4008 SJUD AK. JUDICIAL COUNCIL - AK. COURT SYSTEM: LEG. REQUESTS

Supreme Court addressed this argument by holding that in any later case the burden would be on the prosecutor to prove the absence of such "taint" in the new evidence.

The immunity provisions in other states vary. The broadest right is granted in New York where automatic transactional immunity is granted to all witnesses. Immunity must be specifically waived to allow any prosecution concerning the transactions or occurrences which are the subject of testimony.[19]

To Be Heard

In the context of the investigative grand jury, the right of a target to be heard arises at two stages:

(1) during the proceedings;
(2) upon the issuing of a report.

The right of a target at the second stage is discussed above, Chapter 4.

No statute in Alaska specifically grants a target the right to testify. In practice, very few targets request to testify, because of the dangers of self-incrimination, and because of the hesitancy to reveal the defense case to the prosecutor. Grand jury reformers suggest that a target should have an unqualified right to testify before the grand jury.

The U.S. Attorney's Manual notes that although there is no legal right to testify, refusal to allow a target to testify may create the appearance of unfairness. The Manual suggests the following guidelines:

> Under normal circumstances, where no burden upon the grand jury or delay of its proceedings is involved, reasonable requests by a "subject" or "target" of an investigation...personally to testify before the grand jury ordinarily should be given favorable consideration provided that such witness explicitly waives his privilege against self-incrimination and is represented by counsel or voluntarily and knowlingly appears without counsel and consents to full examination under oath.[Sec. 9-11.252]

The provisions of other states vary. The states that do grant a right to testify to the target characteristically limit that right at least to some extent. New Mexico law requires that a witness be provided an opportunity to testify except when there is reason to believe the target will flee or obstruct justice or when the prosecutor cannot locate the target.[20] New York grants a right to testify, but the witness must waive all rights to immunity.[21] Under Colorado law, a target may request to testify, and a written record must be made and kept of all denials and the reason for each. The law also provides for a petition to the court for a hearing on a denial.[22]

The ABA recommends that a target of a grand jury investigation be granted the right to testify before the grand jury provided that the witness signs a waiver of immunity.[23]

Confidentiality of Proceedings, Returns, & Records

Confidentiality issues include:

* classification of proceedings, returns, records;
* procedures for effecting dispositions (i.e., sealing, expungement, public release); and
* security of proceedings and records

Classification

The secrecy or public nature of grand jury selection, swearing, and charging procedures is not clear. In Anchorage, proceedings in which grand jurors are selected are recorded in "public" tapes in "open" court. The names of grand jurors are announced on the record in open court. After the hearing, the log notes of the proceedings are kept confidential. The names of grand jurors are kept confidential and only released upon order of the court. The procedure in Nome is the same. The procedure is similar in Fairbanks; no one except grand jurors are allowed in the courtroom. In Ketchikan the names of grand jurors are never announced on the record except for those jurors who are excused or otherwise named in the selection procedure.[24]

It is clear under Alaska law that signed indictments, at least once the accused has been held to answer, are matters of public record. No-true-bills, if the accused has been arrested or otherwise legally "held to answer," are also matters of public record. When a suspect or target has never been legally "held to answer", and the grand jury finds a no-true-bill, this return is not a matter of public record. The draft indictment and the log notes and the recordings in such a situation are, under law, to be destroyed, leaving no record at all of the proceeding. The classification of log notes and recordings in the other cases decribed above is not clear. The status of the proceeding at which returns are made, and the records of that proceeding are not clear.

Procedures

The rule requiring destruction of grand jury returns and records of proceedings in cases when the suspect or target has never been "held to answer" is not enforced because no method of enforcement has been instituted. No time limit for accomplishing the required disposition exists. Because the recording of many proceedings are done one after the other on a reel-to-reel tape, it is a very tricky proposition to erase or splice out only the intended record, and not portions of adjacent proceedings. Recently a court order [Order 3AN-A0-85-10, May 13, 1985] issuing in the Third Judicial District made an attempt to address part of the problem. The relevant part of this order states:

> The court further interprets Criminal Rule 6(n) as requiring the destruction and/or erasure of the indictment, evidence, minutes, notes and record of any (sic) grand jury proceeding in which a "no true bill" has been returned. However, such indictment, evidence, minutes, notes and records shall be maintained, under seal, for 60 days to provide the state or defendant an opportunity to apply to the court or leave to have access to such materials, should good cause for access thereto be shown.

The above rule does not provide procedures for effecting sealing, expungement, or publication of grand jury minutes and reports. Grand jury records reviewed in the course of this study were not classified uniformly as to confidentiality.

