

THE MAGISTRATES' ROLE IN ALASKA
PAST AND PRESENT

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I

THE PAST

In Territorial days the roles presently filled by the District Judges and Magistrates were filled by two classes of judicial officers -- United States Commissioners and Municipal Magistrates.

A. U.S. Commissioner

The U.S. Commissioners were appointed by the United States District Court Judge for the Judicial Division in which the commissioner served. Commissioners were appointed for most of the major cities and many of the larger villages of the Territory. They were assigned to cover areas called "Precincts" and were paid on a "fee system" which was directly related to the amount of work that they performed. The maximum one could receive was \$12,000.

Commissioners possessed greater power than our magistrates of today. For example, they had full Probate and Juvenile Court Jurisdiction which is now held by the Superior Court and they could try any defendant who was charged with a misdemeanor, whether he consented in writing or not, unless it happened to be a "Federal Case" in which instance the defendant had the right to demand to be tried by the U.S. District Judge. This power was somewhat checked however by the fact that the defendant had the right to a "de novo" appeal which meant that on appeal, the

U.S. District Court Judge would try the entire case over again. The people in the outlying areas rarely knew this, however. In the cities it was a different matter! While there were many appeals, they were rarely heard due to the extremely heavy court calendars of the U.S. District Judges.

In general, the administrative duties of the Commissioners were the same as those possessed by the magistrates of today.

B. Municipal Magistrates & Village Magistrates

1. Village Magistrates

In the Incorporated Villages (later called Fourth Class Cities), the Village Magistrate was appointed by the Village Council and his power was extremely limited. He could only try people charged with violating Village Ordinances and the maximum penalty that could be imposed was a \$25 fine or 5 days in jail or both. Appeals were heard "de novo" by the U.S. District Court Judge for the Division in which the village was located. These magistrates did not necessarily draw any pay. (Ch.150, SLA 1957 as amended by Ch 79 SLA 1959)

2. Municipal Magistrates

The most powerful municipal magistrate was the one who served in a First Class City. He was an elected official and served a two year term. If there were over 3,000 people in his city, the minimum salary he could receive was \$1,800 per year (16-1-68 ACLA 1949). He could try defendants who were charged with violation of

municipal ordinances and the maximum penalty that could be imposed was 30 days in jail or a \$300 fine or both. These magistrates could hear small claims, as well. Appeals from their courts were heard "de novo" by the U.S. District Court Judge for the Division in which the city was located. Again, unfortunately, the appeals were rarely heard.

C. Weaknesses of the Past.

1. Neither the commissioners nor the magistrates received much, if any, supervision or training.
2. The "de novo" appeals were rarely, if ever, heard.
3. Commissioners were not required to be attorneys.
4. Commissioners were paid on a fee system with no assured regular salary.
5. Magistrates did not have any jurisdiction outside of their cities and if a defendant got away -- crossed the city boundary, little, if anything, could be done to bring him back.

II

STATEHOOD

With the advent of statehood, the Alaska Constitution took effect and Article IV provides "The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified

judicial system for operation and administration." The legislature implemented this strong section of our constitution in 1959 by establishing the District Magistrate Courts as the only courts of limited jurisdiction in the state and gave them three years to make their complete transition to replace the Commissioners and magistrates who had theretofore served the Territory. From a practical point of view however, the District Magistrate Courts (now District Courts) for the State of Alaska came into full existence and operation on the 20th of February, 1960. Many of the former Commissioners and Magistrates became District Magistrates and Deputy Magistrates, of which I am one.

III

THE PRESENT

Magistrates serve as judicial officers in the District Courts, and there is a District Court in each of the Four Judicial Districts of the State. The number of district judges and magistrates within each district may be increased or decreased by rule of the supreme court. (AS 22.15.010 and AS 22.15.020).

The presiding superior court judge for the judicial district appoints the magistrates in his district and they serve at his pleasure (AS 22.15.170 (c)).

