

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4666 HJUD HB 137 - HB 139

238

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 24, 1988

SUBJECT: Public Offices Commission and the duration
and financing of election campaigns [CSSSHB
137(Judiciary)]

TO: Representative John Sund
Chair, House Judiciary Committee

FROM: Richard A. Bradley *RB*
Legislative Counsel

John Hartle has asked that I comment on two questions that have arisen during hearings on the draft CSSSHB 137 (Judiciary).

First, does the limitation of contributions that may be accepted by a candidate from corporations, labor unions, and groups constitute a limitation on free speech or on equal protection rights? Second, do the limits that the bill establishes on the lengths of an election campaign constitute a limitation on free speech?

V In my view, the bill violates none of the suggested constitutional rights.

Some examination of the contents of the bill should be made to put the two questions into focus. While the bill suggests in its title that there is a "duration" to the election campaign, this must be understood in context. The bill does establish times within which the director of elections may accept a declaration of candidacy or a nominating petition. The bill also provides that it is only after filing the declaration or petition through the day before the date of the election that the candidate may accept political contributions. While these are limitations of significance, I believe that it is clear that the rights of the candidate or of others to engage in free speech are not limited by the sections.

To that extent, it would be more accurate to describe the bill as limiting the time within which political contributions may be accepted. While the terminology used in the bill is accurate and proper, the bill does not actually address the separate subject of the limitation of the length of election campaigns; within the constraints established by the bill, the campaign may be as long as the candidates wish it to be.

The limitations established in the bill do not (and could not) limit free speech, have any effect on independent expenditures, or limit contributions from a candidate to the candidate's own campaign.

I. The limitation on contributions that may be accepted by a candidate from corporations, labor unions, and groups as a limitation on free speech or on equal protection rights.

The limitation on the acceptance of contributions from labor unions and corporations is valid because the legislature could, if it wished, prohibit all contributions from labor unions and corporations. The Congress has prohibited all contributions to a candidate for federal office from national banks, corporations, and labor unions and limited the breadth of those from whom "political action committees" established by the banks, unions, or corporations could seek contributions. 2 U.S.C., sec. 441b. [A "political action committee" under federal law is largely identical to a "group" under state law. See AS 15.13.130(4).] The laws have been upheld. Federal Election Committee v. National Right to Work Committee, 459 U.S. 197 (1982); International Ass'n. of Machinists and Aerospace Workers v. Federal Election Committee, 459 U.S. 983 (1982).

I believe that the legislature could enact similar legislation.

While there are limitations on contributions from labor unions, corporations, and groups, the law establishes no limitations on the amounts that a candidate may accept from individuals (beyond the existing \$1,000 that is carried into this bill). The candidate may accept an unlimited number of contributions from individuals.

Since the legislature could enact a total prohibition on the contributions directly and regulate the method by which the union or corporation seeks contributions to the controlled

groups, I believe it could logically enact reasonable nondiscriminatory regulations and limitations on those contributions.

While I am familiar at this time with no legislation from other states that regulate the total amounts that a candidate may accept from unions or corporations, the Supreme Court in Buckley v. Valeo, 424 U.S. 1 (1976) indicated a willingness to accept regulations on outer limits. It accepted a annual limit on contributions from an individual of \$25,000. Sec. 608(b)(3), Federal Election Campaign Act. The Court characterized the limitation in this way:

The overall \$25,000 ceiling does impose an ultimate restriction upon the number of candidates and committees with which an individual may associate himself by means of financial support. But this quite modest restraint upon protected political activity serves to prevent evasion of the \$1,000 contribution limitation by a person who might otherwise contribute massive amounts of money to a particular candidate through the use of unearmarked contributions to political committees likely to contribute to that candidate, or huge contributions to the candidate's political party. The limited, additional restriction on associational freedom imposed by the overall ceiling is thus no more than a corollary of the basic individual contribution limitation that we have found to be constitutionally valid. Buckley v. Valeo, 424 U.S. 1, at ___; 44 USLW 4127, at 4138 (1976).

In my view, since individuals are the ultimate source of all the contributions, the outer limits on the threshold by which corporations, unions, and groups may make their contributions is nothing more than "a corollary of the basic individual contribution limitation" that the Court upheld. Like the \$25,000 total limitation on contributions in the Federal Election Campaign Act, the limitation on contributions from unions, corporations, and groups serves to limit the ways in which wealthier contributor may evade the policy established by the \$1,000 individual contribution limitation.

Representative John Sund
Page 4
February 24, 1988

II. The limits that the bill establishes on the lengths of an election campaign as a limitation on free speech?

In my comments on the bill earlier in this memorandum, I noted that the bill did not in fact address the question of the duration of the election campaign (but only of the time within which the contributions may be accepted). I also noted that the bill does not limit free speech (or independent expenditures) but only contributions. I do not believe that the bill establishes any limitations on constitutionally protected free speech.

If I may be of further assistance, please advise.

RAB:lmb
L6/046

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 16, 1988

SUBJECT: APOC: Amendment of AS 15.13.020(b)
(CSSSHB 137(Jud))

TO: Representative Kay Brown

FROM: Richard A. Bradley
Legislative Counsel

Roxanne Turner has asked that I comment on the provisions of AS 15.13.020(b) as it was included in the draft provided to the Judiciary Committee on February 1, 1988.

The subsection provided:

(b) Each of the two political parties whose candidates for governor received the highest and the second highest number of votes for the office of governor at the most recent preceding gubernatorial election is, as vacancies occur, entitled to submit nominations to the governor for two of the five members of the commission. The governor shall make the appointment within 30 days after receiving four nominations from the central committee or other governing body of the party.

The commission's letter of February 10 suggested that the section could be "construed to mean that any time a vacancy occurs on the commission, both parties are entitled to submit four names."

I believe that that interpretation is incorrect because each party may only make "nominations to the governor for two of the five members of the commission" and then, only "as vacancies occur". When this limitation is read into the right to make nominations, I believe that the section accurately states existing understandings.

While the section does not internally identify which party is entitled to make which nomination, that defect exists in

Representative Kay Brown
Page 2
February 16, 1988

present law and appears not to have created problems. And its solutions would make the section somewhat more complex.

Nonetheless, I have a new version for your consideration.

(b) The political party whose candidate for governor received the highest or the second highest number of votes for the office of governor at the most recent preceding gubernatorial election is, as vacancies occur, entitled to submit nominations to the governor for two of the five members of the commission. The governor shall make the appointment within 30 days after receiving four nominations from the central committee or other governing body of the party.

As I noted in my last memorandum, if this provision is adopted, AS 15.13.020(h) should be repealed.

If I may be of further assistance, please advise.

RAB:bb
wkb2/101

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 15, 1988

SUBJECT: APOC/Duration & financing of election
campaigns (CSSSHB 137(Jud))

TO: Representative Kay Brown

FROM: Richard A. Bradley
Legislative Counsel *RB*

Roxanne Turner has asked that I explain the style and purpose of the amendments contained within the above bill as they addressed the provisions of AS 15.13.020(b) and (d).

The provisions of SSSB 241, the governor's bill, do not address (b) or (d). I thought before and think now that the provisions should be revised. The provisions of AS 15.-13.020(b) now provide:

(b) The governor shall appoint two members of each of the two political parties whose candidate for governor received the highest number of votes in the most recent preceding general election at which a governor was elected. The two appointees from each of these two parties shall be chosen from a list of four names to be submitted by the central committee of each party.

With regard to the revision of (b), I agree that the introductory phrase (from my draft): "Each of" should be deleted.

And while it has always been "understood" what was intended by Sec. 15.13.020(b), I assume that it is clear that it is not accurate to state that two parties can qualify as having "received the highest number of votes in the most recent (gubernatorial) election."

While the bill addresses technical matters that might be dealt with in different ways (e.g., the period of time that should be allowed for the governor to act after having received a nomination), the ideas simply evolved from several

bills that preceded HB 137. And I note that existing law also provides for the 30 day period; the problem is that the existing section seldom works because it only allows 30 days from the occurrence of the vacancy until it is filled. See AS 15.13.020(h). The language I suggested gives the governor 30 days after the nominations reach his office.

If the amendment that I suggested is adopted, AS 15.-13.020(h) should be repealed.

With regard to Sec. 15.13.020(d), existing law not proposed for change in the governor's bill now provides:

(d) Upon selection of the commission's fifth member, the commission's four members selected under (b) of this section shall draw lots to determine the length of their terms of office so that one commission member serves one year, one serves two years, one serves three years, and one serves four years. However, the terms of no two commission members who are members of the same political party may expire in consecutive years. The term of office of the fifth member, appointed under (c) of this section, expires in the fifth year. Terms of office of the initial appointees to the commission, including the fifth member, shall date from February 1 before their appointment. After the terms of office of the initial appointees to the commission expire, the term of office of a member of the commission is five years, or until his successor is appointed and qualifies. No commission member may serve more than one term. However, initial appointees to the commission who do not serve a full five-year term and a person appointed to fill the unexpired term of his predecessor may be appointed to a successive full five-year term.

The only reason that I can think of for amending (d) is that those other sections establishing the organic structure of the commission are being revised--and this is one of them. Since it is an overwritten and obsolete provision and probably half of it is executed temporary law, this is the time to amend it also; when will a better time occur?

Beyond having said that, in my view I did nothing to the substance of (d) and thus I do not understand the reference to the five year terms; terms were and are five years, whether or not members resign early. And note AS 39.05.055.

Representative Kay Brown
Page 3
February 15, 1988

If the terms are now scheduled so that two members of the same party do not have terms expiring in consecutive year, then the second sentence is executed and serves no purpose. That is, I believe, the case.

If I may be of further assistance, please advise.

RAB:bb
wkb2/097

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 15, 1988

SUBJECT: Duration and financing of election campaigns
[CSSSHB 137 (State Affairs)]

TO: Representative Fran Ulmer
Chair, House State Affairs Committee

FROM: Richard A. Bradley
Legislative Counsel

I understand that the committee has passed CSSSHB 137 (State Affairs) out of committee.

I note that there is a technical problem with one section.

In my view, the provisions of Sec. 8 are incomplete in that they do not address municipal candidate's efforts to retire debts existing before this Act.

The problem should be addressed in the next committee of referral.

RAB:bb
WKB1/066

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 17, 1988

STEVE COWPER, GOVERNOR

REPLY TO:

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SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

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FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

The Honorable Kay Brown
House of Representatives
P.O. Box V
Juneau, AK 99811

Re: SSHB 137

Dear Representative Brown:

Karla Forsythe, Executive Director of the Alaska Public Offices Commission, asked this office to review SSHB 137 before its next hearing in the House Judiciary Committee. I note that it has been scheduled for hearing on February 17, 1988, and wanted to apprise you of our analysis before that date.

Section 1. This section would resolve a constitutional problem in the appointment process for APOC commissioners. The language proposed is adequate to achieve this purpose. SSSB 241 contains slightly different language towards the same end.

Section 2. This is a re-write of existing AS 15.13.020(b). The only substantive change is in the second sentence, which proposes that the governor appoint new members of APOC within 30 days of receiving nominations from the political parties. This office is unaware that there has ever been a problem with delay in appointing an APOC commissioner. If the proposed 30 day deadline is to be included, we advise keeping the present language of AS 15.13.020(b) in lieu of the first sentence of section 2.

Section 3. This section would resolve a constitutional problem in the appointment process for the "fifth member," the commissioner nominated by the other commissioners rather than by a political party. SSSB 241 contains slightly different, cleaner language towards the same end. Our suggestion is to consider using the language of SSSB 241 instead of the proposed language.

Section 4. This section would remove archaic language in AS 15.13.020(d), relating to the appointment of the first APOC commissioners. The revisor of statutes has proposed to amend AS 15.13.020(d) to remove the archaic language in this year's revisor's bill. The proposed language is somewhat confusing, and, given that the revisor is already working on this section,

our suggestion is to consider dropping this section from the bill.

Section 5. This section prohibits candidates from accepting campaign contributions prior to the "adjournment sine die of the second session of the legislature," for legislative candidates; prior to January 2 of the "year of the election" for statewide candidates; and prior to 90 days before the election for municipal candidates. The language appears adequate to achieve these ends, although use of the term of art "sine die" could be confusing to the uninitiated. We express no opinion as to the policy proposal to limit fund raising to these time periods.

Section 6. This section would allow candidates to continue the present practice of maintaining multiple campaign accounts, to use the funds in those accounts for a variety of purposes, and to keep the accounts open for years after the campaign is over.

The language of this section is unusual, and the policy goals sought are directly opposed to those which have been articulated by the APOC in this area: a date certain after which campaign accounts must be closed, and a prohibition on the use of campaign funds for purposes other than campaigning. Compare, SSSB 241, sections 3 and 10. This section does not change present law, except for the prohibition on "conversion," i.e., theft, of campaign funds. Our suggestion is to consider substituting sections 3 and 10 from SSSB 241 for this section.

Section 7. This section imposes fines for accepting contributions prior to the dates found in section 5. The language appears to achieve the goals sought.

Sections 8, 9 and 11. These sections prohibit the filing of declarations of candidacy or party petitions earlier than the dates found in section 5. The language of these sections appears to achieve the goals sought.

Section 10. This section would make it a conflict of interest for a member of the legislature to accept a campaign contribution earlier than the dates found in section 5. The language appears to achieve the goals sought.

Sections 12 and 14. These sections contain fairly convoluted effective date provisions. A better approach would be to make the entire act effective on one date.


The Honorable Kay Brown
SSHB 137

February 17, 1988
Page 3

I hope these comments are of some assistance to you as work continues on SSHB 137. Please do not hesitate to call if you have any questions or comments.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL



By: Richard D. Monkman
Assistant Attorney General

RDM:nb

cc: Bob Evans, Legislative Liaison, Governor's Office
Karla Forsythe, Executive Director, APOC

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC OFFICES COMMISSION

REPLY TO:

- 2221 E. Northern Lights, Room 128
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(907) 465-4864

February 10, 1988

FEB 15 1988

Rep. Kay Brown
P.O. Box V
Juneau, AK 99811

Dear Rep. Brown:

Thank you for the opportunity to review and comment on the 2/1/88 work draft of the proposed committee substitute for SS HB 137 (Judiciary).

The Alaska Public Offices Commission greatly appreciates your willingness to include provisions clarifying the procedure for appointment of commission members. However, after reviewing the language proposed in sections 2-4 it appears that the wording set out in the draft deviates substantially from language in SS SB 241 drafted by the Department of Law to address this issue, as well as from existing law. The commission requests that you consider asking the Judiciary Committee to revise the language in the work draft along the lines of the Governor's bill.