Security

The major reasons for grand jury secrecy were listed by the U.S. Supreme Court as follows:

(1) to prevent the escape of those whose indictment may be contemplated;

(2) to insure the utmost freedom to the grand jury in its deliberations, and to prevent persons subject to indictment or their friends from importuning the grand jurors;

(3) to prevent subornation of perjury or tampering with the witnesses who may testify before the grand jury and later appear at the trial of those indicted by it;

(4) to encourage free and untrammeled disclosure by persons who have information with respect to the commission of crime;

(5) to protect the innocent accused who is exonerated from disclosure of the fact that he has been under investigation, and from the expense of standing trial where there was no probability of guilt.[25]

As noted in the introduction to this report, a breach of security during the grand jury's Fairbanks state office lease investigation led to publication of a court recorder's log notes in the media prior to the conclusion of the grand jury's secret deliberations. In other jurisdictions, breaches of confidentiality have resulted from confusion about proper classifications for records of proceedings. In 1980 the General Accounting Office of the federal government conducted a study of the federal district court system to determine sources of grand jury leaks, and ways to address them. The major source of leaks according to this report was confusion about what information must be kept secret.

Approximately 60% of the leaks were attributable to this confusion. The next most frequent source of leaks was the government attorney or workers in that office. A little less than 20% of the leaks were attributable to this source. The third most frequent source of leaks was inadequate security provisions, at about 5%. A few leaks were noted from court reporters and grand jurors. No leaks were attributed to witnesses. Twenty-percent of the sources for leaks were unknown.[26]

The recommendations of the GAO report to remedy the occurrence of federal grand jury leaks could be followed in any court system:

(1) Developing rules and laws which clearly define what must be kept secret during the duration of grand jury proceedings, including specific guidelines for handling (1) preindictment proceedings, (2) grand jury subpoenas, (3) evidence developed independently of a grand jury but later introduced to it, (4) duplicates and copies of original documents presented to a grand jury, and (5) internal government memoranda and other documents that tend to disclose what transpires before a grand jury;

(2) Reviewing plans so that courts and government attorneys' offices are in a position to react appropriately whenever situations calling for maintaining the confidentiality of grand juror names arise;

(3) Establishing guidelines setting forth the minimum physical security requirements needed

to protect the secrecy of grand jury materials;

(4) Requiring each custodian of grand jury materials, including court appointed reporters, to establish procedures consistent with the security guidelines and document them in a security plan to be approved by the appropriate court;

(5) Providing for periodic audits by the court administrator's office of all custodians of grand jury materials to determine whether they are complying with appropriate security plans and whether security procedures need to be improved; and

(6) Evaluating the physical security around grand jury rooms and developing an appropriate plan to upgrade and modify deficient facilities to insure that the secrecy of grand jury proceedings will not be compromised.[27]

NOTES

APPENDIX B

1. Matter of Four Reports of the Nassau County Grand Jury Designated as Panel No. 4 for the April 1975 Term of the County Court of Nassau County (Nassau Cty. Ct. April 27, 1976).

2. See FRANKEL AND NAFTALIS, THE GRAND JURY: AN INSTITUTION ON TRIAL (New York 1977) [hereinafter cited as FRANKEL]; EMERSON, GRAND JURY REFORM: A REVIEW OF KEY ISSUES, NIJ (Washington, D.C. 1983) [hereinafter cited as EMERSON]; ABA MODEL GRAND JURY ACT.

3. See FRANKEL, supra note 2, at 4.

4. Cox v. State of Alaska (Unpublished Memorandum Opinion).

5. Id.

6. Id.

7. Id.

8. Id.

9. SCHNEIDER, The Grand Jury: Powers, Procedures, and Problems, 9 COLUM. J. L. and SOC. PROBS. 681, 715 (1973).

10. EMERSON, supra note 2, at 84.

11. COLO. REV. STAT. §16-5-204(4)(a) (1978).

12. N.M. STAT. ANN. §31-6-11 (1979).

13. S.D. COMP. LAWS ANN. §23A-5-13 (1979).

14. See EMERSON, supra note 2, at 90-91.

15. Id.

16. FRANKEL, supra note 2, at 77.

17. ALASKA STAT. §12.50.101.

18. See CRIM. JUST. MAN.

19. N.Y. CRIM. PROC. LAW §190.52.

20. N.M. STAT. ANN. §31-8-11(13) (1979).

21. N.Y. CRIM. PROC. LAW §190.52.

22. COLO. REV. STAT. §16-5-204(4)(1)(1978).

23. ABA Policy on the Grand Jury, Principle 5.

24. BAUERMEISTER, Criminal Rule 6: Grand Jury Procedure, Alaska Court System, (Sept. 30, 1985) (unpublished memorandum).

25. United States v. Proctor & Gamble Co, 35 U.S. 677, 681 n. 6 (1958).

26. GAO, Report to the Congress: More Guidance and Supervision Needed Over Federal Grand Jury Proceedings, GGD-81-18 (Washington, D.C. 1980).

