administrative agency appeals as well. Because of the uncertainty with respect to the ability of the court of appeals to handle the administrative agency cases, the transferability provision was included in the bill. This would permit the supreme court to transfer these cases to the court of appeals if and when it appeared the court of appeals could manage them.

Finally, a criminal appeal is much more likely than a civil appeal to involve settled principles of law, with the only issue being whether the lower court misapplied the law to the facts of the case. Similarly, within the general class of civil cases, administrative agency appeals very frequently involve the single question of whether there was sufficient evidence to warrant a factual finding and a reasonable basis in established law for the agency's decision.

In preparing the draft, none of the statutes from other states that I reviewed appeared to me to be particularly good drafting models, and were not compatible with Alaska's legislative drafting style. Some were too specific and included purely procedural matters that in Alaska should be in court rule; others seemed not specific enough in some areas and left too much unsaid, or they were poorly organized and poorly drafted. I did include several provisions from other states' statutes, but it would require an even more extensive memorandum than this to detail why some provisions were used and others rejected. I have attached copies of the statutes from which I did take some provisions. These provisions have been marked on the copies and relate mainly to the transfer of pending court of appeals cases to the supreme court and discretionary review of final decisions of the court of appeals.

For the most part, once the supreme court determined what jurisdiction to recommend for the court of appeals, most of the work for me was purely a matter of technical drafting with additional final editing by the Legislative Affairs Agency prior to introduction.

Please let me know if you would like additional explanations.

SB/pmr

P.S.: I have also attached the following materials:

(1) Monthly supreme court statistical reports for January, February and March, 1979;

(2) A discussion of 1978 cases in the affirmed in part/reversed in part category, which provides some additional insight into the reversal rates;

(3) Two copies of the 1977 Supreme Court workload study; and

(4) Two copies on a section to be included in the 1978 Annual Report, updating the 1977 study.

(5) A marked up copy of SB 104 am in which I have hand-written a number of possible language changes that would tighten up the jurisdiction sections of the bill and remove the flexible transfer provisions.

Parr's folder

Rocky - Held for Tuesday

Supreme Court
State of Alaska

March 20, 1979

CHIEF JUSTICE
JAY A. RABINOWITZ

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

P. O. BOX 850
FAIRBANKS, ALASKA
99707
907-452-1559
907-456-5201

The Honorable Charles H. Parr
Chairman, House Judiciary Committee
Mail Stop Number 3100
Pouch V
Juneau, Alaska 99811

Dear Representative Parr:

I received a copy of the letter of March 9, 1979, addressed to you by the four District Court Judges - Miller, Connelly, Clayton and Cline. I shall not attempt to address each paragraph of the letter separately as it would take an undue amount of your time.

Generally, the letter contends that Acting District Court Judges and Acting Magistrates are performing judicial services in the State. It is interesting to note that the Supreme Court has not received any complaints on this matter from litigants. Obviously, in a State as large as ours, it is impossible at this time and within the financial constr ints dictated by necessity to furnish judges who are lawyers in all areas and at all times. Magistrates and Acting Magistrates, however, do not hear contested cases other than small claims, unless the parties consent. They do handle a host of lesser functions.

We have attempted to streamline the judicial system by assigning single Superior Court Judges at major locations. In those instances, to utilize judicial time adequately, the Judges have travelled to various other communities for the purpose of providing judicial services. Obviously, when the

Judge is away from his home community such as Sitka, Bethel, Kodiak, Kenai and Nome, it is necessary that someone be able to handle the judicial functions in his or her absence. This is accomplished by the use of Magistrates. In many circumstances, these Magistrates are utilized primarily to perform other valueable services to the Court System. They additionally perform services as Magistrates to assist in this manner.

Without the flexibility whereby the Superior Court may appoint Acting District Court Judges, and the Presiding Superior Court Judges may appoint Magistrates, the system could not function efficiently. To substitute legally trained District Court Judges in every instance would involve an enormous expense and one, in my opinion, which is not justified at this time. The primary rationales for the use of Acting District Court Judges and Acting Magistrates is to enable our trial judges to meet their constantly expanding caseloads and allow the Alaska Court System the flexibility to meet its obligations to bring judicial services to Alaska's citizens.

I am indeed sorry that your valuable time has been taken up by this matter and regret that the District Court Judges did not see fit to advise me of their suggestions before writing to you. If you wish to have a more detailed response, I will be pleased to furnish it to you.

Sincerely yours,

Jay A. Rabinowitz
Chief Justice
Supreme Court of Alaska

JAR:dw
cc: Members of House Judiciary Committee
Members of Senate Judiciary Committee
Alaska Judicial Council
Local Representatives and Senators
Hon. Patrick M. Rodey, Senator
Hon. Mary Alice Miller
Hon. Hugh H. Connelly
Hon. Monroe N. Clayton
Hon. Stephen R. Cline
Justice, Supreme Court

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

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

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

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

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
PHONE 264-0545

Original: Legislative Finance
cc: Budget and Management

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		20,047
			$354,934
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.	5,000	
			114,400
Commodities:			10,000
Equipment:			25,000
			534,334

FY 80 EXPENSE

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

Alaska Statutes

Title 22. Judiciary.

Chapter

Chapter 05. The Supreme Court.

Section

Sec. 22.05.010. Jurisdiction. (a) The supreme court has final appellate jurisdiction in all actions and proceedings. The supreme court may issue injunctions, writs of review, mandamus, certiorari, prohibition, habeas corpus, and all other writs necessary or proper to the complete exercise of its jurisdiction. Each justice may issue a writ of habeas corpus, upon petition by or on behalf of any person held in actual custody and may make the writ returnable before the justice himself or before the supreme court, or before any judge of the superior court of the state. An appeal to the supreme court is a matter of right, except that the state shall have no right of appeal in criminal cases, except to test the sufficiency of the indictment or information and under (b) of this section.