A magistrate must be a citizen, at least 21 years of age and a resident of the state for at least six months immediately preceding his appointment. The supreme court may also prescribe

additional qualifications (AS 22.15.160). Each magistrate receives annual compensation which is determined by the supreme court. (AS 22.15.220 (b)) A Magistrate may not hold office in a political party, but he may hold other office or be gainfully employed (AS 22.15.210 (b)).

A. CIVIL JURISDICTION

The district court has a maximum jurisdiction in civil cases of up to \$10,000 (except in motor vehicle tort cases \$15,000) plus costs, interest and attorney's fees (AS 22.15.030) and while the magistrate can accept cases of this size for filing, he can only hear and decide cases which are most frequently called Small Claims -- that is where the amount sought does not exceed \$1,000.00 plus costs, interest and attorney's fees. This is further limited by the fact that district court jurisdiction does not extend to an action in which the title to real property is in question nor to actions for false imprisonment, libel, slander, malicious prosecution, criminal conversation, seduction upon a promise to marry, actions of an equitable nature, except foreclosure of some liens, nor to actions in which the state is a defendant (AS 22.15.010).

B. CRIMINAL JURISDICTION OF MAGISTRATE

A Magistrate may hold trials for the violation of state misdemeanor laws if the defendant consents to trial before the magistrate in writing. (AS 22.15.120 (7)).

He may hear, try all cases involving violations of ordinances of political subdivisions.

He acts as an examining magistrate in preliminary hearings for felonies.

If there is a Criminal or Civil matter that the magistrate cannot hear because it exceeds his jurisdiction, a travelling district judge presides over the case when he goes to the area or it is transferred to the city and court where the district judge generally sits.

Appeals from all district court cases are now heard on the record in superior court, unless the judge, in his discretion, grants a trial de novo, in whole or in part. With the advent of electronic recording of judicial proceedings, de novo trials are very rarely held.

C. OTHER POWERS AND DUTIES

A Magistrate has the power (1) to issue writs of habeas corpus, returnable before a judge of the superior court; (2) of a notary public; (3) to issue marriage licenses and to solemnize marriages; (4) to issue warrants of arrest, summons and search warrants; (5) to act as an examining magistrate in preliminary examinations; to set, receive and forfeit bail and to order the release of defendants under bail; (6) to act as a referee in matters and actions referred to him by the superior court; (7) of the superior court in all respects including but not limited to contempts, attendance of witnesses and bench warrants;

(8) to order temporary detention of a minor child or take other action authorized by law or rule (AS 22.15.100).

Each magistrate shall (1) perform the duties and exercise the authority of coroner; (2) record birth, death and marriage certificates presented to them for record in the manner prescribed by law; (3) take custody and control of and preserve the property and estate of deceased persons until a legal custodian is appointed (AS 22.15.110); (4) perform the duties of District Recorders when required by the Supreme Court (Sec 26 Ch 184 SLA 1959); (5) handle absentee ballots (AS 15.20.130)

D. UNOFFICIAL ACTIVITIES

The magistrate until the recent past (if not still) has frequently been the only state official in many of the smaller cities and villages. Therefore, he or she is the person to whom the local residents go for almost any assistance from the cradle to the grave, which automatically makes the magistrate the unofficial peace maker for the community.

E. WEAKNESSES OF THE PRESENT

While there have been numerous improvements since statehood, the following weaknesses in the magistrate system exist today.

1. Constant changes in rules of practice and procedure require more thorough supervision and training.

2. Inadequacy of facilities degrade the judicial function.
3. Frequent changes in the lines of authority and administrative directors staff cause confusion. There has been no criteria developed to determine which communities will have resident magistrates.
4. Inadequate travel budgets have made supervision near impossible.
5. There is no established criteria for determining a magistrate's salary.
6. They are required to perform detailed clerical work, such as recording, which can be handled more adequately in the larger cities in such a manner as to give better service to our bush residents. They all need recording equipment in order to comply with the criminal rules for preliminary examinations and to prevent baseless attacks against the quality of their judicial services and to substantiate the occasional well formed objection to those services.