27. Id. at pp. 33-34.

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/7/89
Date

02-519 (REV 8/78)

Alaska Court System: Legislative Requests

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to appointment, qualifications and duties of an internal auditor within the Alaska Court System."

BE IT ENACTED BY THE LEGISLATURE OF ALASKA:

*Section 1. AS 22.20 is amended by adding a new section to read:

Sec. 22.20.038. INTERNAL AUDITOR. (a) Appointment. The administrative director shall appoint an internal auditor to provide the administrative director with objective information to assist in determining whether Alaska Court System operations are adequately controlled and whether the required high degree of public accountability is maintained.

(b) Qualifications. The internal auditor shall be a certified public accountant of this state, or of another state having requirements equivalent to those of this state, with at least three years of practice in the profession, or the equivalent, before the appointment.

(c) Duties. The internal auditor shall have the following duties:

1. To review and appraise the soundness, adequacy and application of accounting, financial and operating controls;

2. To ascertain the extent of compliance with established policies, plans and procedures;

3. To ascertain the extent to which court system

assets are accounted for and safeguarded from losses of all kinds; and

4. To ascertain the reliability of accounting and other data developed within the Alaska Court System.

(d) Access to Records. The internal auditor shall have full, free and unrestricted access to all public records, all activities of the Alaska Court System, all Alaska Court System property, all Alaska Court System personnel, and all policies, plans and procedures and records pertaining to expenditures financed by Alaska Court System funds. This section shall not authorize the public disclosure of material that is confidential or privileged under federal, state or local law, court rule or order, or materials the public disclosure of which constitutes an unwarranted invasion of personal privacy.

(e) Reports. The internal auditor's conclusions and recommendations shall be reported promptly in writing to the administrative director. Copies of reports of the internal auditor shall be available for public inspection at the office of the internal auditor during regular business hours.

(f) Audit Records. The interna auditor shall keep a complete file of all audit reports and other reports or releases issued by the auditor, and a complete file of audit work papers and other related supportive material.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to setting of venue by supreme court rule."

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

*Section 1. AS 22.10.030 is repealed and re-enacted to read:

Sec. 22.10.030. Where actions are to be brought. Venue for all actions shall be set according to rules established by the Alaska Supreme Court.

Sec. 22.10.030. Where actions are to be brought. (a) All actions in ejectment or for the recovery of the possession of, quieting title to, for the partition of, or the enforcement of liens upon, real property shall be commenced in the superior court in the judicial district in which the real property, or any part of it affected by the action, is situated.

(b) If, in a civil action other than one specified in (a) of this section, a defendant can be personally served within a judicial district of the state, the action against that defendant shall be commenced in that judicial district or in the judicial district in which the claim arose.

(c) All prosecutions for crimes and offenses shall be commenced in the judicial district in which the crime or offense was committed.

(d) Subject to AS 22.10.040, a trial and any precedent or antecedent hearings in an action shall be conducted in a senate district within the judicial district at a location which would best serve the convenience of the parties and witnesses. However, if there is any part of more than one senate district within the boundaries of a borough, the trial and related hearings shall be conducted within the borough's boundaries at a location which would best serve the convenience of the parties and witnesses. If the presiding judge of the district determines that there are no facilities, reasonably suited to the purpose, available for the trial or related hearings in the senate district specified in this subsection, the presiding judge may direct the proceedings to be held in the nearest senate district with reasonably suitable facilities.

(e) Actions in cases not covered by this section may be commenced in any judicial district of the state.

(f) Failure to make timely objection to improper venue waives the requirements of this section.

(g) The chief justice of the supreme court may make exceptions to the requirements of this section if, consistent with the state and federal constitutions, the chief justice determines that transportation facilities reasonably require venue in an urban center in an adjoining judicial or senate district. (§ 17(2) ch 50 SLA 1959; am § 1 ch 126 SLA 1971; am § 1 ch 66 SLA 1972; am § 1 ch 137 SLA 1984)

Cross references. — For judicial district in which action may be brought to compel compliance with surface coal mining laws, see AS 27.21.950(d); for commencement of civil actions by persons adversely affected by failure to comply with Alaska Surface Coal Mining Control and Reclamation Act, see AS 27.21.950(d).

Effect of amendments. — The 1984 amendment, effective July 3, 1984, added subsection (g).

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to judicial vacancy, and providing for an effective date."

BE IT ENACTED by the Legislature of Alaska:

*Section 1. AS 22.05.080(b) is amended to read:

(b) Sec. 22.05.080(b). The office of supreme court justice, including the office of chief justice, becomes vacant 90 days after the election [IN] at which the justice is rejected by a majority of those voting on the question [OR, IF THE JUSTICE FAILS TO FILE A DECLARATION OF CANDIDACY, 90 DAYS AFTER THE FILING DEADLINE] or for which the justice fails to file a declaration of candidacy. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an election; or (3) the election following failure of a justice to file a declaration of candidacy, 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; except that this 45-day period may be extended by the council with the concurrence of the supreme court. In the event of an impending vacancy [OTHER THAN BY REASON OF REJECTION OR FAILURE TO FILE A DECLARATION OF CANDIDACY,] the council may meet at any time [WITHIN THE 90-DAY PERIOD IMMEDIATELY] preceding the effective date of the vacancy and submit to the governor the names of two or more persons qualified for the judicial office.