Specifically, the wording of section 2 could be construed to mean that any time a vacancy occurs on the commission, both parties are entitled to submit four names. Under existing law only the party whose seat is being vacated submits nominees. Since this has been the procedure for many years, and to my knowledge has not been an issue, the preference of the commission is to retain the existing statutory language (AS 15.13.020(b)). Additionally, there may be a concern with language in the draft which limits the time for the governor to act on commission appointments.

With regard to proposed section 3, section 2 of the Senate bill sets out the procedure to be followed for the fifth member appointment in a clear, step-by-step manner which is more precise and easier to read than the wording in the work draft. With regard to proposed section 4, the wording of this section under existing law has not created

Rep. Kay Brown
February 10, 1988
Page 2

a problem. It is the preference of the commission not to amend the statute at this time since there is no apparent reason to single out this section from other provisions in the campaign finance disclosure law which have not created problems but which could be drafted more clearly. Also, although the work draft assumes five year terms for all commission members, it is not uncommon for a member to resign before a term is over.

In summary, the commission requests that you consider asking the committee to incorporate sections 1 and 2 of the governor's bill, and to take no action at this time to amend AS 15.13.020(b) and (d).

Wording in other sections of the bill may raise some questions. In section 6, the use of the phrases "convert surplus funds" and "amounts advanced" could create interpretation issues. Also, permitting candidates to dispose of only unobligated funds, permitting campaign accounts to remain open, and allowing contributions to the accounts of others dilute the concept of a firm campaign close-out date.

A clearly established campaign closing date is in the best interests of both the public and candidates. It promotes public confidence in elected officials, since an unlimited period for post-election contributions is perceived by the public as an opportunity for successful candidates to obtain contributions from those who will be seeking political support for their causes. Also, some elected officials have several accounts for different campaigns and for different offices open at any given time. Public confidence in campaign laws is eroded when a campaign can receive maximum contributions for several campaigns from a single source. A firm deadline emphasizes the importance of straightening up campaign accounts and provides an incentive to do so.

A definite closing date permits commission staff to plan its work more efficiently. Reports are required on all accounts several times during the year, although some of the accounts may be dormant. The additional paperwork causes unnecessary administrative expense for commission staff, and the reporting requirements are confusing to all concerned.

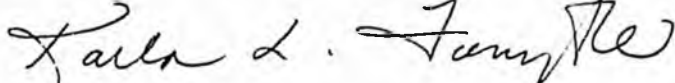
Finally, considering the grandfather and applicability provisions, another approach might be to extend the effective date of the measures to January 1, 1989, assuming this does not alter the intent of those provisions.

Rep. Kay Brown
February 10, 1988
Page 3

I hope these comments are helpful. I will be glad to provide further information or answer any questions about the commission's concerns.

Sincerely,

AK PUBLIC OFFICES COMMISSION



Karla L. Forsythe
Executive Director

cc: APOC Members
Representative Sund, House Judiciary Committee
Bob Evans, Office of the Governor
Dick Monkman, Department of Law
Push Dillon, Department of Administration

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC OFFICES COMMISSION

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February 3, 1988

FEB 06 1988

Rep. Sam Cotten
PO Box V
Juneau, AK 99811

Dear Rep. Cotten:

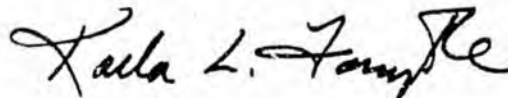
After my testimony to the House Judiciary Committee on HB 137 last Monday, you asked me to provide any written documentation of support from the Alaska Public Offices Commission for SS SB 241, a campaign finance reform measure introduced by the Governor.

I have attached a copy of a letter from the Commission to the Governor dated November 19, 1987, stating that "passage of SB 241 is a Commission priority." Each of the five members signed the letter as a way of emphasizing to the Governor the level of support for language addressing specific Commission concerns.

I believe the attached letter should clarify the Commission's position. If you have further questions, or problems with the way in which the Commission is communicating its views on pending legislation, please let me know.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION



Karla L. Forsythe
Executive Director

cc: APOC members
 \ Rep. Sund, Chair, House Judiciary Committee
 / Rep. Brown

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC OFFICES COMMISSION

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November 19, 1987

Governor Steve Cowper
P.O. Box A
Juneau, AK 99811-0101

Dear Governor Cowper:

At its November 18 meeting the Alaska Public Offices Commission reviewed amendments to SB 241 drafted by the Department of Law at the Commission's request. The Commission strongly supports amendments clarifying the appointment process for the fifth commissioner, requiring confidentiality of investigations, and prohibiting the use of contributions as personal income. Further, all commissioners also agree that language establishing a campaign account closing date is an essential part of this legislation.

Draft language prepared by Mr. Monkman included both campaign start-up and stop dates. The Commission continues to support the concept of a start-up date, but suggests deleting this provision from the present legislation, and focusing instead on the closing date.

Although the Commission is not wedded to any particular date, we believe the concept of a uniform closing date is in the best interests of both the public and candidates. It promotes public confidence in elected officials, since an unlimited period for post-election contributions is perceived by the public as an opportunity for successful candidates to exact contributions from those who will be seeking political support for their causes. A deadline emphasizes the importance of straightening up campaign accounts and provides an incentive to do so without undue delay. Additionally, it will permit Commission staff to plan its work around a uniform closeout date.

The Commission agrees that December 31 of the year in which the election is held may be overly restrictive, and proposes that the date be extended to July 1 of the year following the election. This should allow sufficient time for candidates to close their accounts. It also recognizes the legitimate need of candidates with limited financial resources to accept post-election contributions to defray campaign expenses.

We urge your support for language establishing a fair and reasonable campaign closing date. The Commission will be glad to discuss this issue with you and to help explain to the legislature the ways in which this proposal benefits candidates and the public.

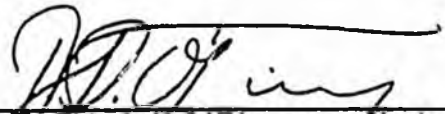
Governor Cowper
November 19, 1987
Page 2

Passage of SB 241 is a Commission priority. We are prepared as individual commissioners and as a group to communicate with legislators and to testify before the committees to which this measure has been referred. Our Executive Director, Karla Forsythe, will be contacting Bob Evans to discuss specific ways in which the Commission can provide assistance.


Thank you for considering our views.

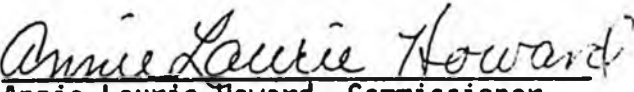
Sincerely,

ALASKA PUBLIC OFFICES COMMISSION


Daniel Patrick O'Tierney, Chairman


Arlayne Knox, Vice Chairman


Charles Dunnagan, Commissioner


Annie Laurie Howard, Commissioner


Burke Riley, Commissioner

cc: Bob Evans
Dick Monkman
Karla Forsythe

STATE OF ALASKA

STEVE COWPER, GOVERNOR

H73137

ALASKA PUBLIC OFFICES COMMISSION

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February 3, 1988

Carol Horos
Office of Sen. Mitchell Abood
PO Box V
Juneau, AK 99811

Dear Ms. Horos:

As we discussed, I have attached an annotated copy of SS SB 241. The annotations were drafted in consultation with the Department of Law, and were reviewed and approved by the commission at its meeting last week. I am forwarding a copy to Bob Evans in the event that he may wish to comment from the Governor's perspective.

The proposed language is intended to clarify some of the issues we discussed previously. To summarize, the changes would:

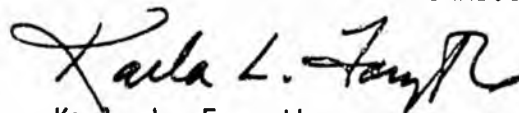
- clarify the extent of the prohibition on use of contributions as personal income (section 3).
- clarify that a complaint to the commission as well as the response (if authorized by the respondent) would be available for public inspection. After that point, investigation by the commission into a complaint would be confidential until the commission files an accusation or closes the investigation. Other new language would cross-reference the penalty under existing law for violation of this section.
- separate section 5 into two sections, and renumber the remainder of the bill accordingly.
- change the word "person" in section 9 to "individual".
- make the procedural portions of the bill effective immediately, and the policy portions effective January 1, 1990, in order to give the commission adequate time to develop new regulations, forms, manuals and procedures needed to implement the bill.

Carol Horos
February 3, 1988
Page 2

It is my understanding that you will be meeting with Sen. Abood to discuss these suggestions, as well as to schedule the bill for hearing. Please let me know if I can provide any additional information which might be of help at this time.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION



Karla L. Forsythe
Executive Director

cc: APOC members
Bob Evans, Office of the Governor
Rep. Kay Brown
X House Judiciary Committee
Dick Monkman, Department of Law
Push Dillon, Department of Administration

2/3/88

An investigation by the commission is confidential. A complaint filed with the commission is a public record. A written response to a complaint is available for public inspection if authorized by the respondent.

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 241

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to election campaign financing and
7 the Alaska Public Offices Commission; and providing
8 for an effective date."

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

10 * Section 1. AS 15.13.020(a) is amended to read:

11 (a) There is created in the Department of Administration the
12 Alaska Public Offices Commission consisting of five members. The
13 governor shall appoint all members of the commission in the manner
14 prescribed in (b) and (c) of this section, subject to confirmation by
15 a majority of the legislature meeting in joint session.

16 * Sec. 2. AS 15.13.020(c) is amended to read:

17 (c) The four members selected under (b) of this section shall,
18 by a majority vote, nominate to the governor an individual to serve as
19 [APPOINT] the [REMAINING] fifth member of the commission. The
20 governor shall either appoint the nominee to the commission, or shall
21 reject the nominee and request the commission to nominate another
22 individual to serve as the fifth member of the commission.

23 * Sec. 3. AS 15.13 is amended by adding a new section to read:

24 Sec. 15.13.041. USE OF CONTRIBUTIONS. ^{An individual who accepts campaign} contributions ~~as a candidate~~

25 ^{may not} use, take, or spend ^{campaign} as personal income ^{contributions} ~~for public office~~ ^{at any time.}

26 * Sec. 4. AS 15.13.045 is amended by adding a new subsection to read:

27 (e) ^{NO} ~~any~~ ^{written or verbal} documentary material, information, ^{or} testimony of
28 witnesses which is produced, obtained, recorded, or compiled during an
29 investigation by the commission may ~~not~~ be disclosed to anyone other

1 than a commission member, an ~~employee~~ employee of the commission for
2 use in the investigation, the attorney general, or the person or group
3 who produced the material or gave the testimony until such times as

4 (1) an accusation is filed under AS 44.62;

5 (2) the commission, by majority vote, closes an inves-
6 tigation without filing an accusation under AS 44.62; or

7 (3) the superior court, for good cause shown, orders the
8 information disclosed.

*Violation of this section constitutes
an abuse of public office under A.S. 11.56*

9 * Sec. 5. AS 15.13.050 is amended to read:

10 Sec. 15.13.050. GROUPS. Each group, before making an expendi-
11 ture on behalf of[,] or in opposition to[,] a candidate, and a politi-
12 cal party, before making [OR] a contribution to a candidate, shall
13 register [, ON FORMS PROVIDED BY THE COMMISSION,] with the commission
14 on forms provided by the commission. // *Sec. 6* If the group intends to support
15 or oppose only one candidate, or to contribute to or expend [ON BEHALF
16 OF, OR IN OPPOSITION TO, ONE CANDIDATE] 50 percent or more of its
17 funds on behalf of or in opposition to one candidate, the name of the
18 candidate must [SHALL] be a part of the name of the group. Promptly
19 upon receiving the registration, the commission shall notify the
20 candidate of the group's organization and intent.

21 * Sec. 7. AS 15.13.070(a) is amended to read:

22 (a) An individual [NO PERSON OR GROUP, INCLUDING BUT NOT LIMITED
23 TO ALL POLITICAL COMMITTEES, BUSINESSES, CORPORATIONS, AND LABOR
24 UNIONS,] may not contribute [TO OR EXPEND] more than \$1,000 a year [ON
25 BEHALF OF OR IN OPPOSITION] to a candidate [THE COMPETING CANDIDATES
26 FOR EACH ELECTIVE OFFICE]. No group other than a political party, and
27 no person other than an individual, may contribute to a candidate.
28 Political parties and their subdivisions are not subject to the limi-
29 tation prescribed in this subsection, but they are subject to the

1 reporting requirements prescribed by AS 15.13.040(b) and 15.13.110.
2 Nothing in this chapter prohibits

3 (1) a candidate from contributing more than \$1,000 of the
4 candidate's [HIS] own money to the candidate's [HIS] own campaign; or

5 (2) individuals or groups, including but not limited to all
6 political committees, businesses, corporations, and labor unions, from
7 contributing to or expending on behalf of a ballot proposition or
8 question more than \$1,000 a year; however, these contributions and
9 expenditures shall be reported in accordance with AS 15.13.040 and
10 15.13.110.

11 * Sec. ~~8~~ AS 15.13 is amended by adding a new section to read:

12 Sec. 15.13.075. CAMPAIGN ACTIVITIES BY LOBBYISTS. An individu-
13 al who is registered as a lobbyist under AS 24.45 may contribute the
14 lobbyist's own money, goods, and services to a candidate, subject to
15 the limits of AS 15.13.070. However, no person registered as a
16 lobbyist under AS 24.45 may

17 (1) serve as a campaign treasurer or deputy campaign trea-
18 surer for a candidate for governor, lieutenant governor, or the legis-
19 lature; or

20 (2) directly or indirectly solicit, receive, collect,
21 handle, disburse, or account for campaign contributions for a candi-
22 date for governor, lieutenant governor, or the legislature.

23 * Sec. ~~9~~ AS 15.13.080 is amended to read:

24 Sec. 15.13.080. STATEMENT BY CONTRIBUTOR. A ^{an individual} ~~person~~ or politi-
25 cal party [GROUP] contributing [TO A CANDIDATE] over \$250 in money,
26 [OR CONTRIBUTING] goods, or services to a candidate [WITH A VALUE OF
27 MORE THAN \$250 TO INFLUENCE THE ELECTION OF A CANDIDATE] shall furnish
28 the commission a signed statement, on a form made available by the
29 commission. The statement shall itemize the contribution [AND GOODS]

1 and state that the contributor is not a ~~person~~^{n individual} or group prohibited by
2 law from contributing and that the contribution consists of funds or
3 property belonging to the contributor and has not been given or fur-
4 nished by another person or group. The contributor's statement shall
5 be filed with the commission by the contributor no later than 10 days
6 after the contribution is made. A copy of the statement shall be
7 furnished the candidate, campaign treasurer, or deputy campaign trea-
8 surer at the time the contribution is made.

9 * Sec. ~~10~~¹⁰ AS 15.13 is amended by adding a new section to read:

10 AS 15.13.115. CLOSING OF CAMPAIGNS AND FINAL REPORTS. (a) . A
11 candidate shall close all campaign accounts, and file a final report
12 with the commission, no later than July 1 of the year following the
13 year in which the election was held. The final report must be in
14 accordance with AS 15.13.040 and must be on a form prescribed by the
15 commission.