(b) The supreme court has jurisdiction to hear appeals of sentences of imprisonment lawfully imposed by the superior courts on the grounds that the sentence is excessive or too lenient and, in the exercise of this jurisdiction, may modify the sentence as provided by law and by the constitution of this state. For the purpose of considering appeals of sentences on these grounds, the supreme court may sit in divisions. (§ 1 ch 50 SLA 1959; am § 1 ch 117 SLA 1969)

Revisor's note. — Chapter 50 SLA 1959 implemented the constitution by providing for the establishment of the supreme and superior court system under the constitution. It was designed to accomplish the transfer of judicial functions within the three-year transition period contemplated by the Statehood Act, P.L. 85-508, July 7, 1958, with provision being made for a more rapid transfer if the President sooner ended

trict Court so that it could enter fresh decree from which timely appeal could be taken to Court of Appeals. Pennsylvania Public Utility Commission v. Pennsylvania R. Co., Pa.1965, 86 S.Ct. 423, 382 U.S. 281, 15 L.Ed.2d 324.

Since the district court evinced its realization that its ordered reapportionment could not be sustained as basis for conducting 1966 election of Alabama legislators, and avowedly intends to take some further action should reapportioned Alabama Legislature fail to enact a constitutionally valid permanent apportionment scheme in the interim, the Supreme Court affirmed the judgment, and remanded the cases for further proceedings. Reynolds v. Sims, Ala.1964, 84 S.Ct. 1362, 377 U.S. 533, 12 L.Ed.2d 506, rehearing denied 85 S.Ct. 12, 13, 379 U.S. 870, 871, 13 L.Ed.2d 76, 77.

Where District Court erred in holding that Interstate Commerce Commission's order, establishing joint rates for through routes and apportioning such joint rates so as to assist financially weak carrier, was prohibited by section 15(4) of Title 49, preventing Commission from establishing through routes, and joint rates applicable thereto, for purpose of diverting traffic to lines of financially weak carrier, United States Supreme Court would remand case for further proceedings without considering contention that Commission's order was not supported by essential findings or substantial evidence justifying continued operation of carrier sought to be assisted. U. S. v. Great Northern Ry. Co., Minn.1952, 72 S.Ct. 965, 343 U.S. 562, 96 L.Ed. 1142, rehearing denied 73 S.Ct. 4, 344 U.S. 848, 97 L.Ed. 650.

Where District Court denied injunction abolishing segregation in South Carolina school and issued injunction to equalize educational facilities and ordered defendant school officials to report within six months the action taken to equalize facilities, and report was filed pending appeal by plaintiff Negro school children, but was not considered by District Court, Supreme Court would not consider questions raised on appeal but would vacate judgment and remand case to District Court to take whatever action might be deemed appropriate in the light of the report. Briggs v. Elliott, S.C.1952, 72 S. Ct. 327, 342 U.S. 350, 96 L.Ed. 1692.

Where suit by Georgia corporation to enjoin Revenue Commissioner from alleged illegal assessment of taxes was dismissed by United States District Court without consideration of corporation's contention that Commissioner was bound

by prior decree entered by District Court and affirmed by Supreme Court, upon determination that District Court did in fact have jurisdiction of cause, case would be remanded to District Court. Georgia R. R. & Banking Co. v. Redwine, Ga.1952, 72 S.Ct. 321, 342 U.S. 299, 96 L. Ed. 335.

Where appeal to Supreme Court from District Court for District of Columbia was unauthorized, cause was remanded in order that a new judgment might be entered from which an appeal could be perfected to Court of Appeals for District of Columbia. U. S. v. Belt, App.D.C.1943, 63 S.Ct. 1278, 319 U.S. 521, 87 L.Ed. 1559.

Where three-judge court heard case but such court and the Circuit Court of Appeals erroneously decided that the District Judge alone had jurisdiction, and that the judgment was appealable to the Circuit Court of Appeals, and the Supreme Court decided that case was proper one for three-judge court and vacated judgment below, but a direction to the Circuit Court of Appeals to dismiss appeal would terminate the litigation because the time within which a direct appeal might have been brought to the Supreme Court had elapsed, the Supreme Court in order to preserve right to appeal, remanded cause to the District Court for entry of a fresh judgment from which a timely appeal might be taken. Query v. U. S., S.C.1942, 62 S.Ct. 1122, 316 U.S. 486, 86 L.Ed. 1616.

Where statutory three-judge court dismissed complaint in suit to enjoin enforcement of federal administrative regulation, and plaintiff took direct appeal to United States Supreme Court, but former section 380a of this title [now this section and sections 2101, 2282 and 2284 of this title], was inapplicable, Supreme Court would vacate the decree below and remand the cause for further proceedings to be taken independently of said section. William Jameson & Co. v. Morgenthau, App.D.C.1939, 59 S.Ct. 504, 307 U.S. 171, 83 L.Ed. 1189.

Where the three judges sitting in the District Court refused an injunction against the enforcement of an order of a state Corporation Commission, on the ground they had no authority to grant it, the Supreme Court, on reversing that decision, will remand the cause to the District Court for trial, since generally it is not desirable that the Supreme Court pass on such matters until they have been dealt with below. Oklahoma Natural Gas Co. v. Russell, Okl.1923, 43 S.Ct. 353, 261 U. S. 290, 67 L.Ed. 659.

107. Costs

Costs were awarded against appellants who erroneously brought case in District Court of three judges, and, upon adverse decree, appealed to Supreme Court, which, though without jurisdiction, vacated decree and remanded cause in order to save to appellants their proper remedies. Oklahoma Gas & Electric Co. v. Oklahoma Packing Co., Okl.1934, 54 S.Ct. 732, 292 U.S. 386, 78 L.Ed. 1318.

§ 1254. Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for

decision of the entire matter in controversy. June 25, 1948, c. 646, 62 Stat. 928.

Historical and Revision Notes

Reviser's Note. Based on Title 28 U.S.C., 1940 ed., §§ 340 and 347 (Mar. 3, 1911, c. 231, §§ 239, 240, 36 Stat. 1157 [derived from Mar. 3, 1891, c. 517, § 6, 26 Stat. 828]; Feb. 13, 1925, c. 229, § 1, 43 Stat. 938; Jan. 31, 1928, c. 14, § 1, 45 Stat. 54; June 7, 1934, c. 426, 48 Stat. 926).

Section consolidates sections 346 and 347 of Title 28, U.S.C., 1940 ed.

Words "or in the United States Court of Appeals for the District of Columbia" and "or of the United States Court of Appeals for the District of Columbia" in sections 346 and 347 of title 28 U.S.C., 1940 ed., were omitted. (See section 41 of this title.)

The prefatory words of this section preceding paragraph (1) were substituted for subsection (c) of said section 347.