*Section 2. AS 22.07.070(b) is amended to read:

Sec. 22.07.070(b). The office of a judge of the court of appeals becomes vacant 90 days after the election at which the judge is rejected by a majority of those voting on the question or for which the judge fails to file a declaration of candidacy. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an election; or (3) the election following failure of a judge to file a declaration of candidacy, [TO SUCCEED] 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.

*Section 3. AS 22.10.100(b) is amended to read:

Sec. 22.10.100(b). The office of a superior court judge becomes vacant 90 days after the election at which the judge is rejected by a majority of those voting on the question [OR, IF A JUDGE FAILS TO FILE A DECLARATION OF CANDIDACY, 90 DAYS AFTER THE FILING DEADLINE] or for which the judge fails to file a declaration of candidacy. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an election; or (3)

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*Section 4. AS 22.15.170(e) is amended to read:

Sec. 22.15.170(e). The office of a district court judge becomes vacant 90 days after the election at which the judge is rejected by a majority of those voting on the question [OR, IF A JUDGE FAILS TO FILE A DECLARATION OF CANDIDACY, 90 DAYS AFTER THE FILING DEADLINE] or for which the judge fails to file a declaration of candidacy. Upon the concurrence of (1) an actual vacancy; (2) the certification of rejection following an election; or (3) the election following failure of a judge to file a declaration of candidacy, the judicial council shall meet within 45 days and submit to the governor the names of two or more persons qualified for the judicial office; except that this 45-day period may be extended by the council with the concurrence of the supreme court. In the event of an impending vacancy [OTHER THAN BY REASON OR REFJECTION OR FAILURE TO FILE A DELARATION OF

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*Section 5. This Act takes effect immediately in accordance with AS 01.10.070(c).

ALASKA CONSTITUTION, ARTICLE IV, SECTION 7

Section 7. Vacancy. The office of any supreme court justice or superior court judge becomes vacant ninety 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.

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Section 7. Vacancy. The office of any supreme court justice or superior court judge becomes vacant ninety 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.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

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(b) Qualifications. The internal auditor shall be a certified public accountant of this state, or of another state having requirements equivalent to those of this state, with at least three years of practice in the profession, or the equivalent, before the appointment.

(c) Duties. The internal auditor shall have the following duties:

1. To review and appraise the soundness, adequacy and application of accounting, financial and operating controls;

2. To ascertain the extent of compliance with established policies, plans and procedures;

3. To ascertain the extent to which court system

assets are accounted for and safeguarded from losses of all kinds; and

4. To ascertain the reliability of accounting and other data developed within the Alaska Court System.

(d) Access to Records. The internal auditor shall have full, free and unrestricted access to all public records, all activities of the Alaska Court System, all Alaska Court System property, all Alaska Court System personnel, and all policies, plans and procedures and records pertaining to expenditures financed by Alaska Court System funds. This section shall not authorize the public disclosure of material that is confidential or privileged under federal, state or local law, court rule or order, or materials the public disclosure of which constitutes an unwarranted invasion of personal privacy.

(e) Reports. The internal auditor's conclusions and recommendations shall be reported promptly in writing to the administrative director. Copies of reports of the internal auditor shall be available for public inspection at the office of the internal auditor during regular business hours.

(f) Audit Records. The internal auditor shall keep a complete file of all audit reports and other reports or releases issued by the auditor, and a complete file of audit work papers and other related supportive material.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.:
Title: An Act Creating an Internal Auditor
Sponsor:
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Alaska Court System
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Appellate Courts, Trial Courts, Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		85.4	90.5	95.9	101.7	107.8
200 TRAVEL		7.5	8.0	8.5	9.0	9.5
300 CONTRACTUAL		3.5	3.7	3.9	4.1	4.3
400 SUPPLIES		2.0	2.1	2.2	2.3	2.4
500 EQUIPMENT		7.2				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		105.6	104.3	110.5	117.1	124.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		105.6	104.3	110.5	117.1	124.0
FEDERAL FUNDS						
OTHER						
TOTAL		105.6	104.3	110.5	117.1	124.0

POSITIONS:

FULL-TIME		2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert G. Fisher, Fiscal Officer Phone: 264-0561
Division: Alaska Court System Date: 1/15/85

Approved by Commissioner: [signature] Date: 1/15/85
Agency: Alaska Court System

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

ALASKA COURT SYSTEM
FISCAL NOTE ANALYSIS

JUDICIAL INTERNAL AUDITOR

PERSONNEL:		SALARY	BENEFITS	TOTAL COST
INTERNAL AUDITOR	(Range 20A)	$40,932	$11,790	$52,722
ASSISTANT	(Range 12B)	24,516	8,116	32,632
Total Personnel Costs				85,354
TRAVEL				7,500
CONTRACTUAL				3,500
SUPPLIES				2,000
EQUIPMENT (one-time items)				7,200
TOTAL FY 86 COST				$105,554

Subsequent fiscal years adjusted to reflect 6% inflation.