16 (b) After the date a final report is due, a contribution may not
17 be accepted by or on behalf of the candidate, and an expenditure may
18 not be made by or on behalf of the candidate.

19 (c) Contributions not spent before the date a final report is
20 due must be

21 (1) donated to an organization that qualifies as a charita-
22 ble organization under 26 U.S.C. 501(c); or

23 (2) returned to contributors on a pro rata basis.

24 * Sec. ~~11~~¹¹ AS 15.13.110(a) is amended to read:

25 (a) Each candidate and group shall make a full report in
26 accordance with AS 15.13.040 during the period ending three days
27 before the due date of the report and beginning on the last day
28 covered by the most recent previous report, or, if a first report, all
29 contributions received and expenditures made before three days before

1 the due date of the report. The report shall be filed at the
2 following times:

3 (1) 30 days before the election; however, this report is
4 not required if the deadline for filing a nominating petition or
5 declaration of candidacy is within 30 days of the election;

6 (2) one week before the election;

7 (3) 10 days after the election; and

8 (4) December 31 of each year in which a final report is not
9 filed with the commission in accordance with AS 15.13.115 [FOR EXPEN-
10 DITURES AND CONTRIBUTIONS WHICH WERE NOT REPORTED THAT YEAR].

11 * Sec. ~~12~~ AS 15.13.125 is amended to read:

12 Sec. 15.13.125. CIVIL PENALTY; LATE FILING OF REQUIRED REPORTS.
13 A person who fails to file a properly completed and certified report
14 within the time required by AS 15.13.110(a)(1), (3), or (4), [OR]
15 15.13.110(d), or 15.13.115 is subject to a civil penalty of not more
16 than \$10 a day for each day the delinquency continues as determined by
17 the commission subject to right of appeal to the superior court. A
18 person who fails to file a properly completed and certified report
19 within the time required by AS 15.13.110(a)(2) or 15.13.110(b) is
20 subject to a civil penalty of not more than \$50 a day for each day the
21 delinquency continues as determined by the commission subject to right
22 of appeal to the superior court. An affidavit stating facts in
23 mitigation may be submitted to the commission by a person against whom
24 a civil penalty is assessed. However, the imposition of the penalties
25 prescribed in this section or in AS 15.13.120 does not excuse that
26 person from filing reports required by this chapter.

27 * Sec. ~~12~~ ¹³ Sections 1, 2 and 4 of This Act take effect immediately under AS 01.10.070(c).

28 Sections 3, 5, 6, 7, 8, 9, 10, 11 and 12
take effect January 1, 1990.



House Judiciary Committee
Alaska Legislature
February 1, 1988
CS HB137

Mister Chair, Members of the Committee:

My name is Eve Reckley. I represent the League of Women Voters of Alaska. You have before you the Committee Substitute for House Bill 137 relating to financing of political campaigns. Reform of campaign financing legislation is a high priority on the League's agenda for enactment in this session.

The League applauds the sponsors of the bill for their efforts in putting this issue before you. We believe that actual reform of the way in which campaigns are financed and conducted is vital to ensure the public's trust in the electoral process. We realize it is not an easy task to address the problems that candidates might encounter in widely disparate election districts. But then, that is the challenge that often faces Alaskans in trying to find an equitable way of legislating in the broad public interest.

This bill provides the vehicle for fair and imaginative action. It will require careful balancing, judicious handling and a real commitment to meaningful reform. It will require statesman-like, or statesperson-like action from each legislator. We believe you are equal to the task. The stakes are high--building the public confidence in the political process.

The League feels that shortening the duration of campaigns would help to bring the costs down and encourage more people to run for office. We are concerned, however, that as the bill is currently drafted, setting the period for legislative campaigns to begin the day following adjournment of the Legislature, would handicap challengers. We question whether it would provide sufficient time for them to raise money to mount a viable campaign.

We are concerned too, that the time period would be inadequate for candidates in large rural districts to reach voters. The timing would be such that fishermen and other seasonal workers would be away from their home base during much of the campaign period.

The League's position on campaign finance reflects our continuing concern for open and honest elections and for maximum citizen participation in the political process. We believe the goals of a campaign finance system should be:

- to ensure the public's right to know;
- to combat corruption and undue influence;
- to enable candidates to compete more equitably for public office.

To accomplish these goals, the League supports legislation to shorten the duration of campaigns to the calendar year in which the election is held and to establish the day before the election as the cut-off date for candidates to recoup expenses of that campaign.

We believe that placing reasonable limitations on campaign contributions and continued disclosure of the source of all contributions in excess of \$100 are essential elements of the bill. The League supports provisions of the bill to prohibit the use of campaign contributions as personal income by candidates.

The League feels that limits on contributions and expenditures should be realistic and reasonable; high enough to be enforceable and allow both for discussion of the issues and for visibility of the candidates. The League also supports strong penalties for violations and for adequate funding of the Alaska Public Offices Commission (APOC) to oversee and enforce provisions of elections laws.

We endorse The Judiciary Committee's inclusion in this bill, the provision on the appointment of the fifth member of the commission by the governor. Since there is a question of the legality of the composition of the APOC which does have quasi-judiciary powers, we understand that this language would clear up the problem. This provision alone makes enactment of reform legislation in this session necessary.

Mister Chairman, members of the committee, this legislation will require work and compromise. There will be many arguments for and against each provision. When an issue is as difficult as campaign finance reform is, the tendency may be to do nothing. The results may be intangible. But it is on issues such as this, that the integrity of our governmental processes are measured. The League of Women Voters of Alaska urges your careful consideration and action on this legislation. We believe it is one of the most important bills you will enact this year.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC OFFICES COMMISSION

REPLY TO:

- 2221 E. Northern Lights, Room 128
Anchorage, AK 99508
(907) 276-4176
- Juneau Branch Office
Box CO
Juneau, AK 99811-0222
(907) 465-4864

January 14, 1988

Rep. Kay Brown
PO Box V
Juneau, AK 99811

Dear Rep. Brown:

The Alaska Public Offices Commission appreciates your responsiveness to the commission's concerns which I expressed during testimony yesterday on the proposed committee substitute for SS HB 137.

As I mentioned, it would be helpful if the committee substitute could include language to remedy a procedural problem with the manner in which commission members are appointed. Under Article III, Section 26 of the Alaska Constitution, commissions which head regulatory or quasi-judicial agencies such as APOC must be appointed by the governor and confirmed by the legislature. Although four commissioners are appointed by the governor from lists of political party nominees, with the governor's choices confirmed by the legislature, AS 15.13.020 currently provides that the fifth member is appointed by APOC members. Several respondents to complaints filed with APOC have challenged the ability of APOC to act, on the grounds that appointment procedures for the fifth member do not comport with the constitution.

The following amendments to AS 15.13.020(a) and (c) would solve this problem:

(a) There is created in the Department of Administration the Alaska Public Offices Commission consisting of five members. The governor shall appoint all members of the commission in the manner prescribed in (b) and (c) of this section, subject to confirmation by a majority of the legislature meeting in joint session.

(b) The four members selected under (b) of this section shall, by a majority vote, [APPOINT] nominate to the governor an individual to serve as the [REMAINING] fifth member of the commission. The governor shall either appoint the nominee to the commission, or shall reject the nominee and request the commission to nominate another individual to serve as the fifth member of the commission.

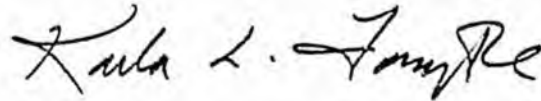
Rep. Brown
January 14, 1988
Page Two

Both the commission and the governor's office support this language. I am not aware of any controversy surrounding this proposed amendment.

Thank you for considering this additional language. If you or your staff have any questions about this proposed amendment or APOC's position on any other aspect of the bill, please let me know.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION



Karla L. Forsythe
Executive Director

cc: APOC members
Jane Barcott, Assistant Director
Bob Evans, Office of the Governor
Marsha Hubbard, Deputy Commissioner
Department of Administration

13. Jane Barcott
APOC
2221 East Northern Lights
Anchorage, AK 99504
1. Rep. Kay Brown
P.O. Box V
Juneau, AK 99811
(907) 465-3784
Testified on HB 137
11. Prent Gazaway
1521 West 14th Avenue
Anchorage, AK 99501
(907) 277-2073
14. Katie Hurley
Box 870157
Wasilla, AK 99687
(907) 376-5736
POM supporting HB 137
7. Greg O'Claray
MEBA PAC
124 Front Street
Juneau, AK 99801
(907) 586-6040
2. Eve Reckley
League of Women Voters
Box 210242
Auke Bay, AK 99821
(907) 789-9392
All campaign & election form
5. Margo Waring
1215 Fifth Street
Douglas, AK 99824
(907) 364-3155
10. Jeff Bowman
Executive Director
AKPIRG
Box 101093
Anchorage, AK 99510
(907) 278-3661
Supports HB 137
9. Karla Forsythe
Executive Director
Alaska Public Offices Comm.
2221 East Northern Lights
Anchorage, AK 99504
(907) 276-4176
Presented APOC Position on HB 137
12. Annie Laurie Howard
Chair
Alaska Public Offices Comm.
3220 Amber Bay Circle
Anchorage, AK 99515
(907) 344-0289
3. Brooke Miles
APOC
P.O. Box CO
Juneau, AK 99811
(907) 465-4864
Testified on HB 137 and HB 234
4. Rep. Pat Pourchot
P.O. Box V
Juneau, AK 99811
(907) 465-3879
Testified on HB 137 and HB 234
6. E.M. Tucker
1050 Salmon Creek Lane, #D201
Juneau, AK 99801
8. John Yarbor
EPIC PAC
Box 671073
Chugiak, AK
(907) 688-0861

JOHN SUND, REPRESENTATIVE

2504 2nd Avenue
Ketchikan, Alaska 99901
(907) 225-5552

While in Juneau
P. O. Box V
Juneau, Alaska 99811
(907) 465-4919

March 4, 1988

Richard Whittaker
Whittaker & Zelensky
Attorneys at Law
Box 3313
Ketchikan, Alaska 99901

Dear Mr. Whittaker *Dick*

Thank you for your thoughtful letter regarding campaign financing. The House Judiciary Committee recently passed out Committee Substitute for House Bill 137 (Judiciary), by Representative Brown, which addresses this issue. I have enclosed a copy, which, as you can see, does not go quite as far as your proposals would. The bill does, in my opinion, improve the present law significantly. HB 137 would set cumulative caps on contributions by PAC's, set time limits on accepting contributions, prohibit candidates from taking campaign funds as personal income, and prohibit legislators from raising money during the legislative session.

As you point out, there are constitutional considerations of free speech and equal protection to be taken into account any time the legislature works to limit campaigns. Some doubts were expressed regarding the proposal we came up with, but we do have an opinion by our Legal Services Division indicating no problems. I think it is a step in the right direction.

Thanks again for writing.

Sincerely,

JS
John Sund
Representative

FEB 18 1988

WHITTAKER & ZELENSKY
Attorneys at Law
Box 3313
Ketchikan, Alaska 99901
907 225-4777
* * * * *
Richard Whittaker
Michael J. Zelensky

17 Feb 88

Howard Wayne
Office of John Sund
State Legislature
Box V
Juneau, Alaska 99811

Dear Howard:

I've been very disturbed about the campaign financing problem for some time. Common Cause is pushing SB 2 which if passed would still give Ted Stevens \$190,000 PAC money.

I'd like to see introduction of a model bill in our legislature and after some reflection would suggest at least the following provisions:

1. Campaign contributions be limited to persons only. Naught from companies or corporations etc.
2. Campaign contributions be limited to those persons living in the particular election district.
3. It be made a crime to pass through funds, i.e., companies giving employes or others money to contribute to a campaign.
4. That advertising by outside the district persons or interests be prohibited and those interests limited to manomano contact with residents of the district.
5. That campaign contributions for statewide contests be limited to residents of the state.

It's been a long time since I've given any thought to the constitutional restrictions on campaign contributions, so I really dont have a handle on that, just a feeling that such a scheme could pass scrutiny.

I'd appreciate your thoughts.

How about a committee to draft Howard Wayne, and a statement from you that you cannot committ as an employe of the legislature, until the legislature is over?

Regards,


Richard Whittaker

Anchorage Daily News



ADN 1-26-88

Winner, 1976 Pulitzer Prize Gold Medal for Public Service

Gerald E. Grilly
Publisher

Howard Weaver
Managing Editor

Michael Carey
Editorial Page Editor

Katherine Fanning, Editor and Publisher 1971 to 1983

Lawrence Fanning, Editor and Publisher 1967 to 1971

Founded in 1946 by Norman C. Brown.

No wonder this reform is popular

After much searching, state house Reps. Kay Brown and Fran Ulmer have found a campaign financing reform they think is politically feasible. And it's not hard to see why their proposal might be popular with their colleagues. Rep. Brown's reform bill (HB 137), as passed from Rep. Ulmer's House State Affairs committee, might be labelled "The Incumbent Protection Act of 1988."

No one can doubt the two lawmakers' sincerity. They both want to cut the influence of money in state politics. But if this is the best that can be done in the cause of reform, the resistance from their colleagues must be a formidable obstacle, indeed.

The measure bars any legislative candidate — incumbent or challenger — from raising money or starting a formal campaign during an election year until the legislature adjourns.

On the plus side, such a change prevents powerful lawmakers from piling up big war chests that scare off potential challengers. Incumbents won't be able to head home for fundraisers and milk lobbyists who want their votes on pending legislation.

But the bill reinforces built-in advantages that every incumbent enjoys. Cutting fund-raising time hurts challengers, since office holders can almost always raise more money faster.

Lawmakers already get state-paid office allowances to communicate with voters during the session. This bill lets them use surplus funds from previous campaigns for the same purpose. With the limits on campaigning during the session, it will get harder and harder to tell legitimate voter communication from disguised campaigning.

Non-incumbents also would lose one small advantage they now enjoy. While lawmakers are tied to their duties in Juneau, challengers back home won't be able to get a jump on the campaign.

Rep. Brown's bill raises constitutional questions, as well. Any measure that restricts the time or place of political speech, which is what campaigns are, must have a compelling justification. Sponsors haven't even begun to build a case for such restrictions.

The measure does do some good things. It bans post-election fund-raising. It also bars candidates from pocketing leftover campaign funds for personal use.