The revised section omits the words of section 347 of Title 28, U.S.C., 1940 ed., "and with like effect as if the case had been brought there with unrestricted appeal", and the words of section 346 of such title "in the same manner as if it had been brought there by appeal". The effect of subsections (1) and (3) of the revised section is to preserve existing law and retain the power of unrestricted review of cases certified or brought up on certiorari. Only in subsection (2) is review restricted.

Changes were made in phraseology and arrangement. 80th Congress House Report No. 308.

Cross References

Appeal from courts of appeals in bankruptcy cases, see section 47 of Title 11, Bankruptcy.

Detention of suspect security risks, review by Supreme Court upon certiorari or certification as provided in this section, see section 821(d) of Title 50, War and National Defense.

Economic poisons, registration of; review by Supreme Court upon certiorari or certification, see section 135b(d) of Title 7, Agriculture.

Quorum of Supreme Court justices, see section 2100 of this title.

Review generally, see section 2101 et seq. of this title.

Review of appeals of orders of Secretary of Health, Education, and Welfare respecting approval of construction projects for State mental retardation facilities and community mental health centers, see section 2004 of Title 42, The Public Health and Welfare.

Review of appeals of orders relating to use of pesticide chemicals on raw agricultural commodities, see section 346(a) (i) of Title 21, Food and Drugs.

Time for appeal or certiorari, and stay, see section 2101 of this title.

Vesting and liquidation of Bulgarian, Hungarian, and Rumanian property, final orders or decrees of district courts of the United States reviewable as provided in this section, see section 1631e of Title 22, Foreign Relations and Intercourse.

Writs, see section 1651 of this title.

Rules of the Supreme Court

Procedure generally on appeal, writ of certiorari, or certification of questions, see Rules of the Supreme Court.

Supersedeas on appeal and stay pending review on certiorari, see rules 18 and 27.

Federal Rules of Civil Procedure

Power of appellate court to stay proceedings not limited by Rule 62, see Rule 62(g).

Notes of Decisions

SB 104 am

Hugh Connelly – TVBA
36-2 vote

Oppose passage this session.
Need more input –
major change, impact on no of people
Ak Bar Assn convention June
Bar comm study

Specifics:
p 1, line 24-25 Supreme Court instead of appeals
" 11-12 first judge below
" 26- Appeals to superior court, remand to district court
p 2, Supreme Court should not determine what its jurisdiction is – leg does
2, line 13 –
3, line 17 – "in any court" of the state
4, line 17-18 – except ion for constitutional convention
4, line 24-28 – split in committee, as to 6 mos or 1 yr, apply to entire court
5, line 11 – strike "on its own motion, or"
5, " 27 may be one-sided
8, " 23-28 strike "sum less than $50"
8, 23-28 ~~to~~ appeal straight to supreme court
9, line 4 – sentence appeal - 45 days
13 " 9-11
45 days or more which is not susp,
180 " " " whether or " "
Comm on Judicial Qual include member from court of appeals

Millard Ingraham -

: delay -

issue "per curiam" opinions help use panels

4/21/79

Appeals bill heads for battle on House floor

Associated Press

Juneau — Senate-passed legislation to create a state court of appeals cleared the House Finance Committee Thursday, but the bill appears headed for a battle on the floor over a key issue.

The controversy centers on the question of whether some criminal defendents should give up their current right to two appeals.

The legislation, which passed the Senate last session, calls for creation of a court of appeals to handle all criminal appeals. With establishment of the new court, the Supreme Court would handle only civil cases.

Three justices would sit on the [illegible] which would cost the state an estimated $619,000 a year to operate, according to Art Snowden, administrative director of the court system.

MONTGOMERY

"In essence aren't we really establishing two Supreme Courts, one to deal with civil cases and one to deal with criminal cases?" asked Rep. Joe Montgomery, R-Anchorage, during a Finance Committee meeting on the bill Thursday.

The legislation would allow criminal cases to be appealed only as far as the proposed court of appeals, making it the top court for criminal cases.

However, Rep. Charlie Parr, D-Fairbanks and chairman of the Judiciary Committee [illegible] which spent long hours rewriting the Senate bill, said in a few specific cases where the appeals court certifies a constitutional issue is involved the case could go to the Supreme Court.

PARR

The area where several committee members voiced disagreement concerns misdemeanors.

Under the bill, if a person is convicted for a misdemeanor, such as drunk driving, he could appeal only to the Superior Court. He would not not have an automatic right to appeal to the new court, whereas currently he the right to appeal twice — first to the Superior Court and then to the Supreme Court.

That means a person convicted of a misdemeanor could appeal only from a single-judge court to another single-judge court.

Several committee members said they think that is wrong, but they agreed to fight the issue on the House floor.

Snowden said the Supreme Court also is opposed to the one-appeal provision. "We feel people should have the right to appeal to a tribunal," Snowden said.

Regardless of the outcome of that issue, the bill appears headed for a free conference committee because of other changes the House made in the Senate version.

Snowden told the committee the bill is badly needed because the Supreme Court's workload has increased substantially over the past few years and a large backlog of cases has resulted.

"I frankly fear for the quality of the Supreme Court decisions," Snowden said. He said that during the past year he continually has had to cut off paychecks of justices on the high court beca e they have exceeded the time limit for opinions.

State law requires that a draft opinion be in circulation within six months. If the opinion is not, the salary of the justice assigned to write the opinion is withheld.

Snowden said the court system has two major objections to the bill: allowing only one appeal for misdemeanor offenders and requiring five years of residency for District Court judges.

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Associated Press Writer

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Secretary
DOUGLAS J. SERDAHELY

Treasurer
WILLIAM M. ERWIN

April 4, 1979

Representative Fred E. Brown
Chairman, House Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: SB 104 am.

Dear Representative Brown:

It has come to our attention that you are interested in the views of the Alaska Academy on the proposed legislation creating an intermediate court of appeals.

I have reviewed, with great interest the text of SB 104 am. and offer the following comments:

1) The case load currently placed upon the Supreme Court is far in excess of the capabilities of any five men, regardless of how hard they work at their task.

2) Increasing the number of Supreme Court Justices would, in our opinion, create more rather than less delay in the appeal system. It has been our experience that a smaller committee can reach agreement with far less time expenditure than a larger one. The idea of panels of Justices, all from one court, has the added inherent problem of conflicting rulings.

3) The proposed jurisdiction of the "appellate" court would take many of the more time consuming tasks currently performed by the Supreme Court, i.e., sentence review, appeals from administrative agencies.