JUDICIAL SELECTION PROCEDURES OF THE ALASKA JUDICIAL COUNCIL

The Alaska Judicial Council is a constitutionally created state agency which evaluates the applications of persons seeking judicial appointment and refers the names of at least two qualified applicants to the Governor for appointment to fill existing or impending vacancies. The following is a brief summary of the judicial selection process--the steps which an applicant must take in order to be considered for a judicial appointment and the steps which are taken by the Judicial Council to insure that applicants are qualified for such appointment.

A. The Application Process

Applicants must first complete the Judicial Council's "Application for Judicial Appointment," which consists of a questionnaire form and two appendices. These appendices request: (1) a physician's certification of the applicant's good health based upon the results of a complete physical examination, preferably one conducted within one year prior to the date of application; or if this is not possible, a certification from the physician who conducted the most recent complete physical examination of the applicant; and (2) a legal writing sample of 5 to 10 pages in length, prepared solely by the applicant within the past five years.

Applicants must submit eight copies of the completed application and appendices to the Judicial Council on or by the date set forth in the notice of vacancy.

Applicants are also encouraged to review the Code of Judicial Conduct (Alaska Rules of Court, Vol. III) during the evaluation process period.

B. The Evaluation Process

Once the application deadline has passed, the Judicial Council begins its evaluation process.

1) The Bar Poll

The Judicial Council sends the names of all applicants to an independent organization, Policy Analysts, Ltd. (PAL) which prepares a survey to be sent to all active members of the Alaska Bar Association. The Bar Survey asks Bar members to rate each candidate on a five point scale [1 (Poor) to 5 (Excellent)] on 11 qualities, including "legal reasoning ability and knowledge of the law" and "integrity", and also asks respondents to rate each candidate as a potential "Good Judge". Survey respondents are asked to indicate whether their numerical ratings are based upon direct professional experience, other personal contacts or reputation; respondents may also decline to evaluate any candidate due to insufficient knowledge. Respondents are invited to offer narrative comments as well.

Survey responses are returned directly to PAL, which prepares a statistical analysis of all survey responses, including average ratings for each quality for each candidate by range (i.e., excellent, good, acceptable, deficient, poor). Although respondents do not rate candidates in comparison to each other, PAL does prepare an analysis showing relative quantitative rankings among candidates (e.g., 2nd highest average "Good Judge" or "11-item scale" rating out of 10 candidates). (PAL also collates all comments and forwards these in a separate, confidential report to the Council.)

After all applicants have been notified of the survey results, the survey report is released to the public. Survey results are used by the Council members in the evaluative process and each applicant has the opportunity to discuss the survey results with the Council during the interview. [See below, (5)]

2) Letters of Reference

Letters of reference are also considered by the Council in its evaluative process. Reference letters are treated as confidential and may not be viewed by the applicants.

3) Investigation of Applicants

The Council may verify applicants' educational and employment history and investigate medical, criminal, legal civil, credit and professional discipline history. Supreme Court Order 489, effective January 4, 1982, authorizes the Council to review bar applications and bar discipline records. During the course of its investigation the Judicial Council may also seek information on candidate qualifications from such other public or private groups or individuals as may be deemed appropriate. Information gathered during the Council's investigation is treated as confidential and is used only for the purpose of evaluating fitness for judicial appointment.

4) Screening

Following its review of the applications, investigative and survey data, the Council schedules candidate interviews. As a general rule, the Council prefers to interview all candidates; however, the Council may decline to interview any candidate whom it finds to be unqualified. The Council may also decide not to interview candidates who have been recently interviewed for other vacancies, where the Council believes it has sufficient information upon which to base its evaluations. The Council will ultimately review and vote on the qualifications of all applicants, whether or not interviewed.

5) vs

The final stage of the evaluation process is a 1/2 hour applicant interview with the full Council. Applicants invited to interview are asked about their judicial philosophy and are given an opportunity to respond to or explain any ratings, reference letters or other information gathered during the investigation.

Following these interviews, the Council submits a panel of nominees to the Governor of those candidates deemed most qualified, provided such panel includes two or more names. (If fewer than two applicants are deemed to be qualified, the Council will decline to submit any names and will re-advertise for the vacancy). Thereafter, the applicants are notified and the Council's nominations are made public. The Governor then has 45 days to appoint a nominee from the list to fill the judicial vacancy.