Taken alone, these would be reforms worthy of the name. But when they're linked with such strong protections for incumbents, they become part of a

HB

139

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files

Mary Van Nimwegen

H. JUD.	3-6-87	1:30 p.m.
H. JUD.	3-5-87	1:30 p.m.

1 IN THE HOUSE

BY GRUENBERG, SUND, PETTYJOHN,
DONLEY, NAVARRE, PHILLIPS,
TAYLOR, ULMER AND MARTIN

2

HOUSE BILL NO. 139

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the jurisdiction of the superior
and district courts, judicial disqualification and
impeachment, the procedure for judicial retirement
due to incapacity or disability, and proceedings
before magistrates."

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

12

* Section 1. AS 09.30.200 is amended to read:

13

cond
Sec. 09.30.200. FILING AND STATUS OF FOREIGN JUDGMENTS. A copy
of a foreign judgment authenticated in accordance with the Act of
Congress or the laws of this state may be filed in the office of the
clerk of the [SUPERIOR] court with jurisdiction in [OF] this state.
The clerk shall treat the foreign judgment in the same manner as a
domestic judgment [OF THE SUPERIOR COURT]. A judgment so filed has
the same effect and is subject to the same procedures, defenses, and
proceedings for reopening, vacating, or staying as a domestic judgment
[OF THE SUPERIOR COURT] and may be enforced or satisfied in like
manner.

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* Sec. 2. AS 09.30.220 is amended to read:

24

cond
Sec. 09.30.220. STAY. (a) If the judgment debtor shows the
[SUPERIOR] court that an appeal from the foreign judgment is pending
or will be taken, or that a stay of execution has been granted, the
court shall stay enforcement of the foreign judgment until the appeal
is concluded, the time for appeal expires, or the stay of execution
expires or is vacated, upon proof that the judgment debtor has

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1 shall preside at the trial. Concurrence of two-thirds of the members
2 of the house is required for a judgment of impeachment. The judgment
3 may not extend beyond removal from office, but does not prevent pro-
4 ceedings in a court on the same or related charges.

5 * Sec. 6. AS 22.15.030(a) is amended to read:

handwritten initials
6 (a) The district court has jurisdiction of civil cases, includ-
7 ing foreign judgments filed under AS 09.30.200 and arbitration pro-
8 ceedings under AS 09.43.170, as follows:

9 (1) for the recovery of money or damages when the amount
10 claimed exclusive of costs, interest, and attorney fees does not
11 exceed \$35,000 [\$25,000];

12 (2) for the recovery of specific personal property, when
13 the value of the property claimed and the damages for the detention do
14 not exceed \$35,000 [\$25,000];

15 (3) for the recovery of a penalty or forfeiture, whether
16 given by statute or arising out of contract, not exceeding \$35,000
17 [\$25,000];

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

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

23 (6) for the recovery of the possession of premises in the
24 manner provided under AS 09.45.070 - 09.45.160 when the value [OF THE
25 PROPERTY OR] of the arrears and damage to the property does not exceed
26 \$35,000 [\$25,000];

27 (7) for the foreclosure of a lien when the amount in con-
28 troversy does not exceed \$35,000 [\$25,000];

29 (8) for the recovery of money or damages in motor vehicle

22.05.120
22.10.170

1 infractions under AS 28, violations under AS 11, and violations of
2 ordinances of political subdivisions;

3 (8) for the extradition of fugitives as authorized under
4 AS 12.70.

5 * Sec. 8. AS 22.15 is amended by adding a new section to read:

6 Sec. 22.15.205. IMPEACHMENT. A district judge is subject to
7 impeachment by the legislature for malfesance or misfesance in the
8 performance of official duties. Impeachment must originate in the
9 senate and must be approved by two-thirds vote of its members. The
10 motion for impeachment must list fully the basis for the proceeding.
11 Trial on impeachment shall be conducted by the house of representa-
12 tives. A supreme court justice designated by the court shall preside
13 at the trial. Concurrence of two-thirds of the members of the house
14 is required for a judgment of impeachment. The judgment may not
15 extend beyond removal from office, but does not prevent proceedings in
16 the courts on the same or related charges.

17 * Sec. 9. AS 22.20.020(a) is repealed and reenacted to read:

18 (a) A judicial officer may not act in a matter in which

19 (1) the judicial officer is a party;

20 (2) the judicial officer is related to a party or a party's
21 attorney by consanguinity or affinity within the third degree;

22 (3) the judicial officer is a material witness;

23 (4) the judicial officer or the spouse of the judicial
24 officer, individually or as a fiduciary, or a child of the judicial
25 officer has a direct financial interest in the matter;

26 (5) a party, except the state or a municipality of the
27 state, has retained or been professionally counseled by the judicial
28 officer as its attorney within two years preceding the assignment of
29 the judicial officer to the matter;

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court

who is it

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

1 IN THE HOUSE

2

HOUSE BILL NO. 139

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the jurisdiction of the superior
and district courts, judicial disqualification and
impeachment, the procedure for judicial retirement
due to incapacity or disability, and proceedings
before magistrates."

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

12

* Section 1. AS 09.30.200 is amended to read:

13

court
Sec. 09.30.200. FILING AND STATUS OF FOREIGN JUDGMENTS. A copy
of a foreign judgment authenticated in accordance with the Act of
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clerk of the [SUPERIOR] court with jurisdiction in [OF] this state.
The clerk shall treat the foreign judgment in the same manner as a
domestic judgment [OF THE SUPERIOR COURT]. A judgment so filed has
the same effect and is subject to the same procedures, defenses, and
proceedings for reopening, vacating, or staying as a domestic judgment
[OF THE SUPERIOR COURT] and may be enforced or satisfied in like
manner.

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* Sec. 2. AS 09.30.220 is amended to read:

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court
Sec. 09.30.220. STAY. (a) If the judgment debtor shows the
[SUPERIOR] court that an appeal from the foreign judgment is pending
or will be taken, or that a stay of execution has been granted, the
court shall stay enforcement of the foreign judgment until the appeal
is concluded, the time for appeal expires, or the stay of execution
expires or is vacated, upon proof that the judgment debtor has

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1 furnished the security for the satisfaction of the judgment required
2 by the state in which it was rendered.

3 (b) If the judgment debtor shows the [SUPERIOR] court any ground
4 upon which enforcement of a judgment of the [SUPERIOR] court of this
5 state would be stayed, the court shall stay enforcement of the foreign
6 judgment for an appropriate period, upon requiring the same security
7 for satisfaction of the judgment that [WHICH] is required in this
8 state.

9 * Sec. 3. AS 09.30.230 is amended to read:

10
11 Sec. 09.30.230. FEES. A person filing a foreign judgment shall
12 pay to the clerk of court the fee prescribed for the filing of an
13 action. Fees for docketing, transcription, or other enforcement
14 proceedings shall be as provided for domestic judgments [OF THE SUPE-
RIOR COURT OF THIS STATE].

15 * Sec. 4. AS 09.43.170 is amended to read:

16
17 Sec. 09.43.170. COURT, JURISDICTION. In AS 09.43.010 - 09.43.-
18 180, the term "court" means the [SUPERIOR] court with jurisdiction in
19 [OF] this state. The making of an agreement described in AS 09.43.010
20 providing for arbitration in this state confers jurisdiction on the
21 [SUPERIOR] court to enforce the agreement under AS 09.43.010 - 09.43.-
180 and to enter judgment on an award under the agreement.

22 * Sec. 5. AS 22.07 is amended by adding a new section to read:

23
24 Sec. 22.07.075. IMPEACHMENT. A judge of the court of appeals is
25 subject to impeachment by the legislature for malfeasance or mis-
26 feasant in the performance of official duties. Impeachment must
27 originate in the senate and must be approved by two-thirds vote of its
28 members. The motion for impeachment must list fully the basis for the
29 proceeding. Trial on impeachment shall be conducted by the house of
representatives. A supreme court justice designated by the court

1 shall preside at the trial. Concurrence of two-thirds of the members
2 of the house is required for a judgment of impeachment. The judgment
3 may not extend beyond removal from office, but does not prevent pro-
4 ceedings in a court on the same or related charges.

5 * Sec. 6. AS 22.15.030(a) is amended to read:

6 (a) The district court has jurisdiction of civil cases, includ-
7 ing foreign judgments filed under AS 09.30.200 and arbitration pro-
8 ceedings under AS 09.43.170, as follows:

9 (1) for the recovery of money or damages when the amount
10 claimed exclusive of costs, interest, and attorney fees does not
11 exceed \$35,000 [\$25,000];

12 (2) for the recovery of specific personal property, when
13 the value of the property claimed and the damages for the detention do
14 not exceed \$35,000 [\$25,000];

15 (3) for the recovery of a penalty or forfeiture, whether
16 given by statute or arising out of contract, not exceeding \$35,000
17 [\$25,000];

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

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

23 (6) for the recovery of the possession of premises in the
24 manner provided under AS 09.45.070 - 09.45.160 when the value [OF THE
25 PROPERTY OR] of the arrears and damage to the property does not exceed
26 \$35,000 [\$25,000];

27 (7) for the foreclosure of a lien when the amount in con-
28 troversy does not exceed \$35,000 [\$25,000];

29 (8) for the recovery of money or damages in motor vehicle

1 tort cases when the amount claimed exclusive of costs, interest and
2 attorney fees does not exceed \$35,000 [\$25,000];

3 (9) over civil actions for taking utility service and for
4 damages to or interference with a utility line filed under AS 42.20.-
5 030;

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

8 * Sec. 7. AS 22.15.120 is amended to read:

9 Sec. 22.15.120. LIMITATIONS ON PROCEEDINGS WHICH MAGISTRATE MAY
10 HEAR. A magistrate shall preside only in cases and proceedings under
11 AS 22.15.040, 22.15.100, and 22.15.110, and as follows,

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

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

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

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

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

26 (6) to hear, try, and enter judgments in all cases involv-
27 ing misdemeanors, if the defendant consents in writing that the magis-
28 trate may try the case;

29 (7) to hear, try and enter judgments in all cases involving

1 (6) the judicial officer has represented a person as attorney
2 for the person against a party, except the state or a municipality
3 of the state, in a matter within two years preceding the assignment of
4 the judicial officer to the matter;

5 (7) an attorney for a party has represented the judicial
6 officer or a person against the judicial officer, either in the judicial
7 officer's public or private capacity, in a matter within two
8 years preceding the filing of the action;

9 (8) the law firm with which the judicial officer was associated
10 in the practice of law within the two years preceding the
11 filing of the action has been retained or has professionally counseled
12 either party with respect to the matter;

13 (9) the judicial officer feels that, for any reason, a fair
14 and impartial decision cannot be given.

15 * Sec. 10. AS 22.20.020(b) is repealed and reenacted to read:

16 (b) The disqualifications specified in (a)(2), (a)(5), (a)(6),
17 (a)(7), and (a)(8) of this section may be waived by the parties and
18 are waived unless a party raises an objection.

19 * Sec. 11. AS 22.25.010(b) is amended to read:

20 (b) A justice or judge may be retired for incapacity as provided
21 in this section [BY LAW]. A justice or judge is eligible for retirement
22 pay with two or more years of service at the time of retirement
23 for incapacity. The effective date of retirement under this subsection
24 is the first day of the month coinciding with or after the date
25 that [UPON WHICH] the governor [WITH RESPECT TO A JUSTICE, OR THE
26 SUPREME COURT WITH RESPECT TO A JUDGE] files written notice with the
27 commissioner of administration [A WRITTEN DECLARATION TO THE EFFECT]
28 that a designated justice or judge was retired for incapacity. A
29 duplicate copy of the notice [DECLARATION] shall be filed with the

five years in (a) -6-

incapacity = (civil death)

*cont system
best plan
arrows*

*only notification
application
of judge*

1 Judicial Council.

2 * Sec. 12. AS 22.30.070(c) is amended to read:

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(c) On recommendation of the commission or after an appeal under AS 22.30.011(e), the supreme court may (1) retire a judge for disability that seriously interferes with the performance of duties and that is or may become permanent, and (2) publicly or privately censure or remove a judge for action occurring not more than six years before the commencement of the judge's current term which constitutes wilful misconduct in the office, wilful and persistent failure to perform duties, habitual intemperance, conduct prejudicial to the administration of justice, or conduct that brings the judicial office into disrepute. The effective date of retirement under (1) of this subsection is the first day of the month coinciding with or after the date that the supreme court files written notice with the commissioner of administration that the judge was retired for disability. A duplicate copy of the notice shall be filed with the Judicial Council.

length of time

#1
Adopted

A M E N D M E N T

Offered in the HOUSE

By Gruenberg

TO: HB 139

Page 1, line 10, following "magistrates":

Insert "; and amending Rule 16(a), Alaska District Court Rules of Civil Procedure"

Page 7, after line 16, insert a new bill section to read:

"* Sec. 13. Rule 16(a) of the Alaska District Court Rules of Civil Procedure is amended to read:

(a) All small claims actions shall be tried by the court without a jury. A judge may [NOT] be peremptorily challenged [EITHER] under Civil Rule 42(c) [OR AS 22.20.022]."

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 2, 1987

SUBJECT: District Court Rule 16(a)
(Work Order No. 5-0526)

TO: Representative Max Gruenberg

FROM: Michael F. Ford *M.F.*
Legislative Counsel

You have asked whether District Court Civil Rule 16(a), providing that a judge may not be peremptorily challenged under AS 22.20.022 or Civil Rule 42(c), violates constitutional or statutory rights of litigants. It is a fundamental principle of due process that a litigant is entitled to a fair and impartial trial. In Re Robson, 575 P.2d 771 (Alaska 1978). To implement this principle the legislature enacted AS 22.20.020 providing for disqualification of a judicial officer for cause, and AS 22.20.022, providing for automatic disqualification of a judge. The District Court rule in question provides that the automatic disqualification right created under AS 22.20.022 is not available for litigants that agree to proceed under the small claims rules of procedure.

Although the right to a fair and impartial trial is a recognized due process right, the right to automatic disqualification of a judge is not guaranteed under the due process clause. Halligan v. State, 624 P.2d 281 (Alaska 1981). A more difficult question is whether the denial of the right to automatic disqualification results in the denial of equal protection of the law guaranteed by article I, section 1, of the Constitution of the State of Alaska. Analysis of this question requires application of the sliding scale test described in State v. Erickson, 574 P.2d 1, (Alaska 1978). Depending on the nature of the right, a greater or lesser burden is placed on the state to show that the classification has a fair and substantial relation to a legitimate government objective. The right to automatic disqualification of a judge is only denied under District Court Rule 16(a) if both

parties elect to proceed under the small claims procedure. Either party can preserve the right to automatic disqualification by choosing to proceed under the formal rules of procedure, and a litigant always retains the right to disqualify a judge for cause under AS 22.20.020. Concerning the legitimate government objective in the court rule, it appears that the goal of this procedure is to simplify administration of small claims. In this regard it is instructive to note that the legislature while creating the right to automatic disqualification, also mandated that procedure in small claims be prescribed by court rule to assure "simplicity and the expeditious handling of small claims." AS 22.15.040. Although there is room for argument, I think that District Court Rule 16(a) does have a fair and substantial relation to a legitimate government objective, and is therefore not a denial of constitutional equal protection rights.