4) The discretionary power of the Supreme Court to grant a further review under Sec. 22.07.030 is a method that has been followed by nearly all states with intermediate courts of appeal, and has allowed the Supreme Court to concentrate on more serious legal issues. We believe it should be made part of any bill.

5) We have some problems with Sec. 22.05.015: While it is obvious that there will be cases that obviously are going to proceed to the Supreme Court, for example the recently contested primary election, we believe the better procedure would be for the new "appellate" court to certify such cases up to the Supreme Court for decision. This would be in line with the standard chain of appeal and further, would be more efficient in the use of the Court's time. If a case is permitted to go to the Supreme Court for a hearing as to whether the appeal should skip the "appellate" court -- that hearing, the briefs, the arguments and the Supreme Court's deliberations would take almost as much time as an appeal.

6) Other than the criticism of the Transfer of Appellate Case section of SB 104 am., we believe the bill would greatly benefit the citizens of Alaska.

While endorsing the creation of an intermediate court of appeals, we do not view such a court as a cure for all of the ills of the delay in the courts which results in great injustice to our citizens. There is a great need for both a more efficient use of the time of trial court judges and for additional judges- It currently requires nearly two years to bring a civil case to trial under the most ideal circumstances. Then the appeal process requires another two years or more. This bill would greatly reduce the appeal time and you are to be applauded for your efforts in that regard. The two plus year delay in the trial courts would, however, still be with us.

In the near future the delay at the trial court level must be reduced. We believe that such steps as a specific designation of a certain number of Superior Court Judges as civil and a certain number as criminal would be one step which should be considered. Funding of new judgeships, we believe, should at least weigh this as an alternative.

On behalf of all of our clients, we wish to thank you for your efforts, through the proposed creation of an intermediate court of appeals, to provide them with a true access to the courts.

ALASKA ACADEMY OF TRIAL LAWYERS

L. Ames Luce
President

LAL/cb

SB

104

#3

PARR

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ALASKA ACADEMY OF TRIAL LAWYERS

L. James Luce
President

LAL/cb

KENAI PENINSULA BAR ASSOCIATION
P. O. BOX 397
KENAI, ALASKA 99611
TELEPHONE 283-7564

RESOLUTION

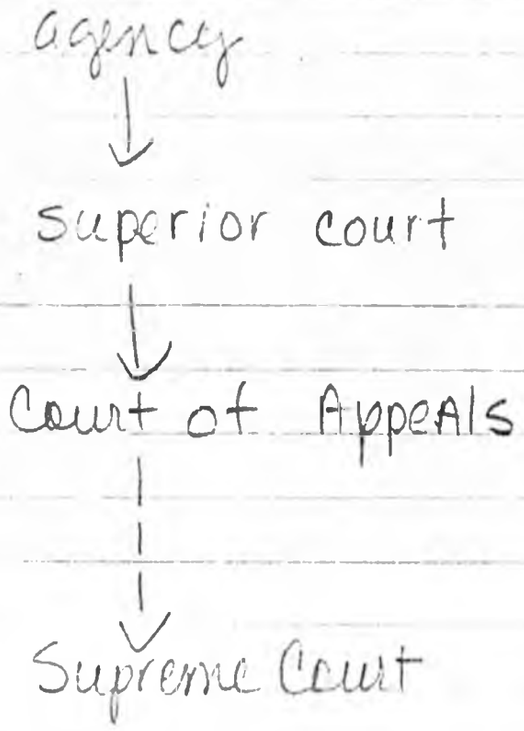
Upon motion duly made, seconded, and passed by the Kenai Peninsula Bar Association, it was resolved:

The Kenai Peninsula Bar Association supports the establishment of an Alaska Intermediate Court of Appeals for criminal cases, provided that review from said appellate court to the Alaska Supreme Court shall be by writ of certiorari and not by automatic right of appeal.

RESOLVED this 13th day of April, 1979.

KENNETH J. CUSACK, President
Kenai Peninsula Bar Association

Original Bill



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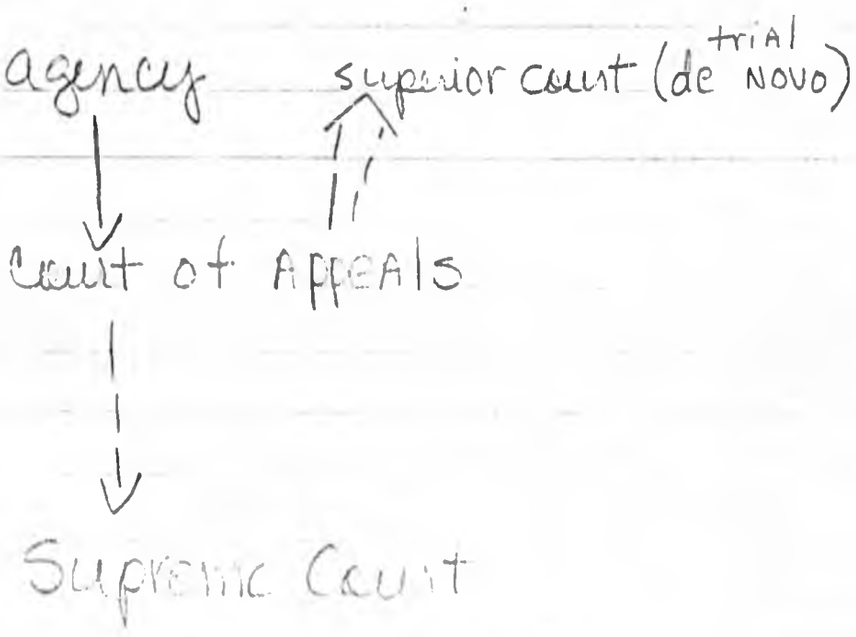
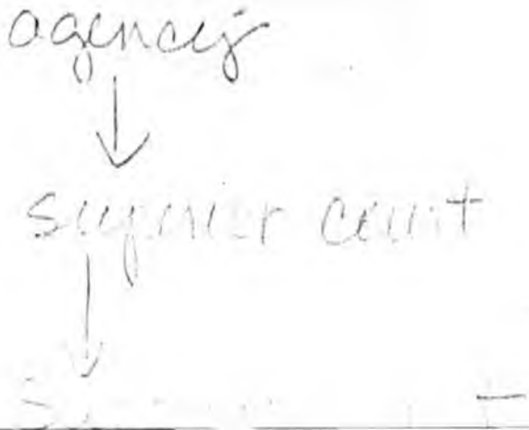


other Alternative - Existing Law



Original sponsors: Ziegler, Bradley, Meland, et al

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR SENATE BILL NO. 104 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to courts and to judges; establishing the court of appeals; and providing for an effective date."