C. Timing of Judicial Selection Procedures

From the time the Council receives notice of a vacancy to the final applicant interviews, the judicial selection process takes a minimum of 10 weeks. Once the names of the nominees have been submitted, the Governor has up to 45 days to appoint.

The outline below describes the timing of the major procedures followed during the judicial selection process:

1) Written notice of the vacancy is received by the Council. (Day 1).

2) Within 3 days, the position is announced to all members of th Bar Associaton and the application process begins. (Day 4).

3) The deadline for receiving applications is approximately three weeks after the announcement of the position. (Day 25). The deadline for filing for the current vacancy is January 25, 1985.

4) The names and biographies of applicants are made public immediately after the filing deadline. (Day 25)

5) The Judicial Council begins its investigation process, requesting letters of reference, disciplinary histories for each applicant, and such other records as may be deemed appropriate. (Day 25).

6) The Bar Poll is mailed out to all members of the state Bar within three days. (Day 28).

7) Bar members have approximately three weeks to complete and return the Bar Poll. (Day 49). The Bar Polls for the current vacancy must be returned by February 18, 1985. The results are tabulated and analyzed within 14 days following the survey return deadline. (Day 63).

8) The candidates are advised of the bar survey results and the report is made public. (Day 63).

9) Applicant files are screened and applicants selected are advised of the time, date and place of their interviews. (Day 63)

10) Interviews are ordinarily held within the next 30 days (Day 70-93). Interviews for the current judicial vacancy are tentatively scheduled to be held on March 27-28, 1985. Council members vote following the interviews. The Governor and the candidates are immediately notified of the Council's vote and a press release is then issued.

11) The following day, the names of nominees are formally submitted to the Governor, along with copies of nominees' applications and a copy of the Bar Survey. The Governor then has up to 45 days to make an appointment from the list.

ALASKA COURT SYSTEM

Requested legislation

(1) Amendments to SB 1, increasing district court and small claims jurisdiction

(a) eliminating concurrent civil jurisdiction in the superior and district court

(b) lien enforcement in district court

(c) authorizing district court to issue domestic violence injunctive orders

(d) standardizing the monetary level of magistrate jurisdiction

(2) Venue

(3) Judicial vacancy

(4) Internal auditor

SB 1: AMENDMENTS PROPOSED BY

THE ALASKA COURT SYSTEM

Proposed Amendment #1 - eliminating concurrent civil jurisdiction in the superior and district court

AS 22.10.020(a) is amended to read:

Sec. 22.10.020. Jurisdiction. (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.

AS 22.15.030(b) is repealed and re-enacted to read:

Sec. 22.15.030(b). [INSOFAR AS THE CIVIL JURISDICTION OF THE DISTRICT COURTS AND THE SUPERIOR COURT IS THE SAME, SUCH JURISDICTION IS CONCURRENT.] An action within the civil jurisdiction of the district court may be referred to the superior court only under procedures provided by supreme court rule.

Proposed Amendment #2 - lien enforcement in district court

AS 34.35.005(a) is amended to read:

(a) When an action is required to enforce a lien provided for in [§§ 5 - 425 OF] this chapter, and when such action falls within the monetary jurisdiction of the district court, the action shall be started in the [SUPERIOR] district court in the judicial district in which the property upon which the lien attaches is located. An action which exceeds the monetary jurisdiction of the district court shall be started in the superior court. The procedure, except as otherwise provided in §§ 5 - 45 of this chapter is the same as in the trial of an

action to secure property to hold it for the satisfaction of a lien against it.

Proposed Amendment #3 - authorizing district court to issue emergency domestic violence injunctive orders

Third Judicial District Presiding Judge Douglas Serdahely has proposed that the district court be given authority to issue injunctive orders in domestic violence matters. At present, under AS 25.35.020 the district court can issue such an order only if there is no superior court within 50 road miles of the residence of the person subjected to domestic violence. The administrative office of the Alaska Court system takes no position on this proposal.

This proposal would require the following amendments:

AS 22.15.100 is amended to read:

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

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

(2) of a notary public;

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

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

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

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

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

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

(9) to issue a temporary order for [EMERGENCY] injunctive relief in cases involving domestic violence [AS PROVIDED IN AS 09.55.610];

(10) to review an administrative revocation of a person's driver's license or nonresident privilege to drive, and an administrative refusal to issue an original license, when designated as a hearing officer by the commissioner of public safety and with the consent of the administrative director of the state court system.

AS 25.35.010 is amended to read:

Sec. 25.35.010. Injunctive relief in cases involving domestic violence. (a) A person who is subjected to domestic violence may petition [A] <u>the</u> superior <u>or district</u> court for injunctive relief restraining the infliction of further domestic violence against the petitioner by the respondent.