There remains the question whether the civil rule infringes upon the substantive right created in AS 22.20.022. It has been established under Gieffels v. State, 552 P.2d 661 (Alaska 1976), that while the right to automatic disqualification is created by the statute, the procedure for invoking the right is strictly within the domain of the court. A litigant can lose the right to peremptory disqualification in a number of ways. (See Civil Rule 42(c).) Since the right created by AS 22.20.022 is preserved for those litigants who choose to proceed under the formal civil rules, it would appear that District Court Civil Rule 16(a) does not infringe on the substantive right created by the legislature in AS 22.20.020 and is a legitimate exercise of the court's power to set procedure for small claims.

The decision to deny the right to peremptory challenge to small claims litigants as a matter of civil procedure is subject to change by the legislature under article IV, section 15, of the Alaska Constitution. If the legislature should disagree with existing procedure, the civil rule could be amended to reflect a procedure approved by the legislature.

MFF:mkr
m8/077

Rule 16. Trial.

(a) All small claims actions shall be tried by the court without a jury. A judge may not be peremptorily challenged either under Civil Rule 42(c) or AS 22.20.022.

(b) The court shall admit any evidence which is relevant and material, despite the fact that such evidence might be inadmissible under formal rules of evidence.

(c) The court may investigate the controversy between the parties either in or out of court. The investigation must be made in the presence of the parties and the findings of fact resulting from the investigation must be stated on the record or reduced to writing and placed in the case file by the court.

(d) Testimony shall be given under oath and may be given in narrative fashion, and the examination of witnesses shall be informal. An adverse party has the right to cross-examine a party or witness. The court may take an active role in the examination of witnesses.

(e) The court may, at any time, consult with the parties on the record for the purpose of reaching a compromise or conciliation.

(f) The date set for trial shall be not less than 15 days from the date the court mails notice of the trial date to the parties. (Supreme Court Order 225 effective May 1, 1976; amended by Supreme Court Order 674 effective June 15, 1986; and by Supreme Court Order 759 effective December 15, 1986)

Problems

- ① AS 22-20.022 provides a substantive right, implemented by CR 42(c). Ct has no power under rule making authority to take away this right - violates separation of powers. Channel Flynn Inc v Bernhardt 451 P2d 570 (Alaska 1969)
- ② ~~equal protection denies defendant the right to have case~~

Alaska R of C Supp. No. 53 11-36

DCR 37

denies small claimant the right to s. 22 claims procedure + preempt - no rational basis for disallowing recovery for small claims

NOTES TO DECISIONS

Magistrates are "judges of other courts" within the meaning of Alaska Const., art. IV, § 4. *Buckalew v. Holloway*, Sup. Ct. Op. No. 1988 (File No. 4058), 604 P.2d 240 (1979).
 Applied in *Larson v. State*, Sup. Ct. Op. No. 1430 (File No. 2433), 564 P.2d 365 (1977).

Sec. 22.20.020. Disqualification of judicial officer for cause. (a) A judicial officer may not act as such in a court of which the judicial officer is a member in an action in which

- (1) the judicial officer is a party or is directly interested;
- (2) the judicial officer was not present and sitting as a member of the court at the hearing of a matter submitted for its decision;
- (3) the judicial officer is a material witness;
- (4) the judicial officer is related to either party by consanguinity or affinity within the third degree;
- (5) either party has retained the judicial officer as their attorney or has been professionally counseled by him in any matter within two years preceding the filing of the action;
- (6) the judicial officer feels that, for any reason, a fair and impartial decision cannot be given.

(b) In an action specified in (a) (4) and (5) of this section the disqualification may be waived by the parties and is waived unless a party raises the objection.

(c) If a judicial officer disqualifies himself or herself or consents to disqualification, the presiding judge of the district shall immediately transfer the action to another judge of that district to which the objections of the parties do not apply or are least applicable and if there is no such judge, the chief justice of the supreme court shall assign a judge for the hearing or trial of the action. If a judicial officer denies disqualification the question shall be heard and determined by another judge assigned for the purpose by the presiding judge of the next higher level of courts or, if none, by the other members of the supreme court. The hearing may be ex parte and without notice to the parties or judge. (§ 54-2-1 ACLA 1949; am § 1 ch 48 SLA 1967)

Cross references. — For other statutory provisions concerning disqualification of judges, see AS 22.30.070 (a). As to when a judge should disqualify himself, see Canon 3C of the Code of Judicial Conduct.

Editor's notes. — This section was redrafted by the revisor of statutes to

remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Legislative history reports. — For report on ch. 48, SLA 1967 (SB 66), see 1967 House Journal, p. 311.

NOTES TO DECISIONS

- I. General Consideration
- II. Basis for Disqualification.
 - A. Paragraph (a)(2).
 - B. Paragraph (a)(5).
 - C. Paragraph (a)(6).

I. GENERAL CONSIDERATION.

The right of an impartial tribunal is embodied in this section. *Amidon v. State*, Sup. Ct. Op. No. 1999 (File No. 3664), 604 P.2d 575 (1979).

The fact that a judge, as a trier of fact in a pretrial motion, found defendant's testimony "not believable" does not in itself preclude his presiding at the subsequent trial. *Coffey v. State*, Sup. Ct. Op. No. 1732 (File No. 3002), 585 P.2d 514 (1978), modified on rehearing on other grounds, 596 P.2d 10 (1979).

Defendant to request appointment of another judge for disqualification question. — Under subsection (c) of this section, it is incumbent on defendant to request the chief justice, as presiding judge of the next higher court, to appoint another judge to determine the question of disqualification. *Coffey v. State*, Sup. Ct. Op. No. 1732 (File No. 3002), 585 P.2d 514 (1978), modified on rehearing on other grounds, 596 P.2d 10 (1979).

Where no request was made to appoint another judge to determine the disqualification question, the fact that defendant was faced with imminent commencement of trial did not justify his failure to pursue his rights under subsection (c) of this section since the entrapment ruling which provided the basis for the allegation of bias was entered nearly three months before trial. *Coffey v. State*, Sup. Ct. Op. No. 1732 (File No. 3002), 585 P.2d 514 (1978), modified on rehearing on other grounds, 596 P.2d 10 (1979).

Quoted in *Wamser v. State*, Sup. Ct. Op. No. 1768 (File No. 4166), 587 P.2d 232 (1978).

Cited in *Peterson v. State*, Sup. Ct. Op. No. 1411 (File No. 2642), 562 P.2d 1350 (1977); *Halligan v. State*, Sup. Ct. Op. No. 2299 (File No. 5035), 624 P.2d 281 (1981); *Deivert v. Oseira*, Sup. Ct. Op. No. 2357 (File No. 4910), 628 P.2d 575 (1981).

II. BASES FOR DISQUALIFICATION.**A. Paragraph (a)(2).**

Issuing orders based on both live and recorded testimony. — Where, in a superior court proceeding to terminate

parental rights in which the judge sat as the trier of fact, one judge presided over the first part of the adjudication hearing, observed the testimony of two of the state's witnesses, and neither made written findings of fact or conclusions of law with respect to this testimony, nor entered an adjudication order; and another judge presided over the continuation of the hearing, observed the testimony of one witness for the state, listened to the tape recorded testimony given before the first judge, and on the basis of both the recorded and live testimony, issued both the order adjudicating the child a neglected child and the order of disposition, the supreme court noted that the terms of paragraph (a)(2) of this section might prohibit the practice adopted by the superior court. In re *C.L.T.*, Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

R. Paragraph (a)(5).

The purposes of paragraph (a)(5) are to ensure the actual impartiality of a judge and to eliminate any possible appearance or suspicion of bias, thereby preserving the integrity of the judicial process and the confidence of the public. *Keel v. State*, Sup. Ct. Op. No. 1290 (File No. 2883), 552 P.2d 155 (1976).

By expanding paragraph (a)(5) in 1967, Alaska's legislature evidenced concern about a somewhat distinct problem: namely, that any professional relationship between a judge and one of the parties, formed or nurtured in any manner during the months preceding the judge's elevation to the bench, might create a risk of partiality or the appearance of partiality. *Keel v. State*, Sup. Ct. Op. No. 1290 (File No. 2883), 552 P.2d 155 (1976).

Disqualification where judge previously employed by state government. — The legislature did not intend, in enacting paragraph (a)(5), to disqualify a judge because of his prior employment by the state government from all cases in which the state appears as a party during the prohibited period of time. *Keel v. State*, Sup. Ct. Op. No. 1290 (File No. 2883), 552 P.2d 155 (1976).

Superior court judge who had been employed as an assistant district attorney was not disqualified in a case brought by the state against a defendant where there was no possibility that he might have learned of the facts of the alleged crime while serving in his prosecu-

torial role. *Keel v. State*, Sup. Ct. Op. No. 1290 (File No. 2883), 552 P.2d 155 (1976).

C. Paragraph (a)(6).

Maintenance of appearance of impartiality. — Paragraph (a)(6) of this section does not provide for disqualification where the sole concern is maintenance of the appearance of impartiality. However, in light of the importance of promoting public confidence in the integrity and impartiality of the judiciary, it would be well to permit disqualification under such circumstances. *Amidon v. State*, Sup. Ct. Op. No. 1999 (File No. 3664), 604 P.2d 575 (1979).

Review of decisions under paragraph (a)(6). — The supreme court rejected the argument that the disqualification standards under paragraph (a)(6) are wholly subjective and therefore not amenable to appellate review. Clearly, review is contemplated on a challenge for cause grounded in bias. The supreme court's duty to assure that judicial proceedings comply with due process mandates appellate scrutiny of allegations of bias. *Coffey v. State*, Sup. Ct. Op. No. 1732 (File No. 3002), 585 P.2d 514 (1978), modified on rehearing on other grounds, 596 P.2d 10 (1979).

Since the initial determination under paragraph (a)(6) of this section has been placed in the discretion of the trial judge, that judge's decision should be given substantial weight. When the judge does not recuse himself or herself, the decision should be reviewable on appeal only if it amounted to an abuse of discretion. *Amidon v. State*, Sup. Ct. Op. No. 1999 (File No. 3664), 604 P.2d 575 (1979).

Sec. 22.20.022. Peremptory disqualification of a superior court judge. (a) If a party or a party's attorney in a district court action or a superior court action, civil or criminal, files an affidavit alleging under oath the belief that a fair and impartial trial cannot be obtained, the presiding district court or superior court judge, respectively, shall at once, and without requiring proof, assign the action to another judge of the appropriate court in that district, or if there is none, the chief justice of the supreme court shall assign a judge for the hearing or trial of the action. The affidavit shall contain a statement that it is made in good faith and not for the purpose of delay.

(b) No judge or court may punish a person for contempt for making, filing or presenting the affidavit provided for in this section, or a motion founded on the affidavit.

Collateral references. —

Disqualification of judge by relative's ownership of stock in corporation which is a party to action. 8 ALR 295; 110 ALR 472.

Right of party in course of litigation to challenge title or authority of judge. 114 ALR 1207.

Disqualification of judge in pending case as subject to revocation or removal. 162 ALR 641.

Relationship of judge to one who is party in an official or representative capacity as disqualification. 10 ALR2d 1307.

Mandamus as remedy to compel assertedly disqualified judge to recuse self or to certify his disqualification. 45 ALR2d 937.

Relationship to attorney as disqualifying judge. 50 ALR2d 143.

Disqualification of judge in proceedings to punish contempt against or involving himself or court of which he is a member. 64 ALR2d 600.

Prior representation or activity as attorney or counsel as disqualifying judge. 72 ALR2d 443.

Time for asserting disqualification. 73 ALR2d 1238.

Intervenor's right to disqualify judge. 92 ALR2d 1110.

Disqualification of judge for bias against counsel for litigant. 23 ALR3d 1416.

Disqualification of original trial judge to sit on retrial after reversal or mistrial. 60 ALR3d 176.

Disqualification of judge by state, in criminal case, for bias or prejudice. 68 ALR3d 509.

Membership in fraternal or social club or order affected by a case as ground for disqualification of judge. 75 ALR3d 1021.

3,5/87

Adopted

AMENDMENT

Offered in the House

By Martin

To: HB 139

Page 1, line 7, after "judicial disqualification" delete:

"..and" and insert: ", (coma)"

Page 1, line 8, after "impeachment" insert:

"..and reprimands"

Page 2, after line 21, insert a new bill section to read:

"*Section 5. AS 15.58.050 is amended to read:

Sec. 15.58.050. INFORMATION AND RECOMMENDATIONS
ON JUDICIAL OFFICIERS. No later than 75 days before
the state general 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. The statement shall
reflect the evaluation of each justice or judge
conducted by the judicial council according to law
and shall contain a brief statement describing each
public reprimand, censure, or suspension received by
the judge under AS 22.30.011 (d)(3) or (4) during
the period covered in the evaluation. A statement
may not exceed 600 words.

or commendation

Renumber remaining bill sections

Page 7, after line 1, insert a new bill section to read:

"*Sec. 12. AS 22.30.011 is amended by adding a new subsection to read:

(h) If a judge reprimanded under this section seeks retention in office, the commission shall report to the judicial council for the statement filed by the judicial council under AS 15.58.050 the existence of public reprimands, censures ~~or~~ suspensions received by the judge since the appointment of the judge or since the last retention election of the judge."

or commendations

Renumber remaining bill sections

M E M O R A N D U M

DATE: March 2, 1987
TO: Representative John Sund
Chairman, House Judiciary Committee
FROM: Representative Terry Martin
RE: Amendment to HB 139

DRAFT

Under the Alaska system, judges are appointed by the Governor from candidates proposed by the Alaska Judicial Council. To remain on the bench, the judges must be approved periodically by the voters.

Since these judges don't run against another candidate, the voters are simply asked to say "yes" or "no" to a new term. Without any indication to think otherwise, most voters assume that a judge is doing a good job and chances are that the voter will cast an affirmative ballot.

In reality, some of these judges are not doing a good job. Some of these judges have received reprimands from the Judicial Council or the Commission on Judicial Qualifications.

Unfortunately, in most cases, the public is not aware that a judge has been reprimanded. These facts are not included in the information made public prior to a retention election.

By amending HB 139, as I suggest, such information will have to be included in the voters pamphlet prepared by the state and mailed to all registered voters prior to an election. This will enable the voters to make a more informed choice when they vote to retain a judge.

SUPP.

Chapter 30. Judicial Conduct.