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

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

CHAPTER 07. THE COURT OF APPEALS.

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

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

(1) criminal prosecution;

(2) post-conviction relief;

(3) children's court matters under AS 47.10.010(a)(1) including waiver of children's court jurisdiction over a minor under AS 47.10;

(4) extradition;

(5) habeas corpus;

(6) probation and parole; and

(7) bail.

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

state constitution.

(c) An appeal to the court of appeals is a matter of right in all actions and proceedings within its jurisdiction, 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 it is too lenient.

(d) The court of appeals may in its discretion (1) review a final decision of the superior court on an appeal ~~of a criminal prosecution commenced~~ from the district court involving a criminal proceeding, extradition, post-conviction relief or bail in the district court; (2) review the final decision of the superior court on appeal of a sentence imposed by the district court. In this subsection "final decision" means a decision or order, other than a dismissal by consent of all parties, that closes a matter in the superior court.

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

(f) 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.

Sec. 22.07.030. REVIEW BY SUPREME COURT. A party may apply to the supreme court for review of a final decision of the court of appeals in accordance with AS 22.05.010 and rules adopted by the supreme court. Review is in the discretion of the supreme court as set out in AS 22.-05.010(c). In this section, "final decision" means a decision or order, other than a dismissal by consent of all parties, that closes a matter in the court of appeals.

Sec. 22.07.040. QUALIFICATIONS OF JUDGES. A judge of the court of appeals shall be a citizen of the United States and of the state, a resident of the state for five years immediately preceding his appointment, have been engaged for not less than eight years immediately pre-

ceding his appointment in the active practice of law, and at the time of appointment be licensed to practice law in the state. For purposes of this section, the active practice of law is the same as defined for the justices of the supreme court in AS 22.05.070.

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

Sec. 22.07.060. APPROVAL OR REJECTION. Each judge of the court of appeals is subject to approval or rejection as provided in the Alaska Election Code (AS 15). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide information to the public about the judge and may provide a recommendation regarding his retention or rejection. The information and any recommendation shall be made public at least 60 days before the election. The judicial council shall also provide the information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet as required by AS 15.57.025. If a majority of those voting on the question rejects the candidacy of a judge, he may not for a period of four years thereafter be appointed to fill a vacancy in the supreme court, the court of appeals, the superior court, or the district court of the state.

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

(b) The office of a judge of the court of appeals becomes vacant

90 days after the election at which he is rejected by a majority of those voting on the question or for which he fails to file his declaration of candidacy to succeed himself. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an election; or (3) the failure of a judge to file a declaration of candidacy to succeed himself, the judicial council shall meet within 45 days and submit to the governor the names of two or more persons qualified for the judicial office; however, the 45-day period may be extended by the judicial council with the concurrence of the supreme court. In the event of an impending vacancy other than by reason of rejection or failure to file a declaration of candidacy, the judicial council may meet at any time within the 90-day period immediately preceding the effective date of the vacancy and submit to the governor the names of two or more persons qualified for the judicial office.

Sec. 22.07.080. RESTRICTIONS. A judge of the court of appeals while holding office may not practice law, or 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 judge of the court of appeals filing for another elective public office other than delegate to a constitutional convention of this state or the United States forfeits his judicial position.

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

Supreme Court

(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 court for opinion or decision has been incompleted or undecided by the court for a period of more than six months.

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

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

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 court 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 or to the superior court under AS 22.10.020.

(c) A decision of the superior court on an appeal from an administrative agency decision may be appealed to the supreme court as a matter of right.

(d) The supreme court may in its discretion review a final decision of the court of appeals on application of a party under AS 22.07.030. The supreme court may in its discretion review a final decision of the superior court on an appeal of a civil case commenced in the district court. In this subsection "final decision" means a decision or order, other than a dismissal by consent of all parties, that closes a matter in the court of appeals.

(e) The supreme court may issue injunctions, writs and all other

process necessary to the complete exercise of its jurisdiction.

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

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

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

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

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

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

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

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

practice of law includes

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

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

(3) rendering legal services to an agency, branch, or department of a civil government within the United States or a state or territory of the United States, in an elective, appointive or employed capacity;

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

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

Sec. 22.05.100. APPROVAL OR REJECTION. Each supreme court justice is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each justice before his retention election and shall provide to the public information about that justice and may provide a recommendation regarding his retention or rejection. Such information and any recommendation shall be made public at least 60 [30] days before the retention election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not be appointed to fill any vacancy in the supreme court, court of appeals, [OR] superior court, or district courts [COURTS] of the state for a period of four years thereafter.

* Sec. 7. AS 22.10.020(a) is amended to read:

(a) The superior court is the trial court of general jurisdiction, with original jurisdiction in all civil and criminal matters, including but not limited to probate and guardianship of minors and incompetents.

The jurisdiction of the superior court extends over the whole of the state. The superior court and its judges may issue injunctions, writs of review, mandamus, prohibition. habeas corpus and all other writs necessary or proper to the complete exercise of its jurisdiction. A writ of habeas corpus may be made returnable before any judge of the superior court. The superior court has jurisdiction in all matters appealed to it from a subordinate court, or administrative agency when appeal is provided by law. Appeals are a matter of right, but no appeal from a subordinate court may be taken by the defendant in a criminal case after a plea of guilty, except on the ground that the sentence was excessive, as futher provided by this section. The state has no right to appeal in criminal cases [NO APPEAL MAY BE TAKEN BY THE STATE], except to test the sufficiency of an indictment or information or to appeal a sentence on the ground it is too lenient. An appeal to the superior court may be taken on the ground that a sentence of imprisonment of 90 [180] days or more was excessive [AND THE SUPERIOR COURT IN THE EXERCISE OF THIS JURISDICTION HAS THE POWER TO MODIFY THE SENTENCE APPEALED FROM UPWARD OR DOWNWARD]. When a sentence is appealed by the state on the ground it is too lenient, the court may not increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion. The hearings on appeal from a final order or judgment of a subordinate court [OR ADMINISTRATIVE AGENCY] shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

* Sec. 8. AS 22.10.090 is amended to read:

Sec. 22.10.090. QUALIFICATIONS OF JUDGES. A judge of the superior court shall be a citizen of the United States and of the state, a resident of the state for five [THREE] years immediately preceding his appointment, have been engaged for not less than five years immediately

preceding his appointment in the active practice of law, and at the time of appointment be licensed to practice law in the state. The active practice of law shall be as defined for justices of the supreme court in AS 22.05.070.