(b) Upon receiving a petition under (a) of this section, the [SUPERIOR] court shall schedule a hearing and shall provide at least 10 days notice to the respondent of the hearing and of the respondent's right to appear and to be heard either in person or by attorney. If, at the hearing, the [SUPERIOR] court finds that the petitioner has been subjected to domestic violence by the respondent, the [SUPERIOR] court may issue any order it determines to be necessary for the protection of the health, safety or welfare of the petitioner or of a minor child in the care of the petitioner. An order under this subsection may include provisions which

(1) restrain the respondent from subjecting the petitioner to domestic violence;

(2) direct the respondent to vacate the home of the petitioner;

(3) restrain the respondent from communicating directly or indirectly with the petitioner;

(4) direct the respondent to pay support for the petitioner or for a minor child in the care of the petitioner if there is an independent legal obligation of the respondent to support the petitioner or the child;

(5) award temporary custody of a minor child to the petitioner;

(6) direct the respondent to pay medical expenses incurred by the petitioner as a result of the domestic violence;

(7) direct the respondent to engage in personal or family counseling;

(8) restrain the respondent from entering a propelled vehicle in the possession of or occupied by the petitioner.

(c) An order issued under this section remains in effect for a period of time not to exceed 90 days. However, the petitioner may petition the [SUPERIOR] court for an extension of a provision of the order if the provision is described in (b)(1), (b)(2), (b)(3), (b)(7), or (b)(8) of this section. If the [SUPERIOR] court, after notice to the respondent of and a hearing on the petition for the extension in accordance with the procedures described in (b) of this section, finds that an extension of the provision of the order is necessary to protect the petitioner or a minor child in the care of the petitioner from domestic violence, the [SUPERIOR] court may extend the provision of the order for a period of time not to exceed 45 days. The court may not grant more than one extension under this subsection.

(d) Proceedings under this section do not preclude any other available civil or criminal remedies.

AS 25.35.020(a) is amended to read:

Sec. 25.35.020. Emergency injunctive relief in cases involving domestic violence. (a) A person who has been subjected to domestic violence may petition the superior <u>or district</u> court for a temporary order providing for emergency injunctive relief restraining the infliction of further domestic violence against the petitioner by the respondent. [IF THERE IS NO SUPERIOR COURT WITHIN 50 ROAD MILES OF THE RESIDENCE OF THE PERSON SUBJECTED TO DOMESTIC VIOLENCE, THE PERSON MAY PETITION THE NEAREST DISTRICT COURT FOR A TEMPORARY EMERGE INJUNCTIVE RELIEF ORDER. IF

THERE IS NO DISTRICT COURT WITHIN 50 ROAD MILES OF THE RESIDENCE OF THE PERSON SUBJECTED TO DOMESTIC VIOLENCE, THE PERSON MAY PETITION THE NEAREST MAGISTRATE FOR THE TEMPORARY EMERGENCY INJUNCTIVE RELIEF ORDER. THE DISTRICT COURT OR MAGISTRATE SHALL NOTIFY THE SUPERIOR COURT IMMEDIATELY UPON ISSUANCE OF AN ORDER GRANTING EMERGENCY INJUNCTIVE RELIEF UNDER THIS SECTION.]

Proposed Amendment #4 - standardization of jurisdiction of magistrates

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

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

(2) for the recovery of specific personal property when the value of the property claimed and the damages for the detention do not exceed $5,000 [$1,000];

(3) for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding $5,000 [$1,000];

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

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

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

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

(8) REPEALED]

IN THE SENATE BY ZIEGLER AND RAY

SENATE BILL NO. 1

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the jurisdiction of the district court and the small claims jurisdictional limitation; and providing for an effective date."

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

* Section 1. AS 22.15.030(a) is amended to read:

(a) The district court has jurisdiction of civil cases and proceedings as follows:

(1) for the recovery of money or damages when the amount claimed exclusive of costs, interest and attorney fees does not exceed $25,000 [$10,000, EXCEPT AS PROVIDED IN (10) OF THIS SUBSECTION];

(2) for the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed $25,000 [$10,000];

(3) for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding $25,000 [$10,000];

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

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

[(6) Repealed

(7) Repealed]

(6) [(8)] for the recovery of the possession of premises in

the manner provided under AS 09.45.070 - 09.45.160 when the value of the property or of the arrears and damage to the property does not exceed $25,000 [$10,000];

(7) [(9)] for the foreclosure of a lien when the amount in controversy does not exceed $25,000 [$10,000];

(8) [(10)] for the recovery of money or damages in motor vehicle tort cases when the amount claimed exclusive of costs, interest and attorney fees does not exceed $25,000 [$15,000];

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

* Sec. 2. AS 22.15.040 is amended to read:

Sec. 22.15.040. SMALL CLAIMS. When a claim for relief does not exceed $5,000 [$2,000] exclusive of costs, interest and attorney fees, and request is so made, the district judge or magistrate shall hear the action as a small claim unless important or unusual points of law are involved. The supreme court shall prescribe the procedural rules and standard forms to assure simplicity and the expeditious handling of small claims.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: SB 1
Title: District Court Jurisdiction and Small Claims Jurisdictional Lmt.
Sponsor:
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Alaska Court System
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Trial Courts

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		94.8	100.5	106.5	112.9	119.7
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES		2.0	2.1	2.2	2.3	2.4
500 EQUIPMENT		9.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		105.8	102.6	108.7	115.2	122.1
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		105.8	102.6	108.7	115.2	122.1
FEDERAL FUNDS						
OTHER						
TOTAL		105.8	102.6	108.7	115.2	122.1

POSITIONS:

FULL-TIME		3	3	3	3	3
PART-TIME		1	1	1	1	1
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert G. Fisher, Fiscal Officer Phone: 264-0561
Division: Alaska Court System Date: 1/15/85

Approved by Commissioner: [signature] Date: 1/15/85
Agency: Alaska Court System

Distribution (by Agency preparing fiscal note):
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12/1/83

ALASKA COURT SYSTEM

SB 1 - DISTRICT COURT JURISDICTION
AND SMALL CLAIMS JURISDICTIONAL LIMITATION

FISCAL IMPACT

The increase in the District Court civil jurisdiction to $25,000 is expected to have a minimal fiscal impact on the courts. In contrast, it is anticipated that the increase in small claims jurisdiction from $2,000 to $5,000 will have a significant impact on court operations.

The Civil Division of the Anchorage Clerk's Office, which is the court location with the greatest number of small claims filings, anticipates that a jurisdictional increase would result in a 15-20% increase in small claims filings. Some of these cases would be matters previously handled in District Court. Others would be new to the system, representing legal problems with a relatively low dollar amount involved for which persons are reluctant to incur the costs entailed for an attorney, but which they wish to handle themselves in small claims court.

Additionally, some litigants would be willing to waive the amount of their claim over $5,000 and proceed in small claims court, balancing the waiver of the claim amount against the savings in attorney fees in small claims.

Judicial resources should not be impacted by the increase since most of these types of cases are already in the system. However, additional clerical help will be required. The small claims procedures involve an extensive amount of clerical assistance, including mailing notices for litigants and substantial time expended in advising the public. General District Court matters require only simple filing and journaling of documents. This impact could be handled by the addition of three and one-half (3½) positions with costs calculated on the following page. One and one-half of these positions would be located in Anchorage. Fairbanks and Juneau would each receive one position.

ALASKA COURT SYSTEM
FISCAL NOTE ANALYSIS

SB 1 - DISTRICT COURT JURISDICTION AND SMALL CLAIMS JURISDICTIONAL LIMITATION

PERSONNEL:	SALARY	BENEFITS	TOTAL COST
1½ COURT CLERK I (Anchorage - 8B)	$28,926	$10,418	$39,344
1 COURT CLERK I (Fairbanks - 8B)	21,744	7,496	29,240
1 COURT CLERK I (Juneau - 8B)	19,284	6,945	26,229
Total Personnel Costs			94,813
SUPPLIES			2,000
EQUIPMENT (one-time items)			8,996
TOTAL FY 86 COST			$105,809

Subsequent fiscal years adjusted to reflect 6% inflation.

Box 234
Dillingham, AK
99576
March 22, 1986

Governor Wm. Sheffield
Pouch A
Juneau, AK 99811

Dear Governor Sheffield:

I have heard that our district attorney is going to be taken from us. If this is true, it is a move which is going to set back this community and the surrounding area in administering the criminal justice system in Bristol Bay.

Governor, you promised not to send communities in our state over the edge on delivery of services, that you would let us down easily. The DA cut is not letting us down easily. Not only that, our region will be the only region in the state without a DA.

What kind of signal will this send to the enforcement community that works so hard to keep law and order in the Bristol Bay region? The DA follows through on making sure that the administration of justice works. If we go back to an itinerant DA system, we will lose many of our cases as we did before we had a DA stationed here. The signal that goes out will be that our state does not care and that criminals can do what they want to do. The attitudes toward law enforcement will diminish and cause serious social problems.

Finally, the DA serves 32 communities, over 5000 people, in the Bristol Bay region. The DA has imposed over $600,000 in fines and fees from criminals. Also, the DA has confiscated 3 fishing boats on infractions of fishing violations, a first in our history of Bristol Bay!

Please reconsider the decision to cut the DA office in Dillingham. The salary has been paid for by the fees imposed. This is probably the only office you have in state government that pays its own way. Bush justice has been a problem in the past and we do not want to go backwards.

Thank you for listening. Good luck as you consider the budget.

Very sincerely,

Dorothy A. Anderson

cc: Sen. Pat Rodey, Judiciary Chr.
Rep. M.Mike Miller
Sen. Fred Zharoff
Rep. Adelheid Herrmann