Section	Section
10. Commission on Judicial Conduct	60. Rules and confidentiality
11. Powers and duties of the commission	66. Inquiry
40. Preparation of budget	80. Definitions
50. Validity of acts of the commission	

Sec. 22 30.010. Commission on Judicial Conduct. The Commission on Judicial Conduct shall consist of nine members as follows: three persons who are justices or judges of state courts, elected by the justices and judges of the state courts; three members who have practiced law in this state for 10 years, appointed by the governor from nominations made by the governing body of the organized bar and subject to confirmation by a majority of the members of the legislature in joint session; and three citizens who are not judges, retired judges, or members of the state bar, appointed by the governor and subject to confirmation by a majority of the members of the legislature in joint session. Commission membership terminates if a member ceases to hold the position that qualified that person for appointment. A person may not serve on the commission and on the Judicial Council simultaneously. The commission shall elect one of its members to serve as chairman for a term prescribed by the commission. A vacancy shall be filled by the appointing power for the remainder of the term. (§ 1 ch 213 SLA 1968; am § 23 ch 71 SLA 1972; am § 1 ch 160 SLA 1984)

Effect of amendments. — The 1984 amendment substituted "Conduct" for "Qualifications" in the catchline and "A person may not" for "No person may" in the third sentence and, in the first sentence, substituted "Conduct" for "Qualifications." "three persons who are justices or judges of state courts" for "one justice of the supreme court," "and judges of the state courts; three" for "of the su-

preme court; three judges of the superior court, elected by the judges of the superior court; one judge of the district court, elected by the judges of the district court; two," and "and subject to confirmation by a majority of the members of the legislature in joint session; and three" for "and two" and inserted "governor from nominations made by the."

Sec. 22.30.011. Powers and duties of the commission. (a) The commission shall on its own motion or on receipt of a written complaint inquire into an allegation that a judge

- (1) has been convicted of a crime punishable as a felony under state or federal law or convicted of a crime that involves moral turpitude under state or federal law;
- (2) suffers from a disability that seriously interferes with the performance of judicial duties and that is or may become permanent;
- (3) within a period of not more than six years before the start of the current term, committed an act or acts that constitute

- (A) wilful misconduct in office,
- (B) wilful and persistent failure to perform judicial duties,
- (C) conduct prejudicial to the administration of justice,
- (D) conduct that brings the judicial office into disrepute, or
- (E) conduct in violation of the code of judicial conduct; or
- (4) is habitually intemperate.

(b) The commission may hold a hearing on an allegation under (a) of this section. A hearing under this section is a hearing under AS 44.62.310(d) and is private unless a public hearing is requested by the judge.

(c) A judge appearing before the commission at the hearing is entitled to counsel, may present evidence, and may cross-examine witnesses.

(d) The commission may, after a hearing held under (b) of this section,

- (1) exonerate the judge of the charges;
- (2) informally and privately admonish the judge or recommend counseling;
- (3) reprimand the judge publicly or privately;
- (4) refer the matter to the supreme court with a recommendation that the judge be suspended, removed, or retired from office or publicly or privately censured by the supreme court.

(e) A decision by the commission to reprimand a judge publicly or privately may be appealed by the judge to the supreme court.

(f) If the commission decides to reprimand a judge privately, the commission shall forward the reprimand to the judge. A copy of the reprimand shall be sent to the chief justice of the supreme court. A private reprimand is confidential.

(g) If the commission exonerates a judge, a copy of the proceedings and report of the commission may be made public on the request of the judge. (§ 1 ch 58 SLA 1981; am §§ 2 — 4 ch 160 SLA 1984)

Effect of amendments. — The 1984 amendment, in paragraph (3) of subsection (a), deleted "or" at the end of subparagraph (C) and added subparagraph (E); changed the internal reference in subsection (b); and, in subsection (d), inserted present paragraph (2) and redesignated former paragraphs (2) and (3) as present paragraphs (3) and (4), respectively.

Sec. 22.30.015. Term of office.

Cross references. — For terms of 1, 1984, see § 10, ch. 160, SLA 1984 in the members appointed or elected after July Temporary and Special Acts.

Sec. 22.30.040. Preparation of budget. The commission shall be responsible for preparing and presenting to the legislature its proposed annual budgets. (§ 1 ch 213 SLA 1968; am § 5 ch 160 SLA 1984)

Effect of amendments. — The 1984 amendment rewrote this section, which formerly read "The Alaska court system shall be responsible for preparing and presenting to the legislature proposed annual budgets for the commission."

Sec. 22.30.050. Validity of acts of the commission. No act of the commission is valid unless concurred in by a majority of the members serving on the commission at the time the act is taken. (§ 1 ch 213 SLA 1968; am § 6 ch 160 SLA 1984)

Effect of amendments. — The 1984 amendment substituted "the members serving on the commission at the time the act is taken" for "its members."

Sec. 22.30.060. Rules and confidentiality. (a) The commission shall make rules implementing this chapter and providing for confidentiality of proceedings.

(b) All proceedings, records, files, and reports of the commission are confidential and disclosure may not be made except

(1) upon waiver in writing by the judge at any stage of the proceedings;

(2) if the subject matter or the fact of the filing of charges has become public, in which case the commission may issue a statement in order to confirm the pendency of the investigation, to clarify the procedural aspects of the proceedings, to explain the right of the judge to a fair hearing, or to state that the judge denies the allegations; or

(3) upon filing of formal charges, in which case only the charges shall become public. (§ 1 ch 213 SLA 1968; am § 7 ch 160 SLA 1984)

Effect of amendments. — The 1984 amendment added subsection (b).

Sec. 22.30.066. Inquiry. (a) The commission may subpoena witnesses, administer oaths, take the testimony of any person under oath, and require the production for examination of documents or records relating to its inquiry under AS 22.30.011.

(b) In the course of an inquiry under AS 22.30.011 into judicial misconduct or the disability of a judge, the commission may request the judge to submit to a physical or mental examination. If the judge refuses to submit to the examination, the commission must determine the issue for which the examination was required adversely to the judge. (§ 2 ch 58 SLA 1981; am § 8 ch 160 SLA 1984)

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vided for in § 10, art. IV, Constitution of the State of Alaska and this
chapter;

(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 § 10, art.
IV, Constitution of the State of Alaska and this chapter. (§ 1 ch 213
SLA 1968; am § 19 ch 12 SLA 1980; am § 9 ch 160 SLA 1984)

Effect of amendments. — The 1984
amendment substituted "Conduct" for
"Qualifications" in paragraph (1).

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 9, 1987

SUBJECT: Alaska District Court Civil Rule 16(a)
(CSHB 139(Jud))

TO: Representative John Sund

FROM: Michael F. Ford *M-F*
Legislative Counsel

Section 15 of CSHB 139(Judiciary) amends Rule 16(a) of the Alaska District Court Rules of Civil Procedure to provide that a judge may be peremptorily challenged. Because of the existing language of Rule 16(a), the challenge would be "under Civil Rule 42(c) or AS 22.20.022." This appears to allow a defendant to use either of two different procedures to implement that right. Under Gieffels v. State, 587 P.2d 232 (Alaska 1978), however, the Alaska Supreme Court held that the legislature has very limited power to provide for the means by which the right to preemption is exercised, and therefore the procedural sections of AS 22.20.022 were struck down. See also Tunley v. Municipality of Anchorage Sch. Dist., 631 P.2d 76 (Alaska 1981).

If it is the intent of the legislature in enacting sec. 15 to "reactivate" the procedural provisions of AS 22.20.022 and give a small claims litigant the choice of the procedures of Rule 42(c) or the statutes, it is doubtful that the current version of CSHB 139(Jud) accomplishes that goal.

The preferred method of amending rules of court is to directly amend the rule in question. Section 15 of CSHB 139(Jud) arguably amends Civil Rule 42(c) indirectly by giving the small claims litigant an option to choose the statutory procedure in making a peremptory challenge in a small claims action. This may prove ineffective in changing Civil Rule 42(c), so that the procedure set out in Civil Rule 42(c) will be applied by the courts regardless of the reference in District Court Civil Rule 16(a) to AS 22.20.022. If you desire to create an exception to the applicability of

Representative Sund
Page 2
March 9, 1987

Rule 42(c), it would be better to directly amend Civil Rule 42(c) to provide the option of a different procedure for small claims actions.

On the other hand, if you desire to defer to Rule 42(c)'s procedural requirements, it would be advisable to delete the reference in Rule 16(a) to AS 22.20.022.

MFF:mkr
m9/116

Chapter 30. Judicial Conduct.

SUPP.

Section	Section
10. Commission on Judicial Conduct	60. Rules and confidentiality
11. Powers and duties of the commission	66. Inquiry
40. Preparation of budget	80. Definitions
50. Validity of acts of the commission	

Sec. 22.30.010. Commission on Judicial Conduct. The Commission on Judicial Conduct shall consist of nine members as follows: three persons who are justices or judges of state courts, elected by the justices and judges of the state courts; three members who have practiced law in this state for 10 years, appointed by the governor from nominations made by the governing body of the organized bar and subject to confirmation by a majority of the members of the legislature in joint session; and three citizens who are not judges, retired judges, or members of the state bar, appointed by the governor and subject to confirmation by a majority of the members of the legislature in joint session. Commission membership terminates if a member ceases to hold the position that qualified that person for appointment. A person may not serve on the commission and on the Judicial Council simultaneously. The commission shall elect one of its members to serve as chairman for a term prescribed by the commission. A vacancy shall be filled by the appointing power for the remainder of the term. (§ 1 ch 213 SLA 1968; am § 23 ch 71 SLA 1972; am § 1 ch 160 SLA 1984)

Effect of amendments. — The 1984 amendment substituted "Conduct" for "Qualifications" in the catchline and "A person may not" for "No person may" in the third sentence and, in the first sentence, substituted "Conduct" for "Qualifications," "three persons who are justices or judges of state courts" for "one justice of the supreme court," "and judges of the state courts; three" for "of the su-

preme court; three judges of the superior court, elected by the judges of the superior court; one judge of the district court, elected by the judges of the district court; two," and "and subject to confirmation by a majority of the members of the legislature in joint session; and three" for "and two" and inserted "governor from nominations made by the."

Sec. 22.30.011. Powers and duties of the commission. (a) The commission shall on its own motion or on receipt of a written complaint inquire into an allegation that a judge

(1) has been convicted of a crime punishable as a felony under state or federal law or convicted of a crime that involves moral turpitude under state or federal law;

(2) suffers from a disability that seriously interferes with the performance of judicial duties and that is or may become permanent;

(3) within a period of not more than six years before the start of the current term, committed an act or acts that constitute

- (A) wilful misconduct in office,
- (B) wilful and persistent failure to perform judicial duties,
- (C) conduct prejudicial to the administration of justice,
- (D) conduct that brings the judicial office into disrepute, or
- (E) conduct in violation of the code of judicial conduct; or
- (4) is habitually intemperate.

(b) The commission may hold a hearing on an allegation under (a) of this section. A hearing under this section is a hearing under AS 44.62.310(d) and is private unless a public hearing is requested by the judge.

(c) A judge appearing before the commission at the hearing is entitled to counsel, may present evidence, and may cross-examine witnesses.

(d) The commission may, after a hearing held under (b) of this section,

- (1) exonerate the judge of the charges;
- (2) informally and privately admonish the judge or recommend counseling;
- (3) reprimand the judge publicly or privately;
- (4) refer the matter to the supreme court with a recommendation that the judge be suspended, removed, or retired from office or publicly or privately censured by the supreme court.

(e) A decision by the commission to reprimand a judge publicly or privately may be appealed by the judge to the supreme court.

(f) If the commission decides to reprimand a judge privately, the commission shall forward the reprimand to the judge. A copy of the reprimand shall be sent to the chief justice of the supreme court. A private reprimand is confidential.

(g) If the commission exonerates a judge, a copy of the proceedings and report of the commission may be made public on the request of the judge. (§ 1 ch 58 SLA 1981; am §§ 2 — 4 ch 160 SLA 1984)

Effect of amendments. — The 1984 amendment, in paragraph (3) of subsection (a), deleted "or" at the end of subparagraph (C) and added subparagraph (E); changed the internal reference in subsection (b); and, in subsection (d), inserted present paragraph (2) and redesignated former paragraphs (2) and (3) as present paragraphs (3) and (4), respectively.

Sec. 22.30.015. Term of office.

Cross references. — For terms of 1, 1984, see § 10, ch. 160, SLA 1984 in the members appointed or elected after July Temporary and Special Acts.

Sec. 22.30.040. Preparation of budget. The commission shall be responsible for preparing and presenting to the legislature its proposed annual budgets. (§ 1 ch 213 SLA 1968; am § 5 ch 160 SLA 1984)

Effect of amendments. — The 1984 amendment rewrote this section, which formerly read "The Alaska court system shall be responsible for preparing and presenting to the legislature proposed annual budgets for the commission."

Sec. 22.30.050. Validity of acts of the commission. No act of the commission is valid unless concurred in by a majority of the members serving on the commission at the time the act is taken. (§ 1 ch 213 SLA 1968; am § 6 ch 160 SLA 1984)

Effect of amendments. — The 1984 amendment substituted "the members serving on the commission at the time the act is taken" for "its members."

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STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 139
Publish Date:

REQUEST: _____

Revision Date: _____ Agency Affected: Alaska Court System
Title: Jurisdiction of superior and district courts, qualifications... BRU: Trial Courts
Sponsor: Gruenberg, Sund, Pettyjohn... Components:
Requestor: House Judiciary Committee

EXPENDITURES/REVENUES:		(Thousands of Dollars)					
OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92	
Personal Services	
Travel	
Contractual	
Supplies	
Equipment	
Land & Structures	
Grants & Claims	
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	

CAPITAL	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
REVENUE	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

FUNDING:		(Thousands of Dollars)					
General Funds	0.0	0.0	0.0	0.0	0.0	0.0	
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	

POSITIONS:							
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Karla Forsythe, General Counsel Phone: 264-8228
Division: Alaska Court System Date: 2-19-87
Approved by: *Stephanie J. Cole* Date: 2-19-87
Agency: Alaska Court System

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

State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
HOUSE JUDICIARY
HOUSE RULES



P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3718
465-4968/4986

14 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

Memorandum

Date: March 2, 1987

To: Members of the House Judiciary Committee

From: Representative Max F. Gruenberg, Jr. *MFG*

Re: HB 139, "An Act relating to the jurisdiction of the superior and district courts, judicial disqualification and impeachment, the procedure for judicial retirement due to incapacity or disability, and proceedings before magistrates.

HB 139 is based on a bill that passed the House last session as HB 516, which provided a procedure for the impeachment of court of appeals judges and district court judges and the disqualification of judges for cause.

HB 139 incorporates HB 516, with some technical changes suggested by legal counsel. At the request of the judiciary, I have also added a number of other provisions, which increase the jurisdiction of district courts, give magistrates explicit authority to handle violations, and clarify the law regarding judicial retirement.