* Sec. 9. AS 22.10.150 is amended to read:

Sec. 22.10.150. APPROVAL OR REJECTION. Each superior court judge is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to the public information about the judge and may provide a recommendation regarding his retention or rejection. Such information and any recommendation shall be made public at least 60 [30] days before the retention election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamplet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme court, court of appeals, [OR] superior courts, or district courts of the state.

* Sec. 10. AS 22.15.160(a) is amended to read:

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

* Sec. 11. AS 22.15.195 is amended to read:

Sec. 22.15.195. APPROVAL OR REJECTION. Each district court judge

is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to the public information about the judge and may provide a recommendation regarding his retention or rejection. Such information and the recommendation shall be made public at least 60 [30] days before the election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamplet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme court, court of appeals, superior courts or district courts of the state.

* Sec. 12. AS 22.15.240 is amended to read:

Sec. 22.15.240. APPEAL. (a) Either party may appeal a judgment of the district court in a civil action to the 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 FOR WANT OF AN ANSWER].

(b) The defendant may appeal a judgment of conviction given in the district court in a criminal action to the superior court. When the judgment is given on a plea of guilty, no appeal may be taken by the defendant except on the ground that a sentence of imprisonment of 90 [180] days or more was excessive [; HOWEVER, THE SUPREME COURT BY RULE MAY FURTHER PROVIDE FOR REVIEW OF A JUDGMENT GIVEN ON A PLEA OF GUILTY]. The state has no right of appeal in criminal actions for which judgment is given in the district courts, except to test the sufficiency of the information or to appeal a sentence on the ground it is too lenient.

When a sentence is appealed by the state on the ground it is too lenient, the court may not increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion.

(c) An appeal from the district court shall be taken within 30 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].

(d) The supreme court shall prescribe further rules for the procedure for appeals from district courts.

* Sec. 13. AS 22.20.010 is amended to read:

Sec. 22.20.010. JUDICIAL OFFICER DEFINED. The term "judicial officer" means a supreme court justice, including the chief justice, a judge of the court of appeals, a judge of the superior court, a district judge and a magistrate.

* Sec. 14. AS 22.20.110 is amended to read:

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

* Sec. 15. AS 22.25.010(g) is amended to read:

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

* Sec. 16. AS 22.30.080(2) is amended to read:

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

* Sec. 17. AS 11.56.900(2) is amended to read:

(2) "judicial officer" means a supreme court justice, including the chief justice, a judge of the court of appeals, a judge of the superior court, a district court judge, or a magistrate;

* Sec. 18. AS 15.15.030(10) is repealed and re enacted to read:

(10) A separate nonpartisan judicial ballot shall be designated for each judicial district in which a justice or judge is seeking to succeed himself. The ballot shall be divided into four parts and each part shall bear a heading indicating the court to which the candidate is seeking approval. Within each part the question of whether the justice or judge shall be approved or rejected shall be set out in substantially the following manner: (A) "Shall . . . . . be retained as justice of the supreme court for 10 years?"; (B) "Shall . . . . . be retained as judge of the court of appeals for eight years?"; (C) "Shall . . . . . be retained as judge of the superior court for six years?"; or (D) "Shall . . . . . be retained as judge of the district court for four years?" Provision shall be made for marking each question "Yes" or "No".

* Sec. 19. AS 15.35 is amended by adding new sections to read:

Sec. 15.35.140. APPROVAL OR REJECTION OF A JUDGE OF THE COURT OF APPEALS. Each judge of the court of appeals is subject to approval or rejection at the first general election held more than three years after his appointment. If approved, he is thereafter subject to approval or

rejection in a like manner every eighth year.

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

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

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

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

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

* Sec. 21. AS 15.57.040(2) is amended to read:

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

* Sec. 22. AS 24.55.330(2) is amended to read:

(2) "agency" includes a department, office, institution,

corporation, authority, organization, commission, committee, council or board of a municipality or in the executive, legislative or judicial branches of the state government, and a department, office, institution, corporation, authority, organization, commission, committee, council or board of a municipality or of the state government independent of the executive, legislative and judicial branches; it also includes an officer, employee or member of an "agency" acting or purporting to act in the exercise of his official duties, but does not include the governor, lieutenant governor, a member of the legislature, justice of the supreme court, judge of the court of appeals, a superior court judge, [OR] district court judge, magistrate, member of a city council or borough assembly, elected city or borough mayor, or a member of an elected school board;

* Sec. 23. AS 39.20.310(1) is amended to read:

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

* Sec. 24. AS 39.23.130(2) is amended to read:

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

* Sec. 25. AS 39.35.680(21)(C)(vi) is amended to read:

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

* Sec. 26. AS 39.50.200(2) is amended to read:

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

* Sec. 27. AS 12.55.120(a) is amended to read:

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

* Sec. 28. AS 12.55.120(b) is amended to read:

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

* Sec. 29. AS 12.55.120 is amended by adding a new subsection to read:

(d) A sentence of imprisonment lawfully imposed by the district court for a term or for aggregate terms exceeding 90 days may be appealed to the superior court by the defendant on the ground that the sentence is excessive. By appealing a sentence under this section, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal he has been twice placed in jeopardy for the same offense. A sentence of imprisonment lawfully imposed by the district court may be appealed to the superior court by the state on the ground that the sentence is too lenient; however, when a sentence is

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appealed by the state, the court may not increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion.

* Sec. 30. A judge of the court of appeals is entitled to receive annual compensation equal to 95 per cent of the annual compensation of a supreme court justice, payable in equal monthly installments, from the date upon which he takes office until superseded by payment of compensation resulting from the first salary recommendations made under AS 39.23 for judges of the court of appeals.

* Sec. 31. A judge of the court of appeals is not required to contribute to the retirement system under AS 22.25.011 if, at the time of his appointment to the court of appeals, he holds a judicial office to which the retirement benefits of AS 22.25 apply and to which he was appointed before July 1, 1978.

* Sec. 32. Notwithstanding the effective date of this Act, operations of the court of appeals shall commence on a date determined by the supreme court after all judges of the court of appeals have taken office.

* Sec. 33. Cases pending in the supreme court on the date on which the operations of the court of appeals begin which have been heard by or submitted to the supreme court on the briefs on or before that date shall be retained by the supreme court for decision. The supreme court may transfer to the court of appeals all other pending cases within the jurisdiction of the court of appeals.

* Sec. 34. It is the intent of the legislature that the court of appeals begin operations as soon as possible after the effective date of this Act. The administrative director of courts shall immediately take necessary action to provide suitable facilities for the court of appeals. When advised by the supreme court, the judicial council shall meet and submit nominations to the governor for the initial vacancies for judge of the court of appeals.

* Sec. 35. The amendments enacted in secs. 5, 8 and 10 of this Act apply only to justices and judges appointed on or after the effective date of this Act.

* Sec. 36. This Act terminates July 1, 1982.

* Sec. 37. This Act takes effect ~~July 1, 1980.~~ immediately.

TO: Charlie Parr, Chairman
FROM: Peggy Berck, Staff
Date: Jan. 18, 1980
Re: Amendments to SB 104 as proposed by J. Connelly, Leg. Comm. TV Bar Assn.

1. TV Bar Assn. wants a legislative court of appeals to be established, until the people approve a constitutional court.

2. If the court is established by constitution, then one member of the court of appeals should replace one superior court judge on the Judicial Qualifications Comm. (note: could one of the court of appeals judges be added to the Judicial Qualifications Comm. by legislature?)

3. Matters from the court of appeals should be remanded to court of original jurisdiction.

4. Appeals from district court in civil matters should go to the supreme court.

5. Recc. of the Judicial Council should be made public at least 60 days (it is now 30 days-see AS 15.57.050) prior to the election. In order to achieve this amendment another section would have to be added to the bill since AS 15.57.050 is currently not addressed in the bill. Futhermore, in order to allow the same time period the Lt. Governor currently has between time of receipt of information and publication page 13, line 1 of the bill should be amended to read 90 days instead of 60 days. Purpose of amendment: to get information to the public for a longer period of time prior to when a judge has to file for retention election. If such is done the judge is given a greater opportunity to bow out gracefully.

6. J Connelly commented that he thought it was odd that provision for sentence appeal is specified in the code of criminal procedure (see page 14, line 16, the entire sec. 27 of the bill), and no corresponding provision exists in the code of criminal procedure for the appeal of sentences imposed by the district court. J. Connelly implied that sentence appeals from either the district court or the superior court should be spellled out in the code of criminal procedure, Title 12 of the Alaska statutes. Currently, upon my brief review of the statutes, appeals from the district court are only mentioned in Title 22 and do not specifically set out a provision for sentence appeals.

7. Retirement benefits-see page 15, sec. begining with line 9. J. Connelly sugested that consideration be given to making a further exception for retired judges, so that they don't have to contribute to retirement system, i. they had been under the old plan and didn't have to contribute.

Original sponsors: Ziegler, Bradley, Meland, et al

Offered: 5/1/79
Referred: Finance

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR SENATE BILL NO. 104

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to courts; establishing the court of appeals; and providing for an effective date."

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

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

CHAPTER 07. THE COURT OF APPEALS.

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

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

(1) criminal prosecution;

(2) post-conviction relief;

(3) waiver of children's court jurisdiction over a minor under AS 47.10; 010(a)(1) set of delinquency

(4) extradition;

(5) habeas corpus;

(6) probation and parole; and

(7) bail.

(b) 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 ~~superior~~ district court for a trial de novo in whole or in part.

(c) The court of appeals may issue injunctions, writs and all

capacity;

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

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

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

* Sec. 7. AS 22.10.020(a) is amended to read:

(a) The superior court is the trial court of general jurisdiction, with original jurisdiction in all civil and criminal matters, including but not limited to probate and guardianship of minors and incompetents. The jurisdiction of the superior court extends over the whole of the state. The superior court and its judges may issue injunctions, writs of review, mandamus, prohibition, habeas corpus and all other writs necessary or proper to the complete exercise of its jurisdiction. A writ of habeas corpus may be made returnable before any judge of the superior court. The superior court has jurisdiction in all matters appealed to it from an [A SUBORDINATE COURT, OR] administrative agency

mendation shall be made publi. at least ~~30~~ 60 days before the retention election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamplet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme court, court of appeals, [OR] superior courts, or district courts of the state.

* Sec. 10. AS 22.15.160(a) is amended to read:

(a) A district judge shall be a citizen of the United States and of the state, at least 21 years of age, a resident of the state for at least five years [ONE YEAR] immediately preceding his appointment, and at the time of his appointment licensed to practice law in the State of Alaska for at least three years. ~~The supreme court may prescribe additional qualifications.~~

* Sec. 11. AS 22.15.195 is amended to read:

Sec. 22.15.195. APPROVAL OR REJECTION. Each district court judge is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to the public information about the judge and may provide a recommendation regarding his retention or rejection. Such information and the recommendation shall be made public at least ~~30~~ 60 days before the election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamplet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme court, court of appeals, superior courts or district courts of the state.

* Sec. 12. AS 22.15.240 is amended to read:

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~~ supreme court [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 FOR WANT OF AN ANSWER].

(b) The defendant may appeal a judgment of conviction given in the district court in a criminal action to the court of appeals [SUPERIOR COURT]. When the judgment is given on a plea of guilty, no appeal may be taken by the defendant except on the ground that a sentence of imprisonment of 180 days or more was excessive [; HOWEVER, THE SUPREME COURT BY RULE MAY FURTHER PROVIDE FOR REVIEW OF A JUDGMENT GIVEN ON A PLEA OF GUILTY]. The state has no right of appeal in criminal actions for which judgment is given in the district courts, except to test the sufficiency of the information or to appeal a sentence on the ground. It is too lenient. However, when a sentence is appealed by the state and the defendant has not appealed the sentence the court is not authorized to increase the sentence but may express its approval or disapproval of the sentence AND its reasons in a written opinion.

(c) An appeal from the district court shall be taken within 30 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].

(d) The supreme court shall prescribe further rules for the procedure for appeals from district courts.