CONTENTS OF HB 139 COMMITTEE FILE

1. Sectional Analysis of HB 139
2. Max's memo
3. Copy of HB 139
4. Court System memo regarding suggested additions to HB 516 ('86)
5. House Journal excerpt showing passage of Amend. #14 to HB 377, increasing the jurisdictional limit of district courts.
6. Present language of AS 22.20.020 (b) waiver provisions for disqualification of judicial officer for cause.

State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
HOUSE JUDICIARY
HOUSE RULES



Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage


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JUNEAU, ALASKA 99811
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465-4968/4936

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(907) 276-6844

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Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
STAFF COUNSEL

303 K Street
Anchorage, Alaska 99501

(907) 264-8228

January 6, 1987

Representative Max F. Gruenberg, Jr.
914 Clay Court
Anchorage, Alaska 99503

Dear Max:

It is my understanding from Art Snowden that you anticipate introducing legislation to increase the monetary jurisdiction of district court to \$35,000, and that you would be willing to include other amendments relating to district court jurisdiction.

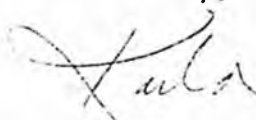
Over the past year judges and administrative office staff have suggested four statutory changes relating to district court jurisdiction.

1. Judge Serdahely suggests amending the Uniform Enforcement of Foreign Judgments Act to provide that foreign judgments falling within the District Court's jurisdiction ^{may} be filed in District Court (see attached letter).
2. Judge Stemp suggests amending the Uniform Arbitration Act to provide that awards may be enforced in district court up to the monetary amount (see attached letter).
3. Judge Stemp also suggests clarifying the jurisdiction of the district court over forcible entry and detainer actions when the value of the property or of the arrears and damage to the property does not exceed \$25,000." Although Judge Stemp has not made a specific proposal, I know that you are familiar from your practice with FED actions, and may have some thoughts about the best way to address his concern.
4. Stephanie Cole suggests amending AS 22.15.120(7) to add violations under AS 11 to the categories of cases which magistrates can hear (see attached memorandum).

Representative Max F. Gruenberg, Jr.
January 6, 1987
Page Two

Thank you for your interest in including these amendments. If I can provide further information or assist you in any way with background or drafting, please let me know.

Sincerely,



Karla L. Forsythe
Staff Counsel

KLF:bs

Att.

cc: Arthur H. Snowden, II, Administrative Director



Superior Court
State of Alaska

THIRD JUDICIAL DISTRICT
303 K STREET
ANCHORAGE, ALASKA
99501-2083

CHAMBERS OF
DOUGLAS J. SERDAHELY
Presiding Judge

MEMORANDUM

TO: Karla Forsythe
FROM: Presiding Judge Serdahely
DATE: February 11, 1986
RE: Legislation - Foreign Judgments

Consistent with the increase in District Court jurisdiction to \$25,000, we may want to amend the Uniform Enforcement of Foreign Judgments Act, AS 09.30.200 et seq., to provide that foreign judgments falling within the District Court's jurisdiction must be filed in District Court rather than Superior Court.

I just had a wage garnishment case based on a \$7400 foreign default judgment, and discovered that I probably could not lawfully remand the matter to District Court.

cc: Judge Finn

RECEIVED
FEB 14 1986

Office of Administrative Director
Alaska Court System



District Court
State of Alaska

THIRD JUDICIAL DISTRICT

CHAMBERS OF
RALPH STEMPE
JUDGE

341 West Fourth Avenue
Anchorage, Alaska 99501-2074

January 31, 1986

Karla Forsythe
General Counsel
303 K Street,
Anchorage, Alaska, 99501-2099

Dear Ms. Forsythe:

With the expanded jurisdiction of the District Court enacted in 1985 you might want to consider two areas of jurisdiction that were not addressed in 1985.

The Uniform Arbitration Act (A.S. 09.43.170) provides that enforcement of awards is proper in the Superior Court regardless of the amount of the controversy. The same is true with regard to enforcement of lawyer fee arbitration awards (Bar Rule 41). You may want to consider whether these two areas of jurisdiction should be amended in order to be consistent with the 1985 act.

Very truly yours,

A handwritten signature in cursive script that reads "Ralph Stemp".

Ralph Stemp
District Court Judge

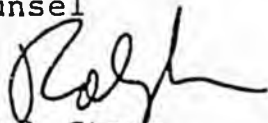
cc: Judge Douglas Serdahely
Judge Natalie K. Finn

MEMORANDUM

Alaska Court System

TO:

Karla Forsythe
Staff Counsel



DATE : May 27, 1986

FROM: Judge Ralph Stemp

SUBJECT: Proposed Legislation

By the very fact that the District Court is a court of limited jurisdiction there will always be situations in which a litigant, through choosing to be in that court, will incur a loss not on the merits because the court is without jurisdiction to adjudicate his claim. It seems that one such situation, where the litigant's losses will probably always be large, is the area of eviction from "premises." It would therefore seem desirable that the definition of jurisdiction in such area be as clear and simple as possible. Our jurisdiction statute is not that clear on the subject and unfortunately there is not much Alaska precedent in the area of forcible entry and detainer.

The chance for jurisdictional error in forcible entry and detainer actions is not merely hypothetical or academic nor can it be overcome with "good lawyering" by a litigant. The reason that there is a large risk of error is that the statute, in attempting to limit jurisdiction, actually introduces the confusion.

The statute (A.S. 22.15.030(a)(6)) (copy attached for easy reference) provides that the District Court shall have jurisdiction over forcible entry and detainer actions "when the value of the property or of the arrears and damage to the property does not exceed \$25,000." There are several problems created by this limitations phrase. First, the notion of "arrears and damages" is not a factor in the forcible entry and detainer summary action.¹ Such matters are separate causes of action which may, but need not be, joined with the summary action for possession. See, McDowell v. Lenarduzzi, 546 P.2d 1315 (Alaska 1976); Thrift Shop, Inc. v. Alaska Mutual Savings Bank, 398 P.2d 657 (Alaska 1965).

Second, the limitation provision deals with the value of "property." There is no indication whether this notion concerns the underlying fee interest, the plaintiff's

present interest, the defendant's present interest, or some other interest. Civil Form 170 seems to suggest that the relevant property interest is that of the nominal plaintiff.

The forcible entry and detainer area is only one example of the problems that are inherent in the grant of limited jurisdiction, and, of course, that will continue to exist. However, when the consequences of error are considered (along with the risk of error not being low or hypothetical) it would seem that the jurisdiction grant should be reviewed for clarity. If it is a desirable policy that the District Court continue to hear these summary lawsuits then perhaps the limiting phrase can be redrafted more carefully. Perhaps, the phrase should be deleted entirely.²

1. This confusion concerning the summary action has been carried into Civil Rule 85(b) which provides that trial of such actions may be in the District Court "when the amount claimed does not exceed the jurisdiction of that court." (emphasis added)

2. The 1985 legislation on concurrent jurisdiction of the Superior and District Courts is a lure for unwary forcible entry and detainer plaintiffs into the District Court when actual jurisdiction may only be in the Superior Court. See A.S. 22.15.030(b).

cc: Judge Douglas Serdahely
Judge Glen Anderson

Memorandum

Alaska Court System

TO: Karla Forsythe

DATE : May 31, 1983

FROM:

Stephanie J. Cole
Stephanie J. Cole
Deputy Director for Services

SUBJECT: Revision of
AS 22.15.120

Susan informs me that you collect and handle requests for minor statutory changes.

I would suggest an amendment to AS 22.15.120. This statute limits the types of cases magistrates can hear. In part, AS 22.15.120 allows magistrates:

- ...
- (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;...

A problem is created because of the existence of that small class of offenses (like littering) called "violations." AS 11.81.900 (55) states:

"violation" is a noncriminal offense punishable only by a fine, but not by imprisonment or other penalty; conviction of a violation does not give rise to any disability or legal disadvantage based on conviction of a crime; a person charged with a violations is not entitled

- (A) to a trial by jury; or
- (B) to have a public defender or other counsel appointed at public expense to represent him;

AS 22.15.120, as presently written, gives no guidance as to whether or not magistrates may hear all phases of violation cases, or if violations must be treated as misdemeanors (requiring a written consent for a trial by magistrate). Logically, violations are akin to infractions, and should be included in AS 22.15.120(7) as one of those types of cases magistrates can hear without the necessity of a defendant's written consent.

I suggest that AS 22.15.120(7) be amended to add "violations under AS 11" to the categories of cases listed.

Adm. F-1

Rev. 2. 83

SJC:jm
cc: Carole Baekey
Susan Miller

HCS CSSB 377(Jud)amH

The question being: "Shall Amendment No. 13 be adopted?"
The roll was taken with the following result:

HCS CSSB 377(JUD)AMH AM13

Yeas: 20 Binkley, Boucher, Collins, Cotten,
Frank, Furnace, Hanley, Jenkins,
Larson, Marrou, Martin,
Miller, M.W., Pearce, Pettyjohn,
Pignalberi, Rieger, Ringstad,
Shultz, Thompson, Uehling

Nays: 20 Adams, Cato, Clocksin, Davis,
Duncan, Fuller, Goll, Gruenberg,
Grussendorf, Herrmann, Hurley,
Koponen, Miller, M.M., Navarre,
Phillips, Pourchot, Sund,
Szymanski, Taylor, Wallis

Excused: 0

Absent: 0

And so, Amendment No. 13 was not adopted.

Amendment No. 14 by Gruenberg and Phillips:

Page 9, after line 1, insert a new section 8 as follows:

** Sec. 8. 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 \$35,000 [\$25,000];

(2) for the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed \$35,000 [\$25,000];

(3) for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding \$35,000 [\$25,000];

(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;

HCS CSSB 377(Jud)amH

(6) for the recovery of the possession of premises in the manner provided under AS 09.45.070 - 09.45.160, when the value [OF THE PROPERTY OR] of the arrears and damage to the property does not exceed \$35,000 [\$25,000];

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

(8) for the recovery of money or damages in motor vehicle tort cases when the amount claimed exclusive of costs, interest and attorney fees does not exceed \$35,000 [\$25,000];

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

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

Renumber remaining sections accordingly.

Representative Gruenberg moved and asked unanimous consent that Amendment No. 14 be adopted.

Representative Collins objected.

The question being: "Shall Amendment No. 14 be adopted?"
The roll was taken with the following result:

HCS CSSB 377(JUD)AMH AM14

Yeas: 32 Adams, Binkley, Boucher, Cato,
Clocksin, Cotten, Davis, Duncan,
Frank, Fuller, Furnace, Goll,
Gruenberg, Grussendorf, Herrmann,
Hurley, Koponen, Larson, Martin,
Miller, M.M., Miller, M.W., Navarre,
Pettyjohn, Phillips, Pignalberi,
Pourchot, Ringstad, Sund,
Szymanski, Taylor, Uehling,
Wallis

Nays: 8 Collins, Hanley, Jenkins, Marrou,
Pearce, Rieger, Shultz, Thompson

Excused: 0

Absent: 0

And so, Amendment No. 14 was not adopted.

*Correction to Journal on May 9:
Amendment #14 was adopted*

NOTES TO DECISIONS

Magistrates are "judges of other courts" within the meaning of Alaska Const., art. IV, § 4. Buckalew v. Holloway, Sup. Ct. Op. No. 1988 (File No. 4058), 604 P.2d 240 (1979). Applied in Larson v. State, Sup. Ct. Op. No. 1430 (File No. 2433), 564 P.2d 365 (1977).

Sec. 22.20.020. Disqualification of judicial officer for cause. (a) A judicial officer may not act as such in a court of which the judicial officer is a member in an action in which

- (1) the judicial officer is a party or is directly interested;
- (2) the judicial officer was not present and sitting as a member of the court at the hearing of a matter submitted for its decision;
- (3) the judicial officer is a material witness;
- (4) the judicial officer is related to either party by consanguinity or affinity within the third degree;
- (5) either party has retained the judicial officer as their attorney or has been professionally counseled by him in any matter within two years preceding the filing of the action;
- (6) the judicial officer feels that, for any reason, a fair and impartial decision cannot be given.

→ (b) In an action specified in (a) (4) and (5) of this section the disqualification may be waived by the parties and is waived unless a party raises the objection.

(c) If a judicial officer disqualifies himself or herself or consents to disqualification, the presiding judge of the district shall immediately transfer the action to another judge of that district to which the objections of the parties do not apply or are least applicable and if there is no such judge, the chief justice of the supreme court shall assign a judge for the hearing or trial of the action. If a judicial officer denies disqualification the question shall be heard and determined by another judge assigned for the purpose by the presiding judge of the next higher level of courts or, if none, by the other members of the supreme court. The hearing may be ex parte and without notice to the parties or judge. (§ 54-2-1 ACLA 1949; am § 1 ch 48 SLA 1967)

Cross references. — For other statutory provisions concerning disqualification of judges, see AS 22.30.070 (a). As to when a judge should disqualify himself, see Canon 3C of the Code of Judicial Conduct.

Editor's notes. — This section was redrafted by the revisor of statutes to

remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Legislative history reports. — For report on ch. 48, SLA 1967 (SB 66), see 1967 House Journal, p. 311.

State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
HOUSE JUDICIARY
HOUSE RULES



Representative Max F. Gruenberg, Jr.
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Memorandum

Date: February 2, 1987
To: Representative John Sund
From: Representative Max Gruenberg *MFG*
Re: Impeachment of Judges Bill

FEB 05 1987

I would like to know if you are interested in co-sponsoring the Impeachment of Judges bill, copy enclosed.

You co-sponsored the original bill last session as HB 516, which provided a procedure for the impeachment of court of appeals judges and district court judges and the disqualification of judges for cause.

Our new bill incorporates HB 516, with some technical changes suggested by legal counsel. At the request of the judiciary, I have also added a number of other provisions, which increase the jurisdiction of district courts, give magistrates explicit authority to handle violations, and clarify the law regarding judicial retirement.

I intend to introduce this bill on Monday, February 9. If you would like to co-sponsor the bill, please let me know, or contact my legislative aide, Mark Handley, at 465-4986 before 3:00 p.m. on Friday, February 6 so that we can ensure that your name is on the bill.

sh JH

MEMORANDUM

DATE: February 2, 1987
TO: Potential Co-sponsors
FROM: Max F. Gruenberg, Jr.
RE: Sectional analysis of Impeachment of Judges Bill

Secs. 1, 2 and 3

AS 09.30.200, .220 and .230 Foreign judgments are now enforceable only in superior court. The bill allows foreign judgments up to \$35,000 to be enforceable in district court.

Sec. 4

AS 09.43.170 The Uniform Arbitration Act is now only enforceable in superior court. The bill allows arbitrations up to \$35,000 to be enforceable in district court.

Sec. 5

AS 22.07.075 Provides for the impeachment of court of appeals judges. It uses the present language of AS 22.05.120 and AS 22.10.170 for the impeachment of supreme court justices and superior court judges. This was part of the bill last year.

Sec. 6

AS 22.15.030(a) Raises district court jurisdiction from \$25,000.00 to \$35,000.00 and clarifies the requirements for district court jurisdiction over evictions. The \$35,000 limit was passed as part of the tort reform bill, SB 377, in the House Judiciary Committee and also passed the House floor last year, but did not survive the conference committee.

Sec. 7

AS 22.15.120 Brings criminal violations within the jurisdiction of magistrate courts.

Sec. 8

As 22.15.205 Provides for the impeachment of district court judges. See section 5 above. This was part of the bill last year.

Secs. 9 & 10

AS 22.20.020(a) and (b) Revises and updates the statute for disqualifying a judge for cause. This was part of the bill last year.

Secs. 11 & 12

AS 22.25.010(b) and 22.30.070(c) Clarifies the procedure for judicial retirement for incapacity or disability.

HB 139

officers of the State.

(The amendment to this section was approved by the voters of the state August 27, 1968 and became effective October 11, 1968. The words "and the commission on judicial qualifications" were incorporated in this section.)

Restrictions

SECTION 14. Supreme court justices and superior court judges while holding office may not practice law, hold office in a political party, or hold any other office or position of profit under the United States, and the State, or its political subdivisions. Any supreme court justice or superior court judge filing for another elective public office forfeits his judicial position.

Rule-making Power

SECTION 15. The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.

Court Administration

SECTION 16. The chief justice of the supreme court shall be the administrative head of all courts. He may assign judges from one court or division thereof to another for temporary service. The chief justice shall, with the approval of the supreme court, appoint an administrative director to serve at the pleasure of the supreme court and to supervise the administrative operations of the judicial system.

(The amendment to this section was approved by the voters of the state August 25, 1970 and became effective October 10, 1970. The amendment substituted "the pleasure of the supreme court" for "his pleasure" in the last sentence.)

ARTICLE V

SUFFRAGE AND ELECTIONS

Qualified Voters

SECTION 1. Every citizen of the United States who is at least eighteen years of age, who meets registration residency requirements which may be

OPINION

PER CURIAM.

This is a sentence appeal.

Bennie Washington was convicted of attempted robbery. He was sentenced to five years of imprisonment.

We have reviewed the record in light of *State v. Chan*, 477 P.2d 441 (Alaska 1970); *Donlan v. State*, 527 P.2d 472, 475 (Alaska 1974); *Cleary v. State*, 548 P.2d 952 (Alaska 1976) and *Bradley v. State*, 535 P.2d 1031, 1033-34 (Alaska 1975).

[1] We note that Washington was convicted in Wisconsin in 1970 for armed robbery and for carrying a concealed weapon. He was 31 years old at the time of his sentencing in Alaska. Although Washington labored under certain disadvantages in his early life these are offset by a number of advantages afforded him in his adult life, and in any event do not mitigate his resort to criminal activities.

[2] From our review of the record we cannot say that the sentencing judge was clearly mistaken.

AFFIRMED.



Timothy Leroy GIEFFELS, Petitioner,

v.

STATE of Alaska, Respondent.

No. 2787.

Supreme Court of Alaska.

July 23, 1978.

Defendant was arraigned in the Superior Court, Third Judicial District, Anchorage, Ralph E. Moody, J., and he filed petition for review from judge's orders, claiming that judge's refusal to disqualify himself and his subsequent conducting of arraignment were illegal. The Supreme

Court, Boochever, C. J., held that since issues pertaining to preemption of judge were of grave public concern and capable of recurring and escaping review, court would consider issues; that if procedural or administrative action taken by preempted judge could not possibly interfere with defendant's right to fair disposition of his case because of bias or interest on part of preempted judge, then actions would be valid; however, if administrative or procedural action interfered with substantive right of defendant to fair trial before impartial judge, action by preempted judge would be impermissible; and that judge's actions in refusing to disqualify himself, revoking bail, allegedly holding defendant in contempt, and refusing to consider motion to dismiss indictment for failure to state an offense or for lack of warrant and summons were procedural matters not affecting defendant's substantive rights, and thus were permissible action for preempted judge to take prior to his transfer of case to another judicial official.

Affirmed in part and dismissed in part for mootness.

See also, 554 P.2d 460.

1. Constitutional Law ⇨69

Advisory opinions are to be avoided, and cases which do not constitute actual cases or controversies are not properly considered.

2. Action ⇨6

One exception to mootness doctrine is a matter of grave public concern that is recurring and capable of escaping review.

3. Action ⇨6

Although defendant's claims, inter alia, that judge's refusal to disqualify himself at arraignment of defendant, revocation of bail, alleged holding in contempt of defendant, refusal to consider motion to dismiss indictment for failure to state an offense were rendered moot by subsequent occurrence of further proceedings under another judge's supervision, issues pertaining to preemption of judge would be considered due to fact that matter was of grave public

concern and was capable of recurring and escaping review. AS 22.20.022; Rules of Criminal Procedure, rule 25(d).

4. Judges ⇨39

Where two proceedings involved same defendant and necessity of proving same facts and issues, and were in fact based upon indictment for same charge, judge who was preempted in prior proceeding was automatically disqualified from presiding at second proceeding. AS 22.20.022; Rules of Criminal Procedure, rule 25(d).

5. Courts ⇨78

State Supreme Court has power to regulate procedural and administrative matters in state courts. Const. art. 4, § 15.

6. Judges ⇨51(1)

Procedure to be followed in implementing substantive right created by statute providing for peremptory disqualification of judge is subject to rule-making powers of the State Supreme Court. AS 22.20.022; Const. art. 4, § 15; Rules of Criminal Procedure, rule 25(d).

7. Constitutional Law ⇨55

Although legislature has power to create right to fair trial before unbiased judge, and right to preempt judge without requiring actual proof of bias or interest, it has very limited power to provide for means by which that preemption right may be exercised. AS 22.20.022; Const. art. 4, § 15; Rules of Criminal Procedure, rule 25(d).

8. Judges ⇨51(1)

Until legislature validly changes criminal rule regulating means or method by which party's peremptory challenge to judge takes effect, that rule is sole provision which may be consulted in determining whether preemptive right was properly exercised and effect of preemption on procedural and administrative functions of court system. AS 22.20.022; Rules of Criminal Procedure, rule 25(d).

9. Judges ⇨51(1)

Insofar as criminal rule regulating means or method by which party's preemp-

tory challenge to judge takes effect regulates only procedural aspects of peremptory right created by statute, and to extent that rule does not infringe upon substantive right created by statute, provisions of rule supercede statute. AS 22.20.022; Rules of Criminal Procedure, rule 25(d).

10. Judges ⇨51(1)

Although means or method by which peremptory challenge to judge is to be raised and recognized in course of judicial proceedings is usually procedural matter solely within rule-making powers of the State Supreme Court, such procedural regulations cannot be the basis of any action which would interfere with the substantive right created by statute. AS 22.20.022; Rules of Criminal Procedure, rule 25(d).

11. Judges ⇨51(4)

If procedural or administrative action taken by preempted judge under provision of criminal rule regulating procedure for preemption of judges could not possibly interfere with defendant's right to fair disposition of his case because of bias or interest on part of preempted judge, then substantive right created by statute to fair trial before impartial judge would not be affected; only if administrative or procedural action interferes with substantive parts of statute would action by disqualified judge be impermissible. AS 22.20.022; Rules of Criminal Procedure, rule 25(d).

12. Judges ⇨56

Generally, calendaring orders and other procedural matters regarding master calendar would not directly affect ultimate disposition of case and thus such action could be properly taken by preempted judge; however, rulings on points of law regarding matters such as searches and seizures, sufficiency of indictment, and other pretrial legal decisions could be affected by bias or interest and would have direct effect on ultimate disposition of a defendant's case and thus such rulings should not be made by preempted judge. AS 22.20.022; Rules of Criminal Procedure, rule 25(d).

18. Criminal Law ⇨266

If defendant stands mute, then case automatically proceeds under name in indictment, and a positive declaration by defendant that no other name is his true name is not required. Rules of Criminal Procedure, rule 10(b)(2)(ii).

19. Criminal Law ⇨266

Trial judge had no discretion to punish defendant for standing mute when he was brought before judge for an arraignment since rules do not require defendant to respond. Rules of Criminal Procedure, rule 10(b)(2)(ii).

20. Judges ⇨56

In absence of specific objection, preempted presiding judge may take a plea, and upon entry of plea of "not guilty" set case for trial and subsequent pretrial hearings. AS 22.20.022; Rules of Criminal Procedure, rule 25(d).

21. Judges ⇨56

If calendaring becomes disputed issue, preempted judge hearing issue should immediately refer case to another judicial officer. AS 22.20.022; Rules of Criminal Procedure, rule 25(d).

22. Judges ⇨56

Determination by judge of whether defendant's "guilty" or "nolo contendere" pleas are voluntary and have reasonable basis is matter which may be affected by factors which would interfere with fair disposition of defendant's case, and thus a preempted judge should assign case at this point to another judge for determination of voluntariness of guilty plea. AS 22.20.022; Rules of Criminal Procedure, rules 11, 25(d).

23. Judges ⇨56

Generally bail questions have no bearing on process that determines guilt or innocence of defendant, and thus may be decided by preempted judge. AS 22.20.022; Rules of Criminal Procedure, rule 25(d).

24. Judges ⇨56

If amount of bail or conditions thereunder are disputed issues, setting of bail

should be immediately referred by preempted judge to another judicial officer. AS 22.20.022; Rules of Criminal Procedure, rule 25(d).

20. Bail ⇨49

Defendant should be advised of his right to have bail heard by judge other than preempted judge. AS 22.20.022; Rules of Criminal Procedure, rule 25(d).

21. Judges ⇨56

Despite fact that judge had been preempted in previous case involving defendant, judge's refusal to disqualify himself and his subsequent conducting of arraignment upon proceedings following reindictment on identical charge was proper due to procedural nature of actions taken by judge prior to his transfer of case to another judge. AS 22.20.022; Rules of Criminal Procedure, rule 25(d).

Phillip P. Weidner, Asst. Public Defender, and Brian Shortell, Public Defender, Anchorage, for petitioner.

Ivan Lawner, Asst. Dist. Atty., Joseph D. Balfe, Dist. Atty., Anchorage, Avrum M. Gross, Atty. Gen., Juneau, for respondent.

Before BOOCHEVER, C. J., and RABINOWITZ, CONNOR, ERWIN and BURKE, JJ.

OPINION

BOOCHEVER, Chief Justice.

Issues pertaining to the pre-emption of a judge challenged under the provisions of AS 22.20.022 and Criminal Rule 25(d) are resolved by this petition. On February 11, 1976, petitioner Gieffels was brought before Presiding Judge Ralph E. Moody for an arraignment. Judge Moody had been successfully pre-empted in a previous case involving Gieffels. The indictments in that case were dismissed by another judge because of insufficient evidence and prosecutorial error before the grand jury. The instant case arose as a result of proceed-

takes effect regardless of preemptory and to extent that upon substantive provisions of rule 22.20.022; Rules of 25(d).

method by which a judge is to be course of judicial procedural matter regarding powers of the which procedural regardless of any action with the substantive e. AS 22.20.022; Procedure, rule 25(d).

administrative action under provisions regarding procedure would not possibly interfere with right to fair disposition of bias or preempted judge, then by statute to fair judge would not be administrative or procedure with substantive action by disqualifiable. AS 22.20.022; Procedure, rule 25(d).

regarding masterly affect ultimate thus such action by preempted points of law as searches and indictment, and dispositions could be set and would have disposition of a thus such rulings preempted judge. Criminal Proce-

ings following reindictment on an identical charge. At the start of the arraignment proceedings after reindictment, the following colloquy took place:

MR. WEIDNER: Your Honor—I think Your Honor has been pre-empted in the instant proceeding. It might be appropriate to . . .

THE COURT: This is a procedural matter and I will not allow a pre-empt. You will proceed with the arraignment.

MR. WEIDNER: I think you've previously been pre-empted and it's been honored in a similar case . . .

THE COURT: It's denied, and we'll proceed with the arraignment.

Subsequently the court asked Gieffels his true name, and counsel for Gieffels, Mr. Weidner, advised Gieffels not to make any comments. Mr. Weidner stated that he thought the court did not have jurisdiction over Gieffels because no summons or warrant had been issued. The court again asked Gieffels his true name, and Mr. Weidner again advised the defendant not to answer. The following comments were then made:

THE COURT: I'm going to find you in contempt, sir, if you don't. Are you going to answer? All right. I'll revoke any bail until you answer your name, sir. And we've handed a copy of this [the indictment] to your counsel and that's all we need at this time until he . . .

MR. WEIDNER: Your Honor. . . .

THE COURT: . . . answers his name, no bail will be set. Anything else?

MR. WEIDNER: Yes, Your Honor. I wanted to first of all direct the court's attention to the fact that I believe that Mr. Gieffels has been brought before this court illegally. I'm not aware of any summons that has been served on him or any arrest warrant.

After the arraignment, again on February 11, 1976, Judge Moody issued a calendar order transferring the case to Judge Lewis.

Later the same day, Gieffels filed a petition for review in this court from Judge Moody's orders. His petition consisted of objections to Judge Moody's actions, namely, the refusal to disqualify him from the revocation of bail, the alleged holding in contempt of Gieffels, the lack of a warrant or summons and the refusal to consider a motion to dismiss the indictment for failure to state an offense.

On February 13, 1976, Judge Lewis issued another arraignment of Petitioner Gieffels at which time a warrant and summons were issued, and the motion to dismiss the indictment was heard and denied. Furthermore, the day after the arraignment before Judge Moody, bail was reinstated.

Petitioner Gieffels argues first that Judge Moody's refusal to disqualify himself and his subsequent conducting of the arraignment were in total disregard of *Channel Flying, Inc. v. Bernhardt*, 45 Alaska 2d 570 (Alaska 1969). Second, Gieffels contends that the superior court disregarded this court's decision in *Gilbert v. State*, 540 P.2d 485 (Alaska 1975), to the effect that bail must be set in a criminal case. Third, Gieffels argues that the judge disregarded Criminal Rule 9(a), which petitioner contends requires that a criminal defendant must be brought before the court by virtue of either a warrant or a summons. Fourth, Gieffels contends that Judge Moody held him in contempt in violation of his fifth amendment privilege and that, in any case, Criminal Rule 10(b)(2) provides that a defendant shall "given the opportunity to declare his name" and not that a defendant shall be forced to state his name.

[1] In general, advisory opinions are to be avoided, and cases which do not constitute actual cases or controversies are

1. On February 12, 1976, Justice Erwin issued a stay of all rulings of the superior court entered at the arraignment of Gieffels in

order that the case be assigned to another superior court judge. The order also stated Gieffels' previous bail of \$100,000.