* Sec. 13. AS 22.20.010 is amended to read:

Sec. 22.20.010. JUDICIAL OFFICER DEFINED. The term "judicial officer" means a supreme court justice, including the chief justice, a judge of the court of appeals, a judge of the superior court, a district judge and a magistrate.

* Sec. 14. AS 22.20.110 is amended to read:

Sec. 22.20.110. DUTY OF THE COMMISSIONER IN THE COURT OF APPEALS.

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OFFICERS. No later than ~~60~~ days before the applicable state election, the judicial council shall file with the lieutenant governor a statement including information about each supreme court justice, court of appeals judge, superior court judge, and district court judge who will be subject to a retention election, following the evaluation of each such justice or judge conducted by the judicial council according to law. Each such statement may not exceed 300 words.

* Sec. 21. AS 15.57.040(2) is amended to read:

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

* Sec. 22. AS 24.55.330(2) is amended to read:

(2) "agency" includes a department, office, institution, corporation, authority, organization, commission, committee, council or board of a municipality or in the executive, legislative or judicial branches of the state government, and a department, office, institution, corporation, authority, organization, commission, committee, council or board of a municipality or of the state government independent of the executive, legislative and judicial branches; it also includes an officer, employee or member of an "agency" acting or purporting to act in the exercise of his official duties, but does not include the governor, lieutenant governor, a member of the legislature, justice of the supreme court, judge of the court of appeals, a superior court judge, [OR] district court judge, magistrate, member of a city council or borough assembly, elected city or borough mayor, or a member of an elected school board;

Add NEW Sec. to AMEND AS 15.57.050 to read 60, instead of 30 days.

* Sec. 23. AS 39.20.310(1) is amended to read:

(1) members of the state legislature, the governor, the lieutenant governor, and justices and judges of the supreme and superior courts and of the court of appeals, but nothing in AS 39.20.220 - 39.20.-

330 may be construed to diminish the salaries fixed by law for these officers by reason of absence from duty on account of illness or otherwise;

* Sec. 24. AS 39.23.130(2) is amended to read:

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

* Sec. 25. AS 39.35.680(21)(C)(vi) is amended to read:

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

* Sec. 26. AS 39.50.200(2) is amended to read:

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

* Sec. 27. AS 12.55.120(a) is amended to read:

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

new section district court sentence APPEALS.

* Sec. 28. AS 12.55.120(b) is amended to read:

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

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

* Sec. 29. A judge of the court of appeals is entitled to receive annual compensation equal to 95 per cent of the annual compensation of a supreme court justice, payable in equal monthly installments, from the date upon which he takes office until superseded by payment of compensation resulting from the first salary recommendations made under AS 39.23 for judges of the court of appeals.

* Sec. 30. A judge of the court of appeals is not required to contribute to the retirement system under AS 22.25.011 if, at the time of his appointment to the court of appeals, he holds a judicial office to which the retirement benefits of AS 22.25 apply and to which he was appointed before July 1, 1978.

* Sec. 31. Notwithstanding the effective date of this Act, operations of the court of appeals shall commence on a date determined by the supreme court after all judges of the court of appeals have taken office.

* Sec. 32. The superior court and the court of appeals have concurrent jurisdiction of those pending district court appellate matters set out in AS 22.07.020(b) that are filed in the superior court before the date on which the operations of the court of appeals commence. The supreme court may transfer a matter within the jurisdiction of the court of appeals from the superior court to the court of appeals, including an appellate matter filed before the effective date of this Act. An appellate matter not transferred shall be decided by the superior court. Before operations of the court of appeals commence, a decision of the superior court on an appellate matter within the jurisdiction of the court of appeals under AS 22.07.020 may be appealed to the supreme court and thereafter to the court of appeals.

* Sec. 33. Cases pending in the supreme court on the date on which the operations of the court of appeals begin which have been heard by or sub-

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 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[1] 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.[2] 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.[3] 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.[4] 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.

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 f ng 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).

Alaska State Legislature

IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4948

BOX 142
EAGLE RIVER, ALASKA
99577

Representative Randy Phillips
HOUSE DISTRICT 8

March 28, 1979

The Honorable Charles Parr, Chairman
House Judiciary Committee
Pouch V, Mail Stop 3100
Anchorage, AK 99811

RE: YOUR MEMO TO ME OF MARCH 29, 1979 CONCERNING INTERIM PARTICIPATION

Thank you for your memo dated March 29, 1979.

In answer to your questions:

1. Yes, I do wish to participate.

2. I work during the summer months and it is hard for me to get away to attend meetings during that time. For me, the best month is probably November; however, if adequate notice is given, I could make arrangements to attend meetings.

3. Specific matters to be investigated: Selection of jury and judges as a whole; slowness of the process; administration of court system in Anchorage.

4. Names of groups of individuals to be notified: Lee Jordan, Editor, Chugiak-Eagle River Star, PO Box 1007, Eagle River, AK 99577; Robbie Robinson, Chugiak Community Council, Box 309, Chugiak, AK 99567; Bob Johnson, Eagle River Community Council, PO Box 456, Eagle River, AK 99577; Stephen Dunning, Eagle River Valley Community Council, Box 1644, Anchorage, AK 99510; Tom Henry, Birchwood Community Council, SRA Box 760, Chugiak, AK 99567; Rex Campbell, North Mt. View Community Council, 819 N. Klevin, Anchorage, AK 99504; Fred Selkregg, Northeast Anchorage Community Council, 5811 Radcliffe, Anchorage, AK 99504; Gene Buck, Russian Jack Park Community Council, 5222 East 24th Avenue, Anchorage, AK 99504; Kathleen Bush, 6631 East Eighth, Anchorage, AK 99504; The Brown Family, 442 South Flower, Anchorage, AK 99504; Clifford and Jane Bissell, Box 656, Eagle River, AK 99577; Marion E. Daley, PO Box 108, Chugiak, AK 99567; Mike Briggs, Esq., Ely, Guess & Rudd, 510 L Street, Anchorage, AK 99501.

5. Other information: I would like to have hearings at following areas in House District 8 -- Eagle River, Mt. View, Muldoon, Nunaka Valley.

If you need further information, please do not hesitate to contact me.

Best Regards,

Randy Phillips
State Representative

RP:js

Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

February 2, 1979

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

Re: The Court of Appeals

Dear Senator Ziegler:

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

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

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

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

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

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

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